

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	File No. EB-08-IH-0692
)	
Tama Broadcasting, Inc.	)	FRN No. 0006042295
Parent of	)	Acct. No. 200932080023
)	
Tama Radio Licenses of Tampa, Florida, Inc., Licensee of Stations:)	
)	
WTMP(AM), Egypt Lake, Florida	)	Facility ID No. 74108
WTMP-FM, Dade City, Florida	)	Facility ID No. 15239
)	
Tama Radio Licenses of Jacksonville, FL, Inc., Licensee of Stations:)	
)	
WHJX(FM), Baldwin, Florida	)	Facility ID No. 52032
WSJF(FM), St. Augustine Beach, Florida	)	Facility ID No. 53672
WSJS(FM), Fernandina Beach, Florida	)	Facility ID No. 40483
WFJO(FM), Folkston, Georgia	)	Facility ID No. 22005
)	
Tama Radio Licenses of Savannah, GA, Inc., Licensee of Stations:)	
)	
WSSJ(FM), Rincon, Georgia)	
WSGA(FM), Hinesville, Georgia	)	Facility ID No. 54805
WTHG(FM), Hinesville, Georgia	)	Facility ID No. 64428
	)	Facility ID No. 7816
and)	
)	
D.B. Zwirn & Co., L.P.)	
Parent of:)	
)	
D.B. Zwirn Special Opportunities Fund, L.P., Bernard Radio LLC; and Straight Way Radio	)	FRN No. 0015502016
	)	Acct. No. 200932080023

ORDER

Adopted: February 17, 2009

Released: February 17, 2009

By the Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the following parties: the Enforcement Bureau (the "Bureau"); Tama Broadcasting, Inc., parent of the above-captioned licensees ("Tama," or the "Licensee"); and D.B. Zwirn & Co., L.P., ultimate parent of Bernard Radio LLC and Straight Way Radio ("Zwirn") (collectively, the "Parties"). The Consent Decree terminates the Bureau's investigation into whether the Licensee and Zwirn, either jointly or separately, violated Section 310(d) of the Communications Act of 1934, as amended (the "Act"),¹ and Section 73.3540 of the

¹ See 47 U.S.C. § 310(d).

Commission's Rules² by engaging in conduct that exceeded the scope of a local marketing agreement between Tama and Zwirn, thereby effectuating a *de facto* unauthorized transfer of control.³

2. The Parties have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Tama and Zwirn possess the basic qualifications including, but not limited to, those related to character, to hold or obtain any Commission license or authorization.⁴

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act and Sections 0.111 and 0.311 of the Commission's Rules,⁵ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that all third-party complaints before the Enforcement Bureau filed against Tama Broadcasting, Inc., and D.B. Zwirn & Co., L.P., regarding the above-captioned investigation as of the date of this Consent Decree **ARE DISMISSED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail, postage prepaid, and certified mail, return receipt requested, to Francisco R.

² See 47 C.F.R. § 73.3540.

³ Although the Bureau is terminating its investigation into whether Tama Broadcasting, Inc., and Zwirn engaged in conduct that constituted an unauthorized transfer of control, the Bureau retains its right to investigate the conduct of Dr. Glenn W. Cherry, Board of Directors member and former President/CEO of Tama, and his brother, Charles W. Cherry II, Board of Directors member and former Vice President/General Counsel and Secretary of Tama.

⁴ The Bureau's assessment that Tama Broadcasting, Inc., possesses the basic qualifications to hold or obtain a Commission license or authorization applies to Tama's qualifications as a corporate entity but does not foreclose the Bureau from making a separate assessment into whether the conduct of Glenn or Charles Cherry raises questions regarding their basic qualifications to hold or obtain a Commission license or authorization.

⁵ See 47 U.S.C. § 154(i); 47 C.F.R. §§ 0.111, 0.311.

Montero, Esquire, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, Virginia, 22209; Richard J. Bodorff, Esquire, and Gregory L. Masters, Esquire, Wiley Rein LLP, 1776 K Street NW, Washington, D.C. 20006; and Percy Squire, Esquire, 514 S. High Street, Columbus, Ohio, 43215.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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D.B. Zwirn & Co., L.P.)	
Parent of)	
)	
D.B. Zwirn Special Opportunities Fund, L.P.; Bernard Radio LLC; and Straight Way Radio)	FRN No. 0015502016
)	Acct. No. 200932080023

CONSENT DECREE

1. The Enforcement Bureau (“Bureau”), Tama Broadcasting, Inc., (“Tama” or the “Licensee”), and D.B. Zwirn & Co., L.P. (“Zwirn”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Tama and Zwirn violated Section 310(d) of the Communications Act of 1934, as amended,¹ and Section 73.3540 of the Commission’s Rules.²

¹ See 47 U.S.C. § 310(d).

² See 47 C.F.R. § 73.3540.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Complaint” means any third-party complaint that may have been received by or is otherwise in the possession of the Commission or Bureau alleging that Tama Broadcasting, Inc., and D.B. Zwirn & Co., L.P., engaged in an unauthorized transfer of control.
 - (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 9.
 - (g) “Effective Date” means the date on which the Commission releases the Adopting Order.
 - (h) “Investigation” means the investigation commenced by the Bureau’s Investigations and Hearings Division’s August 20, 2008, Letters of Inquiry³ regarding whether Tama Broadcasting, Inc., and D.B. Zwirn & Co., L.P., engaged in an unauthorized transfer of control with respect to the Stations.⁴
 - (i) “Investigations and Hearings Division” means the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, acting on behalf of the Enforcement Bureau.
 - (j) “LMA” means the local marketing agreement entered into between Tama Broadcasting, Inc., and D.B. Zwirn’s subsidiary, Bernard Radio LLC, on September 10, 2007, and Bernard Radio LLC’s successor, Straight Way Radio.

³ See Letter from Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Glenn Cherry, President/CEO, Tama Broadcasting, Inc., dated August 20, 2008; and Letter from Kenneth M. Scheibel, Jr., to Tama Broadcasting, Inc., c/o Ted Bolton, dated October 10, 2008 (“Tama LOIs”); *see also* Letter from Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Straight Way Radio, Bernard Radio LLC, and D.B. Zwirn Special Opportunities Fund, L.P., c/o Daniel Zwirn, dated August 20, 2008 (“Zwirn LOI”).

⁴ See 47 U.S.C. § 310(d); 47 C.F.R. § 73.3540.

- (k) “Parties” means Tama Broadcasting, Inc., D.B. Zwirn & Co., L.P, and the Bureau.
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (m) “Licensee” means Tama Broadcasting, Inc., parent of Tama Radio Licenses of Jacksonville, FL, Inc.; Tama Radio Licenses of Savannah, GA, Inc.; and Tama Radio Licenses of Tampa, Florida, Inc., licensees of the captioned stations.
- (n) “Station” or “Stations” means the nine radio stations specified in the caption and that are licensed to subsidiaries of Tama Broadcasting, Inc.

II. BACKGROUND

3. Section 310(d) of the Act and Section 73.3540 of the Rules prohibit the transfer of control of a broadcast station without prior Commission consent.⁵ A licensee may, however, delegate day-to-day functions to an agent pursuant to a time brokerage agreement or local management agreement without engaging in an unauthorized transfer of control.⁶ Such delegation must be limited, however, such that the licensee retains ultimate control of basic station policies.⁷ The touchstone of control “is not divining who executes the station’s programming, personnel and finance responsibilities,” but rather who establishes policies governing these three areas and exercises ultimate control.⁸ To ensure the appropriate level of control, a licensee engaged in a time broker or local management agreement “should be ready and able to operate independently from the broker at anytime it believes the arrangement does not fulfill its public interest responsibilities.”⁹

4. The Bureau received a Complaint alleging that Zwirn, a creditor of Tama’s, had exceeded the terms of a local marketing agreement and thereby assumed control of Tama’s Stations. The Bureau began an investigation and issued letters of inquiry to Tama and Zwirn.¹⁰

⁵ See 47 U.S.C. § 310(d); 47 C.F.R. § 73.3540(a).

⁶ See *Salem Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 4172 (Mass Media Bur. 1991). See also *WGPR, Inc.*, Memorandum Opinion & Order, 10 FCC Rcd 8140, 8142 (1995), *vacated on other grounds, sub nom. Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998). Under certain circumstances, a licensee may be required to file with the Commission a copy of its local marketing agreement. See 47 C.F.R. § 73.3613; see also *David A. Davila*, Memorandum Opinion and Order, 6 FCC Rcd 2897 (1991); *Benito Rish*, Memorandum Opinion and Order, 7 FCC Rcd 6036 (1992) (subsequent history omitted); and *Black Television Workshop*, Decision, 8 FCC Rcd 4192 (1993) (subsequent history omitted).

⁷ See *WGPR, Inc.*, 10 FCC Rcd at 8142.

⁸ *Id.*

⁹ *Id.* at 8145. See *Salem Broadcasting, Inc.*, 6 FCC Rcd at 4173; *Bee Broadcasting Associates*, Hearing Designation Order and Notice of Apparent Liability, 5 FCC Rcd 6584 (1990). See generally *WLOX Broadcasting Company*, 260 F.2d 712, 715-716 (D.C. Cir. 1958); *Phoenix Broadcasting Co.*, 44 FCC 2d 838 (1973).

¹⁰ See Tama LOIs; Zwirn LOI.

Tama and Zwirn responded to the respective LOIs, each denying that it had engaged in an unauthorized transfer of control.¹¹

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** Tama and Zwirn agree that the Bureau has jurisdiction over them and the matters contained in this Consent Decree and that it has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violation.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation and dismiss the Complaint. The Parties agree that this Consent Decree does not constitute an adjudication of the merits of the matters alleged in the Complaint or any finding on the facts or law regarding any compliance or noncompliance by Tama and Zwirn with respect to Section 310(d) of the Act or Sections 73.3540 and 73.3613 of the Rules. In consideration for the termination of said Investigation and dismissal of the Complaint, Tama and Zwirn agree to the terms, conditions, and procedures contained herein, as such terms, conditions and procedures apply to them individually. The Bureau agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding, formal or informal, or take any action against Tama Broadcasting, Inc., D.B. Zwirn & Co. L.P., or their affiliates, concerning the matters that were the subject of the Investigation.¹² The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in

¹¹ See Letter from Francisco R. Montero, Esq., counsel for Tama Broadcasting, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated November 21, 2008, at 2-10, 13 (Tama noted that on September 5, 2008, the Supreme Court of the State of New York appointed a temporary receiver to assume control of the Licensee's assets. See *id.* at 2-3, 8-9, and Exhibit A. Tama also noted that it apparently failed to file a copy of the LMA with the Commission, as required by Section 73.3613 of the Rules. See *id.* at 11). See also Letter from Gregory L. Masters, Esq., counsel for D.B. Zwirn & Co., L.P., D.B. Zwirn Special Opportunities Fund, L.P., Bernard Radio LLC, and Straight Way Radio, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated October 6, 2008. Citing Sections 0.457(d), 0.457(f), 0.457(g)(1)-(2), and 0.459(b) of the Rules, Zwirn requested confidential treatment of its LOI responses; the Bureau has not yet ruled on the request.

¹² Notwithstanding the foregoing, the Bureau retains its authority to investigate the conduct of Dr. Glenn Cherry, Board of Directors member and former President/CEO of Tama, and of Charles W. Cherry II, Board of Directors member and former Vice President/General Counsel and Board Secretary of Tama. The Bureau expressly reserves the right to use facts developed during the course of this Investigation in any subsequent investigation of Glenn and Charles Cherry. See, e.g., *Medford Broadcasters Inc.*, Decision, 34 FCC 2d 989, 992 (1972).

this Investigation through the Effective Date, or the existence of this Consent Decree, to institute any proceeding, formal or informal, or take any action against Tama Broadcasting, Inc., D.B. Zwirn & Co., L.P., or their affiliates, with respect to their basic qualifications, including character qualifications, to be a Commission licensee.¹³ In addition, the Bureau agrees that it will not provide any documents within its possession in connection with the Investigation to any party or entity, except as may be necessary during the course of any future investigation into possible violations of the Act or the Rules or Commission orders by the Cherrys, or as otherwise expressly mandated by law or as required by an order of a court or other administrative body.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, Tama and Zwirn each agree to maintain a Compliance Plan related to each entity's respective future compliance with Section 310(d) of the Act, Section 73.3540 of the Commission's Rules, and the Commission's Orders related thereto. Each Compliance Plan will include, at a minimum, the following components:

- a. The President of D.B. Zwirn & Co., L.P., and the President of Tama Broadcasting, Inc., will each conduct a compliance examination of their respective subsidiaries, companies, or affiliates that have negotiated local marketing or time brokerage agreements. Such examination will be conducted, at a minimum, every six (6) months, beginning on the Effective Date.
- b. The President of Zwirn and the President of Tama shall also consult with their respective telecommunications counsel regarding their respective entity's overall compliance with Section 310(d) of the Act and Section 73.3540 of the Commission's Rules on an annual basis, if not more frequently.
- c. The requirements of each Compliance Plan will expire three (3) years from the Effective Date or upon Tama's or Zwirn's complete assignment of all Commission licenses, whichever is earlier.

10. **Compliance Reports.** Tama and Zwirn will file their respective compliance reports with the Commission 12 months, 24 months, and 36 months following the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of the reporting entity, stating that the officer has personal knowledge that the reporting entity has satisfied the terms of the respective compliance plan set forth herein, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554.

11. **Voluntary Contribution.** Tama and Zwirn agree that within five (5) calendar days after the Effective Date, they will make a voluntary contribution to the United States Treasury totalling eighteen thousand dollars (\$18,000). The payment must include the Account Number and the FRN Number of each respective payee referenced in the caption to the Adopting

¹³ See note 12, *supra*. The Bureau reserves its right to use facts developed during the course of this Investigation in any subsequent investigation regarding whether the conduct of Glenn and/or Charles Cherry violates any statute or rule administered by the Commission, or negatively affects their basic qualifications to hold or obtain a Commission license or authorization.

Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Tama and Zwirn will also send an electronic notification on the date each said payment is made to: Hillary S. DeNigro (Hillary.Denigro@fcc.gov), Kenneth M. Scheibel, Jr. (Kenneth.Scheibel@fcc.gov), and Dana E. Leavitt (Dana.Leavitt@fcc.gov).

12. **Waivers.** Tama and Zwirn waive any and all respective rights each may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Tama and Zwirn shall retain their respective rights to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Tama nor Zwirn nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Tama and Zwirn each shall waive any statutory right to a trial *de novo*. Tama and Zwirn each hereby agree to waive any claims they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

13. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Tama Broadcasting, Inc., or D.B. Zwirn & Co. L.P. do not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Bureau and Tama Broadcasting, Inc., and the Bureau and D.B. Zwirn & Co., L.P.¹⁴ The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and Orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of all Parties.

16. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each party represents and warrants to the others that it has full power and authority to enter into this Consent Decree.

¹⁴ The Consent Decree between the Bureau and Tama Broadcasting, Inc., applies only to Tama as a corporate licensing entity and does not constitute a settlement between the Bureau and Glenn or Charles Cherry. *See* note 12, *supra*.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument

Kris Anne Monteith
Chief, Enforcement Bureau

Date

Jeffrey Scott, Member, Board of Directors
Tama Broadcasting, Inc.

Date

David C. Lee, President
D.B. Zwirn & Co., L.P.

Date