



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

January 11, 2013

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***In Reply Refer to:***  
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Aaron P. Shainis, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street N.W. Suite 240  
Washington, D.C. 20036

David Oxenford, Esq.  
Wilkinson Barker Knauer LLP  
2300 N Street N.W. Suite 700  
Washington, D.C. 20037

Percy Squire  
341 South Third Street Suite 101  
Columbus, OH 43215

In re: **WV KO(AM), Columbus, Ohio**  
Facility ID No. 22341  
File No. BR-20120529AHE

**WV KO-FM, Johnstown, Ohio**  
Facility ID No. 58633  
File No. BRH-20120529AHG

**WASN(AM), Youngstown, Ohio**  
Facility ID No. 72100  
File No. BR-20120529AHH

**WGFT(AM), Campbell, Ohio**  
Facility ID No. 74164  
File No. BR-20120529AHJ

**Applications for Renewal of License  
Petition to Deny**

**WRBP(FM), Hubbard, Ohio**  
Facility ID No. 63498  
File No. BRH-20120529AHK  
**Application for Renewal of License**

File No. BALH-20120612AAP  
**Application for Assignment**

## **Petition to Deny**

File No. BMLH-20120710AAS

### **Application to Modify License Request for Waiver of Main Studio Rule Petition to Deny**

Dear Counsel and Petitioner:

We have before us the above-captioned license renewal applications (the “Renewal Applications”) for stations WVKO(AM), Columbus, Ohio; WVKO-FM, Johnstown, Ohio; WASN(AM), Youngstown, Ohio; WGFT(AM), Campbell, Ohio; and WRBP(FM), Hubbard, Ohio (the “Stations”). We also have under consideration the above-captioned application (the “Assignment Application”) seeking approval for the proposed assignment of the license for station WRBP(FM), Hubbard, Ohio, (the “Station”) from Bernard Ohio, LLC (“Bernard”) to Educational Media Foundation (“EMF”). Finally, we have the above-captioned application filed by EMF for modification of the license for station WRBP(FM) to operate as a noncommercial educational (“NCE”) station<sup>1</sup> and accompanying main studio waiver request to operate WRBP(FM) as a “satellite” of co-owned NCE station KLVR(FM), Middletown, California (“License Modification Application”) (collectively, the “Applications”).<sup>2</sup> Petitions to deny each of the Applications have been filed by Percy Squire (“Squire”) (the “Squire Petitions”).<sup>3</sup> The Squire Petitions are nearly identical in content and are therefore considered collectively. For the reasons set forth below, we deny the Squire Petitions and grant the Applications.

## **I. Background**

Squire was the Managing Member and CEO of the former licensee of the five Stations, Stop 26 Riverbend Licenses, LLC (“SRL”).<sup>4</sup> In 2004, SRL entered into a loan agreement with the predecessor of D.B. Zwirn Special Opportunity Fund, LP (“DBZ Onshore Fund”), a hedge fund then managed by

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<sup>1</sup> 47 C.F.R. § 73.1690(c)(9).

<sup>2</sup> A “satellite” station meets all of the Commission’s technical rules. However, it originates no programming and instead rebroadcasts the parent station’s programming. *See Amendment of Multiple Ownership Rules*, Memorandum Opinion and Order, 3 R.R.2d 1554, 1562 (1964).

<sup>3</sup> On July 2, 2012, Squire filed an Amended Petition to Deny the Renewal Applications, and on July 9, 2012, he filed a nearly-identical Second Amended Petition to Deny (the “Squire Renewal Petition”). We have no record that Squire’s initial Petition to Deny the Renewal Applications was filed with the Commission, although apparently it was sent to Bernard’s counsel via U.S. Postal Service on June 29, 2012. Bernard responded with an August 10, 2012, Opposition to Petition to Deny (“Bernard Renewal Opposition”). On July 11, 2012, Squire filed a Petition to Deny the Assignment Application (“Squire Assignment Petition”), which Bernard responded to with an August 9, 2012, Opposition to Petition to Deny (“Bernard Assignment Opposition”). On August 13, 2012, Squire filed a Verified Reply of Percy Squire to Opposition to the Bernard Assignment Opposition. On August 8, 2012, Squire filed a Petition to Deny the License Modification Application (“Squire License Modification Petition”). On August 16, 2012, EMF opposed the Squire License Modification Petition with an Opposition to Petition to Deny (“EMF License Modification Opposition”).

<sup>4</sup> *See Shareholders of Stop 26 Riverbend, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 6516, 6517 (2012) (“2012 Stop 26 Riverbend Order”).

another Zwirn entity, D.B. Zwirn & Co. L.P. (“DBZ”).<sup>5</sup> In July 2005, SRL filed for Chapter 11 bankruptcy.<sup>6</sup> As a result of the bankruptcy, on January 22, 2007, the Stations were assigned to Bernard, an affiliate of DBZ Onshore Fund.<sup>7</sup> Bernard’s sole member is Rocklynn Radio, LLC (“Rocklynn”) (previously Bernard Radio LLC).<sup>8</sup> Rocklynn’s managing and sole voting member is RL Transition Corp.<sup>9</sup> Rocklynn’s insulated non-managing member (100 percent equity member) is DBZ Onshore Fund.<sup>10</sup> Daniel B. Zwirn (“Zwirn”) is the sole shareholder of RL Transition Corp.<sup>11</sup>

Squire contends that grant of the Applications would be against the public interest because Bernard “is actively violating Commission rules concerning multiple ownership, premature change of control, alien ownership and racially discriminatory and predatory lending.”<sup>12</sup> Specifically, Squire alleges that the Stations are actually controlled by Fortress Investment Group (“Fortress”), who took over management of Zwirn’s various hedge funds (including DBZ Onshore Fund) from DBZ in 2009.<sup>13</sup> Squire argues that even if Bernard had a time brokerage agreement (“TBA”) with Fortress, it would still have failed to maintain the required level of control because “all programming, personnel and financial decisions for the station . . . are actually made by Fortress.”<sup>14</sup> Squire also contends that *pro forma* transfer of control applications submitted by Bernard in 2009<sup>15</sup> contain inaccurate ownership information, due to the alleged control of the Stations by Fortress.<sup>16</sup> Finally, Squire alleges that Bernard violated the Commission’s foreign ownership limits, apparently by means of alleged cash transfers among the various

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<sup>5</sup> Squire Renewal Petition at 13; Squire Assignment Petition at 12; Squire License Modification Petition at 12-13; Bernard Assignment Opposition at 6.

<sup>6</sup> 2012 *Stop 26 Riverbend Order*, 27 FCC Rcd at 6517.

<sup>7</sup> See File Nos. BAL-20060301ACU; BALH-20060301ACV; BALH-20060301ACW; BAL-20060301ACX; and BAL-20060301ACY.

<sup>8</sup> *Id.*; Bernard Assignment Opposition at 4.

<sup>9</sup> In May 2009, DBZ assigned its managing member interest in Rocklynn to RL Transition Corp. See File Nos. BTC-20090520ACI; BTC-20090520ACJ; BTCH-20090520ACK; BTC-20090520ACL; and BTCH-20090520ACM.

<sup>10</sup> See File No. BTC-20090520ACI, Exhibit 1.

<sup>11</sup> Bernard Assignment Opposition at 4.

<sup>12</sup> Squire Renewal Petition at 3; Squire Assignment Petition at 2; Squire License Modification Petition at 3. Beyond this introductory statement, Squire does not make any further arguments regarding possible violation of the Commission’s multiple ownership rules. Therefore, we address only his arguments regarding premature control, alien ownership, and discriminatory and predatory lending.

<sup>13</sup> Squire Renewal Petition at 3-7; Squire Assignment Petition at 3-7; Squire License Modification Petition at 3-7.

<sup>14</sup> Squire Renewal Petition at 4; Squire Assignment Petition at 3; Squire License Modification Petition at 3.

<sup>15</sup> File Nos. BTC-20090520ACI; BTC-20090520ACJ; BTCH-20090520ACK; BTC-20090520ACL; and BTCH-20090520ACM. By these *pro forma* applications, several intermediary entities ultimately controlled by Zwirn were removed from the control structure of Bernard and replaced with RL Transition Corp. Thus, DBZ’s managing member interest in Rocklynn was transferred to RL Transition Corp. See *supra* note 9.

<sup>16</sup> Squire Renewal Petition at 4-5; Squire Assignment Petition at 3-4; Squire License Modification Petition at 4.

Zwirn hedge funds.<sup>17</sup> In support of his foreign ownership argument, Squire cites a U.S. Securities and Exchange Commission (“SEC”) complaint and court opinion in a case against DBZ’s former Chief Financial Officer, Perry Gruss, in the United States District Court for the Southern District of New York.<sup>18</sup>

In response to the Squire Renewal and Assignment Petitions, Bernard argues that there is no support for any of Squire’s allegations concerning either unauthorized control or alien ownership.<sup>19</sup> With respect to unauthorized control, Bernard states that the Fortress assumption of the management of various hedge funds previously managed by Zwirn is not a basis for the “speculative assertion” that Zwirn does not control Bernard and the Stations.<sup>20</sup> Finally, Bernard states that while “it is virtually impossible to comprehend [Squire’s] arguments” regarding alien ownership, Squire has “totally failed to show that Daniel Zwirn does not control the licensee entity.”<sup>21</sup>

In its Opposition to the Squire License Modification Petition, EMF observes that the issues raised by the Squire Petitions do not pertain to EMF or to the License Modification Application.<sup>22</sup> Rather, EMF contends, the Squire License Modification Petition is “entirely focused on the qualifications of Bernard to sell the station to EMF.”<sup>23</sup> EMF argues that those issues will be considered in connection with the Assignment Application and are not relevant to the License Modification Application.<sup>24</sup>

## II. Discussion

**Renewal Applications.** Section 309(k) of the Communications Act of 1934, as amended (the “Act”),<sup>25</sup> provides that the Commission must grant a license renewal application if, upon consideration of the application and pleadings, it finds that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission’s rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.<sup>26</sup>

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<sup>17</sup> Squire Renewal Petition at 10-19; Squire Assignment Petition at 9-19; Squire License Modification Petition at 9-19.

<sup>18</sup> Squire Renewal Petition at 19. Squire Assignment Petition at 18-19; Squire License Modification Petition at 18-19.

<sup>19</sup> Bernard Assignment Opposition at 2-7. Bernard’s Renewal Opposition “incorporates by reference” the Bernard Assignment Opposition. Bernard Renewal Opposition at 2 (citing File No. BALH-20120612AAP).

<sup>20</sup> Bernard Assignment Opposition at 4.

<sup>21</sup> Bernard Assignment Opposition at 6-7.

<sup>22</sup> EMF License Modification Opposition at 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 2.

<sup>25</sup> 47 U.S.C. § 309(k).

<sup>26</sup> 47 U.S.C. §309(k)(1). The renewal standard was amended by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

Any interested party may file a petition to deny with the Commission alleging facts, supported by affidavit, sufficient to show that grant of the application would be *prima facie* inconsistent with the standard set forth above.<sup>27</sup> If the specific allegations support a *prima facie* case, we next examine and weigh all the evidence presented, to determine whether “a substantial and material question of fact” is presented,<sup>28</sup> *i.e.* “whether the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for.”<sup>29</sup> We must also determine whether grant of the Renewal Applications would serve the public interest.<sup>30</sup>

In determining whether a petitioner has made a *prima facie* case, “[t]he Commission’s inquiry . . . is much like that performed by a trial judge considering a motion for a directed verdict: if all the supporting facts alleged in the affidavits were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established.”<sup>31</sup> Allegations that consist “of ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits . . . are not sufficient” to establish a *prima facie* case.<sup>32</sup>

If the Commission finds, on the basis of the application, the pleadings filed, or other matters which it may officially notice, that there are no substantial and material questions of fact and that a grant of the application would be consistent with the standard of Section 309(k), it shall make the grant and deny the petition. If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under Section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>33</sup>

In this case, Squire has not presented specific factual allegations sufficient to either establish a *prima facie* case or raise substantial and material questions of fact that grant of the Renewal Applications would be inconsistent with the public interest.

*Foreign ownership.* Squire alleges that DBZ Onshore Fund, which has an indirect equity interest in Bernard, has a prohibited level of foreign ownership.<sup>34</sup> Under Section 310 of the Act, indirect foreign

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<sup>27</sup> 47 U.S.C. § 309(d)(1).

<sup>28</sup> 47 U.S.C. § 309(d)(2).

<sup>29</sup> *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985).

<sup>30</sup> 47 U.S.C. § 309(a); *See also Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

<sup>31</sup> *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir.1987) (“*Gencom, Inc.*”).

<sup>32</sup> *North Idaho Broadcasting Co.*, Memorandum Opinion and Order, 8 FCC Rcd 1637, 1638 (1993) (quoting *Gencom Inc.*, 832 F.2d at 180 n.11).

<sup>33</sup> 47 U.S.C. §§ 309(k)(2),(3).

<sup>34</sup> Squire Renewal Petition at 10-19; Squire Assignment Petition at 9-19; Squire License Modification Petition at 9-19.

ownership of any entity that controls a broadcast licensee cannot exceed 25 percent.<sup>35</sup> Both insulated and non-insulated foreign equity interests in broadcast licensees are evaluated in determining compliance with Section 310(b).<sup>36</sup> Therefore, DBZ Onshore Fund's ownership is relevant to assessing Bernard's compliance with Section 310. However, Squire does not introduce any facts that would suggest an impermissible level of alien ownership in Bernard or otherwise call into question Bernard's certified statement that it is in compliance with the foreign ownership restrictions of Section 310.<sup>37</sup>

Squire's foreign ownership contentions rest primarily on alleged cash transfers from and among the funds formerly managed by DBZ. Specifically, Squire states that "[b]y reason of the unlawful and hidden transfers of improper charges to DBZ [Onshore Fund] clients and intra Fund transfers, DBZ [Onshore Fund]'s actual domestic ownership was not as represented . . ."<sup>38</sup> He also argues that "it is clear from the SEC filing in the Southern District of New York against DBZ [Onshore Fund] Chief Financial Officer, Perry Gruss, that the 25% benchmark [on foreign ownership] . . . was surpassed . . ."<sup>39</sup> Finally, he states that "[i]t is now clear from Judge Sweet's opinion in Gruss that DBZ [Onshore Fund] . . . had foreign ownership at levels prohibited by §310(B)(4)."<sup>40</sup>

Presumably, Squire refers to a complaint brought by the SEC against Perry Gruss on April 8, 2011.<sup>41</sup> On May 9, 2012, District Judge Sweet denied Gruss's motion to dismiss.<sup>42</sup> In that opinion, Judge Sweet summarized the SEC case against Gruss as follows: "Gruss used the signatory and approval authority he had over the funds to authorize more than \$870 million in improper transfers of client cash. The cash was transferred both between client funds and from client funds to [DBZ] and third parties."<sup>43</sup>

Squire does not attempt to demonstrate how alleged improper cash transfers carried out by the hedge fund manager's CFO could affect the ownership structure of DBZ Onshore Fund, a limited partnership. Nor does Squire provide any other data relevant to the foreign ownership percentages of either Bernard or DBZ Onshore Fund. Absent information sufficient to raise a *prima facie* foreign ownership issue, much less a substantial and material question of fact, we properly rely on Bernard's

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<sup>35</sup> 47 U.S.C. § 310(b)(4) ("Section 310" or "Section 310(b)").

<sup>36</sup> See, e.g., *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973 (1995) (citing *Wilner & Scheiner I*, Declaratory Ruling, 103 FCC 2d 511, 519, n.37 (1985) ("By its express terms, the statute provides limitations on the amount of capital stock which can be owned or voted by aliens. Because the statutory limitations are cast in the disjunctive, the non-voting stock owned by aliens is considered in evaluating compliance with the benchmarks established by Section 310(b)").

<sup>37</sup> Bernard Renewal Applications, Section II, item 5.

<sup>38</sup> Squire Renewal Petition at 14; Squire Assignment Petition at 14; Squire License Modification Petition at 14.

<sup>39</sup> Squire Renewal Petition at 19. Squire Assignment Petition at 18; Squire License Modification Petition at 18-19.

<sup>40</sup> Squire Renewal Petition at 19. Squire Assignment Petition at 19; Squire License Modification Petition at 19.

<sup>41</sup> *SEC v. Perry A. Gruss*, Case No. 11 Civ. 2420 (S.D.N.Y.) (pending). The SEC's complaint was amended on June 10, 2011. *SEC v. Gruss*, Opinion, No. 11 Civ. 2420 at 1 ("*Gruss Opinion*").

<sup>42</sup> *Gruss Opinion*, No. 11 Civ. 2420 at 2.

<sup>43</sup> *Id.*

affirmative certification under penalty of perjury that it complies with the foreign ownership provisions of Section 310(b) of the Act.<sup>44</sup>

*Unauthorized transfer of control.* In determining whether there has been an unauthorized transfer of control, the Commission employs a tripartite, fact-based test for control within the meaning of Section 310(d) of the Act.<sup>45</sup> Specifically, we look to whether an entity other than the licensee determines the basic operating policies of the station(s) with respect to personnel, programming, and finances.<sup>46</sup>

Here, Squire provides no information regarding Fortress's purported operational control over the Stations' personnel, programming, and finances. Instead, Squire argues that Fortress controls the Stations because the Station licenses were part of \$2.5 billion in "illiquid assets" acquired from DBZ by Fortress in June 2009 in connection with Fortress assuming the investment management of the Zwirn hedge funds.<sup>47</sup> Squire submits a copy of a shareholder proxy statement apparently sent to DBZ Special Opportunities Fund, Ltd. ("DBZ Offshore Fund") investors on May 5, 2009 ("Proxy Statement"). The Proxy Statement describes an asset purchase agreement ("APA"), entered into May 1, 2009, between DBZ and Fortress, under which Fortress would acquire "substantially all of the assets of [DBZ] that an investment manager would need to manage the funds . . ."<sup>48</sup> It also proposes that a Fortress affiliate take over management of the various Zwirn funds.<sup>49</sup>

The Proxy Statement does not support Squire's contentions. Rather, it confirms that DBZ, as the general partner of the insulated equity member (DBZ Onshore Fund) of Bernard's sole member, held a non-controlling, non-attributable interest in the Stations.<sup>50</sup> Fortress would have acquired that same non-attributable positional interest when it assumed management of DBZ Onshore Fund. Squire presents no facts or argument suggesting that DBZ Onshore Fund's interests in Bernard are not properly insulated (and therefore not attributable) as certified by Bernard.<sup>51</sup> Therefore, the transactions described in the Proxy Statement—assuming that they transpired as outlined—do not raise an issue of whether Fortress exercises impermissible *de facto* control over the Stations.

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<sup>44</sup> See, e.g., *Corporate Ownership Reporting and Disclosure by Broadcast Licensees, Amendment of Sections 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, Report and Order, 97 FCC 2d 997, 1028 n. 75 (1984), *recon. granted in part*, 58 R.R.2d 604 (1985), *further recon. granted in part*, 1 FCC Rcd 802 (1986) ("We emphasize that our action herein with respect to ownership reporting requirements in no way affects the continued obligation of licensees to reasonably determine and certify compliance with the alien ownership restrictions of [Section 310(b) of the Act].").

<sup>45</sup> See *WGPR, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142-46 (2005) ("*WGPR*"), *vacated on other grounds sub nom. Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998); *Choctaw Broadcasting Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 8534, 8538-39 (1997).

<sup>46</sup> See, e.g., *WGPR*, 10 FCC Rcd at 8145.

<sup>47</sup> Squire Renewal Petition at 9; Squire Assignment Petition at 8; Squire License Modification Petition at 8.

<sup>48</sup> Proxy Statement at 1, Annex A-9.

<sup>49</sup> Proxy Statement at 1.

<sup>50</sup> Proxy Statement at ii.

<sup>51</sup> Bernard Assignment Opposition at 4; See also 47 C.F.R. § 73.3555.



Squire also provides a detailed overview of the applicable legal standard for evaluating control in the context of a TBA,<sup>52</sup> but offers no facts to support his concluding statement that “Bernard is not operating the Ohio stations.”<sup>53</sup> The attached Declaration of Dr. Glenn Cherry refers exclusively to a different transaction, a different set of stations and a different licensee.<sup>54</sup> To the extent that the Cherry Declaration makes general assertions, such as “Fortress Investment Group controls all radio licenses purportedly controlled by DBZ or its successor R.L. Transition Corp.,”<sup>55</sup> these statements are wholly unsupported by facts relevant to the Stations. Such statements exemplify “conclusionary facts or more general allegations on information and belief” that are insufficient to establish a *prima facie* case.<sup>56</sup> The Personal Declaration of David A Schum (“Schum”) likewise refers to a different transaction, a different licensee and a different set of stations and therefore is not relevant to the Applications.<sup>57</sup> Schum’s general statements such as “offshore financing disqualifies Zwirn as a licensee” similarly lack factual support.<sup>58</sup> Consequently, Squire fails to establish either a *prima facie* showing that the Stations have undergone an unauthorized change of control or to adduce facts that raise a substantial and material issue of fact on this point.

*Racially discriminatory and predatory lending.* Squire’s allegations of discriminatory and/or predatory lending are equally conclusory. The only fact he alleges in support of this contention is the “loss of roughly 20% of all African American owned stations in the United States, e.g. Tama Broadcasting, Florida” due to DBZ Onshore Fund’s “predatory lending practices, oppressive behavior, and outright manipulation.”<sup>59</sup> Yet Squire does not argue that Bernard has violated the Act or a particular Commission rule or policy. It is well-established that unadjudicated allegations of misconduct not involving the Act or Commission rules or policies normally do not constitute the basis of a *prima facie* showing that an applicant lacks the character qualifications to be a Commission licensee.<sup>60</sup> Moreover,

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<sup>52</sup> Squire Renewal Petition at 5-7; Squire Assignment Petition at 4-7; Squire License Modification Petition at 5-7.

<sup>53</sup> Squire Renewal Petition at 7; Squire Assignment Petition at 7; Squire License Modification Petition at 7.

<sup>54</sup> Squire Assignment Petition, Exhibit A, Declaration of Dr. Glenn W. Cherry in Support of Petition to Deny Transfer of Urban Radio, LLC Debtor-in-Possession, Broadcast Licenses to YMF Media, LLC, File Nos. BAL-20120430ADH (station WLIB(AM), New York, New York) and BALH-20120430ADI (station WBLS(FM), New York, New York), dated May 25, 2012 (“Cherry Declaration”).

<sup>55</sup> Cherry Declaration at 8.

<sup>56</sup> *North Idaho Broadcasting Co.*, Memorandum Opinion and Order, 8 FCC Rcd 1637, 1638 (1993) (quoting *Gencom Inc.*, 832 F.2d at 180 n.11).

<sup>57</sup> Squire Assignment Petition, Exhibit B, Personal Declaration of David A Schum, dated May 23, 2012 (“Schum Declaration”) (stating that it was originally filed as an exhibit to a Petition to Deny the Application for Consent to Assignment of Licenses from Urban Radio, LLC Debtor-in-Possession, Broadcast Licenses to YMF Media, LLC, File No. BAL-20120430ADH. *Id.* at 1).

<sup>58</sup> Schum Declaration at 5.

<sup>59</sup> Squire Renewal Petition at 14-15; Squire Assignment Petition at 14; Squire License Modification Petition at 14.

<sup>60</sup> *See Southern Broadcast Corp. of Sarasota*, 16 FCC Rcd 3655, 3659 (2001) (“Our policy with respect to discrimination complaints is only one of several circumstances in which we will not inquire into arguably relevant alleged misconduct unless it has first been adjudicated by an agency or court with primary responsibility in the



based on our review of the record as a whole, Squire's allegations fail to establish that there is a material and substantial question of fact on this point warranting further inquiry in a hearing. Accordingly, we find that grant of the Renewal Applications is in the public interest.

**Assignment Application.** Squire has not presented any allegations of fact that raise a *prima facie* question regarding Bernard's qualifications to assign the license for WRBP(FM) to EMF or EMF's qualifications to be a licensee. The Squire Assignment Petition raises identical objections and arguments as the Squire Renewal Petition: namely, allegations regarding Bernard's purported unauthorized transfer of control and foreign ownership violations. For the reasons given above, therefore, the Squire Assignment Petition likewise fails to meet the standards for a *prima facie* case set forth in Section 309(d)(1).<sup>61</sup> Furthermore, considering all the evidence before us, there is no substantial and material question of fact that merits further inquiry. Accordingly, we find that grant of the Assignment Application is in the public interest.

**License Modification Application.** A licensee may apply to convert a radio station from commercial to noncommercial educational status using a modification of license application, provided that it demonstrates that it is a qualified educational organization under Section 73.503(a) of the rules<sup>62</sup> and that the station will be used to advance its educational program.<sup>63</sup> In the License Modification Application, EMF submits the required certifications.<sup>64</sup> Although nominally a petition to deny the License Modification Application, the Squire License Modification Petition does not raise any specific objections to EMF's request to convert station WRBP(FM) to NCE status. Rather, the Squire License Modification Petition merely reiterates objections to Bernard as the current licensee of the Station. Those objections are fully addressed and rejected above. Therefore, we approve EMF's request to operate station WRBP(FM) as an NCE station and grant the License Modification Application.<sup>65</sup>

**Main studio waiver.** The Commission will waive the main studio rule<sup>66</sup> where good cause exists to do so and where the proposed studio location "would be consistent with the operation of the station in the public interest."<sup>67</sup> The Commission has recognized the benefits of centralized operations for NCE

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pertinent area.") (citing *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order, and Policy and Statement, 102 FCC 2d 1179, *recon. granted in part and denied in part*, Memorandum Opinion and Order, 1 FCC Rcd 421 (1986), *modified*, 5 FCC Rcd 3252 (1990) (subsequent history omitted)).

<sup>61</sup> 47 U.S.C. § 309(d)(1).

<sup>62</sup> 47 C.F.R. § 73.503(a).

<sup>63</sup> 47 C.F.R. § 73.1690(c)(9).

<sup>64</sup> License Modification Application, Exhibit 31 (stating that the Commission has previously found that EMF qualifies as a noncommercial educational organization under File No. BPED-19980206MA).

<sup>65</sup> However, the grant of the License Modification Application will not become effective until we receive notification of the consummation of the Assignment Application.

<sup>66</sup> A station's main studio must be located either (1) within a station's principal community contour; (2) within the contour of any other broadcast station licensed to its community; or (3) within 25 miles of the center of its community. 47 C.F.R. § 73.1125(a).

<sup>67</sup> 47 C.F.R. § 73.1125(b)(2).

stations, given their limited funding, and thus has found good cause exists to waive the main studio location requirement where satellite operations are proposed.<sup>68</sup> A satellite NCE station must demonstrate, however, that it will meet its local service obligations to satisfy the Section 73.1125 public interest standard. In this case, we are satisfied that EMF has committed to specific measures adequate to meet its local service obligations.<sup>69</sup> The Squire License Modification Petition makes no reference to EMF's main studio waiver request and is thus irrelevant to our analysis. Therefore, we conclude that there is good cause to waive Section 73.1125(a) of the rules to allow EMF to colocate the main studio of station WRBP(FM) with co-owned station KLVR(FM).<sup>70</sup>

**Conclusion/Actions.** We find that Squire fails to provide the necessary specific allegations of fact to make a *prima facie* case that grant of the Applications would be against the public interest. We further find that Squire has not raised a substantial and material question of fact warranting further inquiry. Bernard is qualified to hold the WVKO(AM), WVKO-FM, WASN(AM), WGFT(AM), and WRBP(FM) station licenses, and grant of the Applications is consistent with the public interest, convenience, and necessity. Accordingly, IT IS ORDERED that the Squire Petitions ARE DENIED.

IT IS FURTHER ORDERED that the applications to renew the licenses of stations WVKO(AM), Columbus, Ohio (File No. BR-20120529AHE); WVKO-FM, Johnstown, Ohio (File No. BRH-20120529AHG); WASN(AM), Youngstown, Ohio (File No. BR-20120529AHH); WGFT(AM), Campbell, Ohio (File No. BR-20120529AHJ); and WRBP(FM), Hubbard, Ohio (File No. BRH-20120529AHK) ARE GRANTED.

IT IS FURTHER ORDERED that the application to assign the license of station WRBP(FM), Hubbard, Ohio (File No. BALH-20120612AAP) from Bernard Ohio, LLC to Educational Media Foundation IS GRANTED.

IT IS FURTHER ORDERED that the application to modify the license of station WRBP(FM), Hubbard, Ohio (File No. BMLH-20120710AAS) IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>68</sup> *Id.*; See also, e.g., *American Family Association*, Hearing Designation Order, 12 FCC Rcd 15128 (MMB 1997).

<sup>69</sup> Specifically, EMF has pledged that it will: (1) operate a toll-free number that permits residents of Hubbard to contact Station staff without long-distance charges; (2) establish a local public affairs representative in the community of Hubbard who will conduct, at least on a quarterly basis, interviews and surveys of local community leaders and other residents to ascertain the interests, concerns, and needs of Hubbard listeners; (3) regularly address the recurrent issues, problems, and needs of Hubbard residents through the Station's news and public affairs programming; and (4) maintain a public inspection file for station WRBP(FM) at the main studio of its parent station, station KLVR(FM), Middletown, California, making reasonable accommodation to listeners wishing to examine the file's contents. License Modification Application, Exhibit 6.

<sup>70</sup> We remind EMF that, notwithstanding grant of the waiver requested here, the public file for WRBP(FM) must contain the quarterly issues and programs lists required by 47 C.F.R. § 73.3527(e)(8).