

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

In the Matter of )
)
GB Enterprises Communications Corp., ) NAL/Acct. No. MB-201541410038
Assignor ) FRN: 0017563370
and )
)
CATCO Communications, LLC, Assignee )
)
Application for Assignment of Station ) Facility ID No. 21766
WHNR(AM), Cypress Gardens, Florida ) File No. BAL-20140820AAE

ORDER

Adopted: March 22, 2016

Released: March 23, 2016

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it an application for consent to assign the license for Station WHNR(AM), Cypress Gardens, Florida (Station), from GB Enterprises Communications Corp. (GB) to CATCO Communications, LLC (CATCO) (CATCO Assignment Application). Also before us is a Petition to Deny the Application (Petition), filed on October 6, 2014, by La Poderosa, LLC, and Carlos S. Guerrero (collectively, Poderosa).1 For the reasons stated below, we deny the Petition. In this Order, we also adopt the attached consent decree entered into by GB and the Bureau, which resolves issues regarding unauthorized control of the Station and violations of Section 1.65 of the Commission’s Rules.2

II. BACKGROUND

2. Martin Santos (Santos), former sole shareholder of licensee GB, defaulted on a personal debt to Edward Olivares (Olivares) for \$48,020.85.3 According to Poderosa, Santos also defaulted on a debt to Poderosa for around \$770,000, which was secured against the assets of the Station.4 On August 8, 2011, Olivares procured a default judgment against Santos (Olivares Judgment) in the Circuit Court of the

1 On October 17, 2014, George R. Reed (Reed) and CATCO filed a Joint Opposition to Petition to Deny (Opposition). Also part of the record is GB’s May 21, 2015, response (LOI Response) to an April 2, 2015, Bureau letter of inquiry (LOI) requesting: (1) a copy of the Assignment of Rights dated February 10, 2014, between Olivares and TAACO, LLC (TAACO); (2) information on each holder of GB stock from August 8, 2011, to the date of response; and (3) particulars of the January 24, 2013, foreclosure sale conducted by the Polk County Sherriff’s Office. See Letter of Inquiry from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Lewis J. Paper, Esq., et al., Ref No. 1800B3-CEG (MB Apr. 2, 2015).

2 47 CFR § 1.65 (Section 1.65).

3 Edward Olivares v. Martin Santos, Case Number 2009CA-005214, Emergency Motion (Fla. Cir. Ct. Feb. 15, 2012) (Olivares v. Santos).

4 See WHNR(AM), Cypress Gardens, Florida, Letter Order, 28 FCC Rcd 4550, 4550-51 (MB 2013) (Reconsideration Decision).

Tenth Judicial Circuit in and for Polk County, Florida (the Court).<sup>5</sup> Immediately afterward, on August 10, 2011, Santos attempted to sell the Station for \$1000 to Florida Spanish Communications Corp.<sup>6</sup> On October 14, 2011, Poderosa filed a motion with the Court to compel arbitration and enjoin the sale of the Station, which the Court granted on January 24, 2012 (Arbitration Order).<sup>7</sup> On August 3, 2012, upon receiving notification of the Arbitration Order, the Bureau rescinded its grant of the Florida Spanish Assignment Application.<sup>8</sup>

3. Meanwhile, in the *Olivares v. Santos* proceeding, on February 16, 2012, the Court appointed Reed as receiver for Santos' assets (Receivership Order), at Olivares' request.<sup>9</sup> On March 16, 2012, Reed filed an application to assign the Station license to himself as Receiver (Reed Assignment Application).<sup>10</sup> On August 3, 2012, the Bureau granted the Reed Assignment Application, stating that the scope of Reed's authority as Receiver, as well as any inconsistencies between the Arbitration Order and the Receivership Order, were for the Court to decide.<sup>11</sup> On September 4, 2012, Poderosa filed a Petition for Reconsideration (Poderosa Petition for Reconsideration), arguing that a Court Order issued on June 12, 2012 (June 12 Court Order),<sup>12</sup> clarified that the scope of Reed's authority as Receiver extended only to Santos' assets, not to the assets of the corporate licensee, GB, making a transfer rather than assignment application the appropriate means of effectuating the Court orders.<sup>13</sup> On November 7, 2012, 100 percent of GB's shares were assigned to Reed. This transaction was not reported to the Commission until May 21, 2015, in the LOI Response.

4. While the Poderosa Petition for Reconsideration was still under review by the Bureau, on January 24, 2013, Olivares purchased 100 percent of the GB shares at a sheriff's sale conducted pursuant to the Olivares Judgment (Olivares Purchase).<sup>14</sup> In the Opposition, Reed states that he did not report the Olivares Purchase or file a transfer of control application with the Commission because "as the [then-licensee of the Station], Reed had no occasion to advise the Commission of the sale of GB stock to Olivares . . ."<sup>15</sup> Thus, the Bureau was not notified of the Olivares Purchase until April 16, 2013, in a footnote to a Petition for Partial Reconsideration of the *Reconsideration Decision*.<sup>16</sup>

5. On April 9, 2013, the Bureau granted the Poderosa Petition for Reconsideration and rescinded

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<sup>5</sup> *Olivares v. Santos*, Final Judgment (Aug. 8, 2011).

<sup>6</sup> File No. BAL-20110810AAB (Florida Spanish Assignment Application). Poderosa filed a petition to deny the Florida Spanish Assignment Application on October 4, 2011.

<sup>7</sup> *Martin Santos and GB Enterprises Communications, Corp. v. Carlos Guerrero and La Poderosa, LLC*, Case Number 53-2011 CA-001681-000-LK (Fla. Cir. Ct. Jan. 24, 2012).

<sup>8</sup> See *WHNR(AM), Cypress Gardens, Florida*, Letter Order, 27 FCC Rcd 9048, 9051 (MB 2012) (*Staff Letter*).

<sup>9</sup> *Olivares v. Santos*, Order Granting Motion for Injunctive Relief and Appointment of Receiver (Feb. 16, 2012).

<sup>10</sup> See File No. BAL-20120316AAP.

<sup>11</sup> *Staff Letter*, 27 FCC Rcd at 9052-53.

<sup>12</sup> *Olivares v. Santos*, Order of Proceedings Supplementary (June 12, 2012).

<sup>13</sup> Poderosa Petition for Reconsideration at 3 (explaining that the difference between an assignment and a transfer of control was a "critical one" in terms of Poderosa's ability as a creditor to collect on a debt secured against GB's corporate assets).

<sup>14</sup> *Olivares v. Santos*, Order Denying Intervenors' Verified Emergency Motion to Intervene, to Set Aside Appointment of Receiver and for Expedited Hearing and Granting Receiver's Request for Guidance on Certain Issues Pursuant to the Supplemental Update to Statement of Position of Receiver as to All Pending Issues (June 20, 2013) (Guidance Order) at 2.

<sup>15</sup> Opposition at 8, n.11; Transfer Application, Exhibit 1, n.1.

<sup>16</sup> See also *infra*, para. 6.

the grant of the Reed Assignment Application, agreeing with Poderosa that because only Santos' interest in GB—i.e., his shares—entered receivership, a transfer of control application was the appropriate vehicle for the transaction.<sup>17</sup> The Bureau also admonished Reed for failure to file a copy of the June 12 Court Order while the Reed Assignment Application was pending.<sup>18</sup> Because at the time it issued the *Reconsideration Decision*, the Bureau had not been apprised of the Olivares Purchase, it instructed Reed to file a transfer of control application such that he would become the “100 percent shareholder of the license.”<sup>19</sup> Reed applied to the Court for confirmation, and on June 20, 2013, the Court ordered Reed to comply with the Commission's directive.<sup>20</sup> The Court further instructed that:

[U]pon the successful completion of the “involuntary transfer of control” process with the FCC, Receiver shall transfer control over GB and its stock and assets, including but not limited to the FCC License, to [Olivares] as the successful bidder and purchaser of GB and its stock and assets at the January 24, 2013, sheriff's sale.<sup>21</sup>

6. On June 28, 2013, Reed complied with the first step of the Guidance Order, filing a Form 316 involuntary transfer of control application (Transfer Application) with the Commission to transfer 100 percent of the equity interest in GB from Santos to Reed.<sup>22</sup> In the Transfer Application, Olivares was not listed as a party in interest and Reed was identified as the sole shareholder post-transaction. However, in a footnote to an exhibit, Reed disclosed Olivares' actual interest in GB.<sup>23</sup> In that same footnote, Reed asserted that he would file an additional transfer of control application to Olivares “[u]pon grant and consummation of the instant application.”<sup>24</sup> The Transfer Application was granted on July 31, 2013, and the transaction reported as consummated on August 2, 2013. However, no additional transfer of control application was ever filed, so the Commission's records continue to erroneously identify Reed as the 100 percent shareholder of GB.<sup>25</sup>

7. Reed states that he has exercised operational control over GB and the Station from the time of the Receivership Order, February 2012, to the present.<sup>26</sup> Reed explains that he did not relinquish control of the Station to the purchaser at auction, Olivares, because he was not able to come to “satisfactory financial terms” over payment of his fees,<sup>27</sup> which, including legal fees, totaled \$224,560.14.<sup>28</sup> Reed

<sup>17</sup> *Reconsideration Decision*, 28 FCC Rcd at 4552.

<sup>18</sup> *Reconsideration Decision*, 28 FCC Rcd at 4552-53; see 47 CFR § 1.65. On April 16, 2013, Reed filed a Petition for Partial Reconsideration of this admonishment, which the Bureau denied on December 12, 2013. See *WHNR(AM), Cypress Gardens, Florida*, Letter Order, 28 FCC Rcd 16553 (MB 2013) (*Admonishment Decision*).

<sup>19</sup> *Reconsideration Decision*, 28 FCC Rcd at 4552, n.19.

<sup>20</sup> Guidance Order, Ordering Clauses, para. 3.a.

<sup>21</sup> *Id.*

<sup>22</sup> File No. BTC-20130628AAD. The Transfer Application was granted on July 31, 2013.

<sup>23</sup> Transfer Application, Exhibit 6, n.1; (stating that the information had also been disclosed in the April 16, 2013, Petition for Partial Reconsideration of the *Reconsideration Decision*).

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

<sup>25</sup> In the LOI Response, Reed explains that he filed the CATCO Assignment Application, a year later, “instead of an application to transfer control of GB to Olivares.” LOI Response at 5.

<sup>26</sup> Opposition at 7 (“Reed, as Receiver, has not relinquished control of GB or the Station's license”).

<sup>27</sup> Opposition at 13 (stating that Reed “initiated discussions with Olivares, GB's sole stockholder, about the parameters of any transaction that would involve a transfer of control of GB and the Station license . . . Olivares was not able to come to satisfactory financial terms with the Receiver.”); Guidance Order at 2 (“[Reed] expressed concern that relinquishing control of GB and its stock and assets would risk non-satisfaction of [Reed's] unpaid obligations.”)

<sup>28</sup> CATCO Assignment Application, Exhibit 5, Assignment and Assumption Agreement at 1, 3.

claims that his retention of the receivership assets as against GB's new owner, rather than Santos, was sanctioned by the Court.<sup>29</sup>

8. *Settlement documents.* On June 12, 2014, Olivares and Reed executed a Settlement Agreement (Settlement Agreement), under which Olivares agreed to pay such of Reed's receivership fees and expenses that were not covered by the operation of the Station, totaling \$175,000,<sup>30</sup> in return for Reed filing an application with the Commission to transfer control of the Station to Olivares.<sup>31</sup> That same day, June 12, 2014, Olivares and Reed also executed an Assignment and Assumption Agreement under which Olivares assigned his rights and obligations under the Settlement Agreement to CATCO<sup>32</sup> because "neither Olivares nor GB has been and is able to pay [Reed] the monies to be paid the Receiver under the Settlement Agreement."<sup>33</sup> On July 8, 2014, the Court approved the Settlement Agreement and related agreements.

9. *Pleadings.* In its Petition to Deny, Poderosa contends that the assignment of the Station license from GB to CATCO is not in the public interest because: (1) GB has been dissolved as a corporation and therefore is not legally qualified to assign the Station license;<sup>34</sup> (2) an unauthorized transfer of control resulted from the Olivares Purchase (and later amendments to GB's Articles of Incorporation naming new officers to GB),<sup>35</sup> and (3) the proposed assignment would be inconsistent with the 2012 Arbitration Order, in which the Court enjoined GB and Santos from "attempting to assign the license or other assets of the Station to any third party, or to transfer control of [GB], pending completion of the arbitration."<sup>36</sup>

10. In the Opposition, the Parties claim that, as a procedural matter, the Petition to Deny is untimely and thus should be dismissed or treated as an informal objection. The Parties also contend that Florida state law authorizes a dissolved corporation to wind up its business affairs, including disposing corporate properties such as the Station license.<sup>37</sup> With respect to Poderosa's unauthorized transfer of control claims, the Parties assert that "the identity of GB's officers is totally irrelevant to the control of the Station" and that "Reed is in control of GB—despite the Court's acknowledgement that Olivares owns all of GB's stock."<sup>38</sup> Finally, regarding Poderosa's arbitration-related claims, the Parties argue that the Commission does not adjudicate contractual matters, nor does it generally defer action on applications pending dispute resolution in another forum.<sup>39</sup>

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<sup>29</sup> Opposition at 12-13.

<sup>30</sup> CATCO Assignment Application, Exhibit 5, Stipulation for Entry of Order Approving Settlement, at 2-3 (Stipulation); CATCO Assignment Application, Exhibit 5, Settlement Agreement at 8 (Settlement Agreement).

<sup>31</sup> Settlement Agreement at 7-8.

<sup>32</sup> Thomas Saunders, a managing member of CATCO, was counsel to Olivares in the Olivares Judgment proceeding.

<sup>33</sup> CATCO Assignment Application, Exhibit 5, Assignment and Assumption Agreement at 1. The parties also entered into an Amended Settlement Agreement and Assignment of Rights "made effective as of February 10, 2014," that separately settled Olivares' debt to Saunders Law Group, LLC, in return for the assignment of certain remaining claims against third parties to TAACO.

<sup>34</sup> Petition to Deny at 14 and Exhibit 7.

<sup>35</sup> To support its allegation that CATCO and Olivares assumed premature control of the Station, Poderosa appends a copy of a letter from Olivares' counsel implying that Olivares, as sole shareholder, controls GB. Petition to Deny, Exhibit 1, "Exh 8 Ltr Asserting Olivares (not Receiver) controlled GBE re TBA."

<sup>36</sup> Petition to Deny at 9-10, Exhibit 1.

<sup>37</sup> Opposition at 6-7.

<sup>38</sup> Opposition at 8.

<sup>39</sup> *Id.* at 9-10, 14-15.

### III. DISCUSSION

11. *Procedural issue.* A petition to deny must be filed within 30 days of public notice of acceptance for filing of the application.<sup>40</sup> In this case, public notice of acceptance for filing of the Application was August 27, 2014.<sup>41</sup> The Petition was filed on October 6, 2014. Therefore, it is untimely. However, because it was received before Commission action on the Application, we will consider the Petition as an informal objection under Section 73.3587 of the Rules.<sup>42</sup>

12. *Substantive issues.* Informal objections, like petitions to deny, must allege properly supported facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.<sup>43</sup> As discussed below, Poderosa has not raised a substantial and material question of fact that grant of the CATCO Assignment Application would be inconsistent with the public interest. However, the facts on record establish that several violations of the Commission's Rules and the Communications Act of 1934, as amended (Act) have occurred.<sup>44</sup> We believe that these violations—involving Sections 1.65 and 73.3540 of the Rules and Section 310(d) of the Act<sup>45</sup>—are appropriately resolved by the Consent Decree adopted herein.

13. Unauthorized Transfer of Control. Section 310(d) of the Act prohibits the *de facto* or *de jure* transfer of a radio station license without the consent of the Commission: “No. . . station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntary or involuntary, directly or indirectly, or by transfer of control of any corporation holding such . . . license to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”<sup>46</sup> This provision requires that we review, as may be appropriate, the citizenship, character, and other qualifications of the proposed assignee, as well as its compliance with the multiple ownership rules.<sup>47</sup> The Bureau has determined—and GB stipulates in the Consent Decree adopted herein—that GB violated Section 310(d) of the Act and Section 73.3540 of the Rules when Olivares acquired a controlling ownership interest in a Commission licensee, GB, without prior Commission approval.

14. Effect of the Arbitration Order. While the Commission generally accommodates court decrees unless it is in the public interest to do otherwise,<sup>48</sup> in this case the Court enjoined GB from assigning the Station license “pending completion of arbitration” in January of 2012, but subsequently approved the Settlement Agreement authorizing the assignment of the Station's license to CATCO on

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<sup>40</sup> 47 CFR § 73.3584(a).

<sup>41</sup> *Broadcast Applications*, Public Notice, Report No. 28312 (Aug. 27, 2014).

<sup>42</sup> 47 CFR § 73.3587.

<sup>43</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, [http://telecomlaw.bna.com/terc/display/link\\_res.adp?fedfid=27792279&fname=fccrcd\\_6\\_193&vname=cmrgdec6](http://telecomlaw.bna.com/terc/display/link_res.adp?fedfid=27792279&fname=fccrcd_6_193&vname=cmrgdec6) FCC Rcd 193 [http://telecomlaw.bna.com/terc/display/link\\_res.adp?fedfid=27792279&fname=fccrcd\\_6\\_193&vname=cmrgdec](http://telecomlaw.bna.com/terc/display/link_res.adp?fedfid=27792279&fname=fccrcd_6_193&vname=cmrgdec), 197 n.10 (1990).

<sup>44</sup> 47 U.S.C. § 310(d).

<sup>45</sup> 47 CFR § 1.65, 73.3540; 47 U.S.C. § 310(d).

<sup>46</sup> 47 U.S.C. § 310(d); see also 47 CFR § 73.3540(a).

<sup>47</sup> See, e.g., *Contel Cellular Inc.*, Memorandum Opinion and Order, 9 FCC Rcd 5309, 5310 (MSD 1994) (*Contel Cellular*); see also 47 CFR § 73.3555.

<sup>48</sup> See, e.g., *Inforum Communications Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 820, 827 (2005) (noting that it is the Commission's policy “to accommodate court decrees adjudicating disputes over contract and property rights, unless a public interest determination compels a different result”); *Estate of Peggy Haley*, Letter Decision, 23 FCC Rcd 12687 (MB 2008).

July 8, 2014. Resolution of this apparent conflict lies with the Court, not the Commission, and we find no reason to defer consideration of the CATCO Assignment Application pending Court action on this matter. Commission grant of an assignment or transfer of control application merely finds that the parties to the Application are qualified under, and the proposed transaction does not violate, the Act or the Commission's rules and policies. As such, it is permissive, not compulsory, and does not prejudice any relief to which any party may ultimately be entitled under state law or federal bankruptcy law.<sup>49</sup> The Parties, therefore, close at their own risk and remain subject to the determination of the state court as to their respective rights and obligations under the Court's orders.

15. GB Corporate Status. Likewise, we are not persuaded by Poderosa's argument that GB's status as a dissolved corporation disqualifies it as a licensee and, accordingly, prevents it from assigning the Station license. Although it is established that a licensee cannot assign its authorization after it is found to be disqualified from holding that license, in this case Poderosa has not presented any evidence that would support disqualifying GB as a licensee.<sup>50</sup> We do not generally consider issues of a licensee's compliance with the requirements of state corporate law where no challenge has been made in state court.<sup>51</sup> Furthermore, Poderosa cites no state law or Commission rule that would prohibit a corporate licensee from selling its license as part of the winding up process after formal dissolution.<sup>52</sup> Therefore, the issue of what actions GB may take as it winds up its corporate affairs is a matter of state law appropriately left for a state court of competent jurisdiction. Again, we note that our grant of the CATCO Assignment Application is merely permissive in nature, and that the parties remain subject to any applicable state law.

16. Section 1.65 Violation. Section 1.65 requires the applicant to amend a pending application whenever the information furnished within it is no longer substantially accurate and complete, and to submit a statement when there has been a significant change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application.<sup>53</sup> Applicants are required to update an application in response to either event "as promptly as possible and in any event within 30 days."<sup>54</sup> An application is considered "pending" for Section 1.65 purposes until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court.<sup>55</sup> GB stipulates, by virtue of the Consent Decree attached herein, that it failed to apprise the Commission that there had been a substantial and significant change in the information furnished in the Reed Assignment Application during its pendency—specifically, that equity and voting control of GB

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<sup>49</sup> See, e.g., *Contel Cellular*, 9 FCC Rcd at 5310 ("There is no reason for us to withhold action on the applications pending resolution of this dispute. Granting the applications simply authorizes the transfer of control of the licensee to take place. The forum having jurisdiction over the parties could enjoin the stock sale from going forward until it decides the respective rights of the parties.").

<sup>50</sup> See, e.g., *Jefferson Radio Co., Inc. v. FCC*, 340 F.2d 781, 783 (1964) ("It is the recognized policy of the Commission that assignment of broadcast authorization will not be considered until the Commission has determined that the assignor has not forfeited the authorization.") (internal citations omitted).

<sup>51</sup> *Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543 (1999); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852 (1997).

<sup>52</sup> However, we distinguish this situation from a noncommercial educational (NCE) or low power FM (LPFM) applicant's failure to establish eligibility to hold a license due to lack of non-profit organizational status. See, e.g., *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13395-96 (2013) (holding that an LPFM applicant's status as a valid non-profit organization at the time it files its application is "fundamental to our determination of the applicant's qualifications to hold an LPFM authorization.") (internal citations omitted).

<sup>53</sup> 47 CFR § 1.65(a).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

was no longer held by Reed but by Olivares. GB also acknowledges that this is the second violation of Section 1.65 in connection with Reed's receivership of the GB stock.

#### IV. CONCLUSION/ACTIONS

17. In the Consent Decree adopted herein, GB stipulates that it violated Section 310 of the Act and Sections 73.3540 and 1.65 of the Rules.<sup>56</sup> The Consent Decree requires that GB make an eleven thousand dollar (\$11,000) civil penalty payment to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

18. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's investigation of potential violations of the Rules and the Act in connection with the CATCO Assignment Application. Other matters raised in the Petition to Deny and not addressed by the Consent Decree are disposed of by this Order. Therefore, we will deny the Petition to Deny.

19. We conclude that nothing in that record before us creates a substantial or material question of fact as to whether GB or CATCO possess the basic qualifications to assign and to be the licensee of the Station, respectively.

20. ACCORDINGLY, IT IS ORDERED that the Petition to Deny filed on October 6, 2014, by La Poderosa, LLC, and Carlos S. Guerrero IS DENIED.

21. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>57</sup> and by the authority delegated by Sections 0.61 and 0.283 of the Rules,<sup>58</sup> the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

22. IT IS FURTHER ORDERED that the investigation by the Media Bureau of the matters noted above IS TERMINATED.

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<sup>56</sup> 47 U.S.C. § 310; 47 CFR §§ 73.3540, 1.65.

<sup>57</sup> 47 U.S.C. § 4(i).

<sup>58</sup> 47 CFR §§ 0.61, 0.283.

23. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to GB Enterprises Communications Corp., c/o Media Services Group, 149 Roscoe Boulevard South, Ponte Vedra Beach, FL 32082, and to its counsel, Lewis J. Paper, Esq., Pillsbury Winthrop Shaw Pittman LLP, 1200 17th Street, NW, Washington, DC 20036; to CATCO Communications, LLC, 480 South Broadway Avenue, Bartow, FL 33830; and to its counsel, John Wells King, Esq., 4051 Shoal Creek Lane East, Jacksonville, FL 32225-4792; and to Barry D. Wood, Esq., Wood Martin & Hardy, PC, Suite 202, 3300 Fairfax Drive, Arlington, VA 22201, counsel for La Poderosa, LLC and Carlos S. Guerrero.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

**CONSENT DECREE****V. INTRODUCTION**

1. This Consent Decree is entered into by and between: the Media Bureau of the Federal Communications Commission; GB Enterprises Communications Corp., licensee and proposed assignor of Station WHNR(AM), Cypress Gardens, Florida (Facility ID No. 21766); and CATCO Communications, LLC, proposed assignee, for the purpose of terminating the Bureau's Investigation into GB's compliance with Sections 73.3540 and 1.65 of the Commission's Rules, 47 CFR §§ 73.3540, 1.65, and Section 310 of the Communication Act of 1934, as amended, 47 U.S.C. § 310.

**VI. DEFINITIONS**

2. For 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 the order of the Bureau adopting this Consent Decree;
  - (c) "Application" means the FCC Form 314 application, as amended, for consent to assign the Station license from GB to CATCO (File No. BAL-20140820AAE);
  - (d) "Bureau" means the Media Bureau of the Commission;
  - (e) "CATCO" means CATCO Communications, LLC;
  - (f) "Commission" or "FCC" means the Federal Communications Commission;
  - (g) "Effective Date" means the date on which the Bureau releases the Adopting Order;
  - (h) "Investigation" means the Bureau's investigation of information contained in the Application and associated pleadings;
  - (i) "Licensee" or "GB" refers to GB Enterprises Communications Corp.;
  - (j) "Olivares" means Edward Olivares;
  - (k) "Olivares Purchase" means Olivares' January 24, 2013, purchase of 100 percent of the GB shares at a sheriff's sale;
  - (l) "Parties" means GB, CATCO, and the Bureau;
  - (m) "*Reconsideration Decision*" means the decision released by the Bureau on April 9, 2013 with respect to the Petition for Reconsideration filed in conjunction with the Reed Assignment Application, 28 FCC Rcd 4550 (MB 2013).
  - (n) "Reed" refers to George R. Reed;
  - (o) "Reed Assignment Application" means the Application to involuntarily assign the Station License from GB to Reed as Receiver (File No. BAL-20120316AAP);

- (p) “Rules” means the Commission’s Rules, found in Title 47 of the Code of Federal Regulations;
- (q) “Station” means WHNR(AM), Cypress Gardens, Florida (Facility ID. No. 21766);
- (r) “Violations” means: (1) the acquisition of 100 percent of the voting stock in licensee GB by Olivares without Commission approval in violation of Section 310(d) of the Act and Section 73.3540 of the Rules; and (2) the failure to inform the Commission that Olivares had acquired 100 percent of the voting stock in GB during the pendency of the Reed Assignment Application, in violation of Section 1.65 of the Rules.

## VII. BACKGROUND

3. Section 310(d) of the Act states, in pertinent part, that:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, . . . except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby . . . .

Similarly, Section 73.3540(a) of the Rules indicates that “[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control.” Additionally, Section 1.65 of the Rules indicates that:

Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application . . . Except as otherwise required by rules applicable to particular types of applications, whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate . . . .

An applicant’s obligations under Section 1.65 continue from the time the application is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court.

4. In this case, while the Reed Assignment Application had been granted but was subject to a petition for reconsideration, on January 24, 2013, Olivares purchased 100 percent of the GB shares at a sheriff’s sale. No transfer of control application reflecting the Olivares Purchase was ever filed, and the Commission was not advised of the Olivares Purchase until April 16, 2013 in a Petition for Partial Reconsideration filed by Reed after the *Reconsideration Decision* had been released. Because at the time it issued the *Reconsideration Decision*, the Bureau had not been apprised of the Olivares Purchase, it instructed Reed to file a transfer of control application such that he would become the 100 percent shareholder of the licensee. However, subsequent to the Olivares Purchase, GB should have: (1) filed an amendment to the Reed Assignment Application indicating that Olivares had acquired 100 percent of GB’s voting shares and equity; and (2) filed a “long form” application on FCC Form 315 seeking Commission consent to Olivares’ acquisition of control of GB in order to provide the Commission with an opportunity to evaluate Olivares’ qualifications and the facts and circumstances surrounding his

ownership, Reed's receivership, and the *de facto* control of the Station.

5. Because of the compliance issues raised by the Olivares Purchase, the Parties have negotiated this Consent Decree to terminate the Bureau's Investigation.

## VIII. AGREEMENT

6. The Parties acknowledge that any proceedings that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, resolve the matter, and promote the Station's compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

7. The Parties agree to be legally bound by the terms and conditions of this Consent Decree. GB and CATCO further agree that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. GB and CATCO agree that each is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that either GB or CATCO fails to satisfy any condition or Commission Rule, in the absence of Commission alteration of the condition or Rule, GB or CATCO will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment and/or forfeitures. Any violation of the Adopting Order or the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to enforcement of a Commission order.

9. 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 the Investigation. In consideration for the termination of the Investigation as provided herein, GB and CATCO agree to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the Violations in any action against GB and CATCO, provided that each of GB and CATCO satisfies all of its obligations under this Consent Decree. In the event that either GB or CATCO fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

10. Solely for purposes of this Consent Decree and in reliance on paragraph 9 hereof, GB stipulates that it violated Section 1.65 of the Rules by failing to amend the Reed Assignment Application to report Olivares' acquisition of 100 percent of GB's voting and equity shares pursuant to the Olivares Purchase. In addition, GB stipulates that it violated Section 310(d) of the Act and Section 73.3540 of the Rules by failing to seek any Commission approval of Olivares' acquisition of licensee GB's voting and equity shares.

11. GB agrees to pay a civil penalty to the United States Treasury in the amount of Eleven Thousand Dollars (\$11,000), within ninety (90) calendar days after the Effective Date. Licensee will also send electronic notification of payment to Christine Goepf at Christine.Goepf@fcc.gov and Michael Wagner at Michael.Wagner@fcc.gov on the date said payment is made. Such payment will be made, without further protest or recourse to a *trial de novo*, by a check or similar instrument, wire transfer or credit card and must include the Account Number and FRN referenced in the caption to the Order. Regardless of the form of payment, a completed 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). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether GB or CATCO possesses the basic qualifications, including those relating to character, to hold or obtain a Commission license or authorization. Accordingly, the Bureau agrees to grant the CATCO Application, after the Effective Date, provided that the following conditions have been met: 1) the civil penalty payment referred to in paragraph 11 of this Decree has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Application.

13. GB and CATCO each agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If any Party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, no Party will contest the validity of the Consent Decree or Adopting Order, and GB and CATCO will waive any statutory right to a *trial de novo*. GB and CATCO each further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 CFR Section 1.1501 *et seq.*, relating to the matters herein.

14. The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

15. The Parties agree that if any provision of this 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 Licensee does not expressly consent), such provision will be superseded by such Commission rule or order.

16. The Parties agree and acknowledge that this Consent Decree shall constitute a final

settlement between GB, CATCO and the Bureau concerning the Violations discussed herein.

17. This Consent Decree cannot be modified or amended without the advance written consent of all Parties.

18. Each Party represents and warrants to the other Parties that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

19. This Consent Decree may be signed in counterparts and/or by telecopy or pdf and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or pdf or by original signatures.

**MEDIA BUREAU  
FEDERAL COMMUNICATIONS COMMISSION**

By: \_\_\_\_\_  
William T. Lake, Chief

Date: \_\_\_\_\_

**GB ENTERPRISES COMMUNICATIONS CORP.**

By: \_\_\_\_\_  
George R. Reed, Receiver

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Edward Olivares, Sole Shareholder

Date: \_\_\_\_\_

**CATCO COMMUNICATIONS, LLC.**

By: \_\_\_\_\_  
Thomas C. Saunders, Member

Date: \_\_\_\_\_