

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

In the Matter of	)	
	)	
Entercom Communications and CBS Radio	)	MB Docket No. 17-85
Seek Approval to Transfer Control of and	)	
Assign FCC Authorizations and Licenses	)	
	)	
Subsidiaries of CBS Corporation	)	BTCH-20170320AAV
(Transferors)	)	BTC-20170320AAZ, <i>et al.</i> ,
and	)	BTCH-20170320ACR
Shareholders of Entercom Communications	)	BTCH-20170320AEV
Corporation (Transferees)	)	BTCH-20170320AFU
	)	BTC-20170320AGG
For Consent to Transfers of Control	)	BTCH-20170320AGZ
	)	BTCH-20170320AHB, <i>et al.</i> ,
	)	BTCH-20170320ACM
	)	BTCH-20170320ACT, <i>et al.</i> ,
	)	BTCH-20170320AFS
	)	BTCH-20170320AFV, <i>et al.</i> ,
	)	BTC-20170320AGE, <i>et al.</i> ,
	)	BTCH-20170320AGP
	)	BTCH-20170320ACS
	)	BTC-20170320ACV, <i>et al.</i> ,
	)	BTC-20170320AFI, <i>et al.</i> ,
	)	BTCH-20170320AFT
	)	BTC-20170320AGD
	)	BTC-20170320AGO
	)	BTCH-20170320AHA
	)	BTCH-20170320AHD
	)	
	)	
Joseph M. Field (Transferor)	)	BTCH-20170320AHE, <i>et al.</i> ,
and	)	BTCH-20170320AAW
Shareholders of Entercom Communications	)	BTC-20170320AGQ, <i>et al.</i> ,
Corporation (Transferees)	)	BTCH-20170320AAX, <i>et al.</i> ,
	)	BTC-20170320AAR, <i>et al.</i> ,
For Consent to Transfers of Control	)	BTC-20170320AGH, <i>et al.</i> ,
	)	BTC-20170320AFX, <i>et al.</i> ,
	)	BTCH-20170320ACN, <i>et al.</i> ,
	)	BTC-20170320AEW, <i>et al.</i> ,
	)	
	)	
Subsidiaries of CBS Corporation	)	BALH-20170320AMP, <i>et al.</i> ,
(Assignors)	)	BALH-20170320AMR,
and	)	BALH-20170320AMT,
The Entercom Divestiture Trust	)	BALH-20170320ANE, <i>et al.</i>
(Assignee)	)	
	)	
For Consent to Assignment of Licenses	)	
	)	

Subsidiaries of Entercom Communications Corporation (Assignors) and The Entercom Divestiture Trust (Assignee)	)	BALH-20170320ALF, <i>et al.</i> ,
	)	BALH-20170320ALH,
	)	BALH-20170320ALJ, <i>et al</i>
	)	
	)	
For Consent to Assignment of Licenses	)	

### ORDER ON RECONSIDERATION

**Adopted: October 24, 2018**

**Released: October 25, 2018**

By the Commission:

1. We have before us a joint Petition for Reconsideration (Petition) filed on July 26, 2018, by Edward R. Stolz II (Stolz) and Deborah J. Naiman (Naiman) (collectively, Petitioners) seeking reconsideration of our decision denying their Application for Review (AFR) in this proceeding.<sup>1</sup> The Petitioners again ask the Commission to rescind the captioned transfer of control and assignment of license applications, as amended (Merger and Divestiture Applications), and designate for hearing CBS Corporation's (CBS) basic character qualifications to assign its radio stations to Entercom Communications Corporation (Entercom).<sup>2</sup> For the reasons set forth below, we dismiss in part and otherwise deny the Petition.

2. **Background.** Entercom, CBS, and CBS's wholly-owned subsidiary CBS Radio, Inc. (CBSR) filed the Merger and Divestiture Applications, pursuant to which they sought to transfer control of the CBSR radio stations to Entercom.<sup>3</sup> Stolz and Naiman each filed a timely Petition to Deny those Applications,<sup>4</sup> and Stolz subsequently filed three Supplements to his Petition. On November 9, 2017, the Bureau rejected the arguments raised in the Petitions and Supplements, denied the Petitions, and granted the Merger and Divestiture Applications subject to certain conditions pertinent to ensuring that the transaction complied with the Commission's local radio ownership rules.<sup>5</sup> Stolz and Naiman filed an AFR of the *Order*, arguing that the Bureau erred by not designating the Merger and Divestiture Applications for evidentiary hearing in response to Petitioners' claim that CBS had engaged in "intentional news distortion" at its television stations, which Petitioners also claim called into question CBS's basic character qualifications to hold any Commission license. In the *AFR Order*, the Commission

<sup>1</sup> See *Entercom Communications and CBS Radio Seek Approval to Transfer Control and Assign FCC Authorizations and Licenses to Subsidiaries of CBS Corporation (Transferors) and Shareholders of Entercom Communications Corporation (Transferee)*, Memorandum Opinion and Order, FCC 18-84 (Jun. 26, 2018) (*AFR Order*).

<sup>2</sup> Petition at 10.

<sup>3</sup> The captioned applications were filed on March 20, 2017. By Public Notice released March 31, 2017, the Media Bureau (Bureau) established petition to deny, opposition, and reply filing deadlines of May 1, May 11, and May 18, 2017, respectively. The Bureau also announced permit-but-disclose *ex parte* status for the applications. *Entercom Communications and CBS Radio Seek Approval to Transfer Control of and Assign FCC Authorizations and Licenses*, Public Notice, 32 FCC Rcd 2105 (MB 2017).

<sup>4</sup> Stolz challenged the Merger and Divestiture Applications in the Sacramento and San Francisco markets; Naiman challenged only those in the Sacramento market.

<sup>5</sup> 47 CFR § 73.3555. See *Entercom Communications and CBS Radio Seek Approval to Transfer Control and Assign FCC Authorizations and Licenses to Subsidiaries of CBS Corporation (Transferors) and Shareholders of Entercom Communications Corporation (Transferee)*, Memorandum Opinion and Order, 32 FCC Rcd 9380, 9835-86, paras. 15-17 and 9388, para. 26 (MB 2017) (*Order*).

affirmed the Bureau and dismissed in part and otherwise denied the AFR, finding that nothing in Petitioners' claims of news distortion at CBS television stations raised a question about CBS's qualifications to hold the radio station licenses that were the subject of the Merger and Divestiture Applications.<sup>6</sup>

3. On reconsideration, Petitioners argue that there are two developments which occurred after they filed the AFR that justify reconsideration of the *AFR Order*:<sup>7</sup> (1) a Hearing Designation Order adopted by the Commission following the release of the *AFR Order* which designated for hearing applications filed by Sinclair Broadcast Group, Inc. (Sinclair) and Tribune Media Company (Tribune) to transfer control of Tribune subsidiaries to Sinclair (Sinclair-Tribune Applications);<sup>8</sup> and (2) recent studies by the Media Research Center (MRC) alleging instances of intentional news distortion by CBS Corporation television stations and the CBS Television Network.<sup>9</sup> Petitioners argue that the Commission's decision to designate the Sinclair-Tribune Applications for hearing, but not the Merger and Divestiture Applications, is inconsistent with *Melody Music*, because the Commission has treated "similarly situated parties" inconsistently.<sup>10</sup> They claim the Commission has based its decision to designate the Sinclair-Tribune Applications but not the Merger and Divestiture Applications on Sinclair's status as a "right of center media organization" whereas CBS is "a well-known leftist media organization."<sup>11</sup> Petitioners additionally reiterate their previous claim that CBS engages in news distortion, raising questions about CBS's basic qualifications that must be resolved in an evidentiary hearing.<sup>12</sup>

4. Section 1.106(b)(2) of the Commission's rules (Rules) specifies limited circumstances under which a party may seek reconsideration of a Commission denial of an application for review. Such a petition for reconsideration will be entertained only if the petition (i) "relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission," and/or (ii) "relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity."<sup>13</sup>

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<sup>6</sup> *AFR Order* at 2-3, para. 4.

<sup>7</sup> Petitioners reference Section 1.106(b)(2) which, as discussed below, limits the circumstances under which parties may seek reconsideration after the Commission denies an application for review.

<sup>8</sup> *Applications of Tribune Media Company and Sinclair Broadcast Group, Inc.*, Hearing Designation Order, FCC 18-100 (July 19, 2018) (*Sinclair-Tribune HDO*).

<sup>9</sup> Petition at 3, 5-8. Petitioners call the MRC a "media watchdog group." *Id.* at 5. Details about the specific MRC studies can be found in the Petition and will not be repeated here.

<sup>10</sup> Petition at 5, citing *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965); see *Melody Music*, 345 F.2d at 733 (Commission "must explain its reasons [for differential treatment] and . . . the relevance of those differences to the purposes of the Federal Communications Act.").

<sup>11</sup> *Id.* at 2-3.

<sup>12</sup> *Id.* at 5, 8-9.

<sup>13</sup> 47 CFR § 1.106(b)(2).

5. **Discussion.** Upon review of the Petition, we conclude the two developments Petitioners cite do not provide new evidence that would justify reversing our findings in the *AFR Order*. To the extent that the Petition reiterates arguments regarding CBS's alleged news distortion that Petitioners had raised previously in their AFR, we dismiss the Petition as repetitious.<sup>14</sup> We reject Petitioners' other claims.

6. We are not persuaded by Petitioners' argument that, under *Melody Music*, Sinclair and Tribune would be considered "similarly situated parties" to Entercom, CBS, and CBSR.<sup>15</sup> In the Sinclair-Tribune HDO, the Commission found that there were substantial and material questions of fact surrounding whether Sinclair was a real party in interest with respect to certain stations that it intended to divest in order to comply with the Commission's broadcast ownership rules,<sup>16</sup> a finding that required designation for hearing under Section 309(e) of the Act.<sup>17</sup> The allegations in this proceeding, in contrast, concern unrelated stations, and Petitioners have not raised any real party in interest issues with respect to Entercom's, CBS's, or CBSR's filings with the Commission. Moreover, Petitioners have failed to identify any substantial and material questions of fact warranting further inquiry in a hearing with respect to their claim of news distortion.<sup>18</sup> Other than the fact that both cases involve acquisition of broadcast stations, we do not find any similarity, and nothing requires us to designate these applications for hearing under *Melody Music*.<sup>19</sup>

7. With respect to Petitioners' most recent claims regarding CBS's purported news distortion, we reject these on the same grounds that we did in the *AFR Order*. Specifically, the MRC studies involve CBS television stations and the CBS Television Network, not the CBS or CBSR radio stations that were the subject of the captioned applications. The Petition is based solely on what CBS and other networks did and did not cover in their television news programs and provides no evidence or other basis to support a finding that conduct occurring at CBS TV stations is relevant to CBS's qualifications to assign or transfer control of its radio station licenses.<sup>20</sup>

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<sup>14</sup> Although Petitioners have referenced several new CBS television segments, they have repeated their argument from the AFR that those types of news reports are somehow relevant to CBS's qualifications. We previously rejected those arguments while upholding the Bureau's decision to grant the Merger and Divestiture Applications. *AFR Order* at 3, para. 5 ("[N]othing in Stolz's claims of news distortion at CBS television stations identifies any facts that raise questions about CBS's qualifications to hold the radio station licenses that are the subject of the proposed transfer of control to Entercom.").

<sup>15</sup> Petition at 5.

<sup>16</sup> Sinclair-Tribune HDO at 2, para. 3 (" Specifically, substantial and material questions of fact exist regarding whether: (1) Sinclair was the real party in interest to the sale of [three TV stations]; (2) if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission; and (3) whether consummation of the overall transaction would be in the public interest, including whether it would comply with Section 73.3555 of the Commission's rules, the broadcast ownership rules.").

<sup>17</sup> 47 U.S.C. § 309(e).

<sup>18</sup> *AFR Order* at 3-4 paras. 5-7.

<sup>19</sup> We also reject Petitioners' unsupported speculation that Sinclair's and CBS's respective alleged political orientation factored into the Commission's decision to designate the Sinclair-Tribune Applications for hearing but not the Merger and Divestiture Applications.

<sup>20</sup> *AFR Order* at 3, para. 5 (citations omitted) ("Stolz notably does not allege that the purported improper actions occurred at a CBSR radio station subject to the transaction. Rather, he asserts that his adjudicated, unsubstantiated, and conclusory news distortion claim against CBS's *television* stations presents sufficient circumstances to investigate CBSR's qualifications to be a Commission licensee. We disagree. Under established Commission policy, there is 'no presumption that misconduct at one station is necessarily predictive of the operation of the other stations.'"); see also *Serafyn v. FCC*, 149 F.3d 1213, 1216-17 (D.C. Cir. 1998) (summarizing evidentiary requirements for news distortion claims). In addition, we note that it appears that all of the new allegations of misconduct by CBS television stations relate to events that occurred after Entercom and CBS

8. Accordingly, IT IS ORDERED that, pursuant to Section 405(a) of the Communications Act of 1934, as amended,<sup>21</sup> and Section 1.106 of the Rules,<sup>22</sup> the July 26, 2018, Petition for Reconsideration filed by Edward R. Stolz II and Deborah J. Naiman IS DISMISSED to the extent described in paragraph 5 herein and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

(Continued from previous page) \_\_\_\_\_  
consummated the transaction on November 17, 2017. *See* CBS Radio Annapolis LLC, File No. BTCH-20170320AAV, Consummation Notice, *available at* [https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101772239&formid=905&fac\\_num=20983](https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101772239&formid=905&fac_num=20983). Petitioners fail to proffer any theory or evidence by which these post-consummation allegations have any bearing on the qualifications of CBS as a radio station licensee when the Bureau granted the applications.

<sup>21</sup> 47 U.S.C. § 405(a).

<sup>22</sup> 47 CFR § 1.106.