

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, et al.,
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, et al.,
) BTCH-20170320ACM
) BTCH-20170320ACT, et al.,
) BTCH-20170320AFS
) BTCH-20170320AFV, et al.,
) BTC-20170320AGE, et al.,
) BTCH-20170320AGP
) BTCH-20170320ACS
) BTC-20170320ACV, et al.,
) BTC-20170320AFI, et al.,
) BTCH-20170320AFT
) BTC-20170320AGD
) BTC-20170320AGO
) BTCH-20170320AHA
) BTCH-20170320AHD
)
)
Joseph M. Field (Transferor) ) BTCH-20170320AHE, et al.,
and ) BTCH-20170320AAW
Shareholders of Entercom Communications ) BTC-20170320AGQ, et al.,
Corporation (Transferees) ) BTCH-20170320AAX, et al.,
) BTC-20170320AAR, et al.,
For Consent to Transfers of Control ) BTC-20170320AGH, et al.,
) BTC-20170320AFX, et al.,
) BTCH-20170320ACN, et al.,
) BTC-20170320AEW, et al.,
)
)
Subsidiaries of CBS Corporation ) BALH-20170320AMP, et al.,
(Assignors) ) BALH-20170320AMR,
and ) BALH-20170320AMT,
The Entercom Divestiture Trust ) BALH-20170320ANE, et al.
(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	)	

### MEMORANDUM OPINION AND ORDER

**Adopted: June 26, 2018**

**Released: June 26, 2018**

By the Commission:

1. We have before us Edward R. Stoltz, II's (Stolz) and Deborah J. Naiman's (Naiman) (collectively, Petitioners) December 11, 2017 joint Application for Review (AFR)<sup>1</sup> of the Media Bureau's (Bureau) denial of Petitioners' separate Petitions to Deny the captioned transfer of control and assignment applications, as amended (Merger Applications and Divestiture Applications), filed by Entercom Communications Corp. (Entercom), CBS Corporation (CBS), and CBS's wholly-owned subsidiary CBS Radio, Inc. (CBSR).<sup>2</sup> For the reasons set forth below, we dismiss in part and otherwise deny the AFR.

2. On March 20, 2017, Entercom, CBS, and CBSR filed the Merger and Divestiture Applications, pursuant to which they sought to transfer control of the CBSR radio stations to Entercom. Stolz and Naiman each filed a timely Petition to Deny those Applications,<sup>3</sup> and Stolz subsequently filed three Supplements to his Petition. In the *Order*, 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>4</sup>

3. On review, Petitioners contend that the Bureau erred by not designating the Merger and Divestiture Applications for evidentiary hearing because CBS had allegedly engaged in "intentional news distortion" at its television stations.<sup>5</sup> Although CBS's television stations were not part of the transaction, Petitioners contend that their news distortion claim calls into question CBS's basic character qualifications to hold any Commission license.<sup>6</sup>

4. In its Opposition, Entercom maintains that the AFR fails to demonstrate any legal or factual error warranting reversal of the *Order*. Entercom argues that Petitioners simply reiterate

<sup>1</sup> On December 28, 2017, Entercom filed an Opposition to the AFR (Opposition), to which Stolz and Naiman filed a Reply on January 2, 2018.

<sup>2</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, 32 FCC Rcd 9380 (2017) (*Order*). The *Order* contains a complete description of the transaction, which will not be reiterated here. See *Order*, 32 FCC Rcd at 9382-82, paras. 2-3.

<sup>3</sup> Stolz challenged the Merger and Divestiture Applications in the Sacramento and San Francisco markets; Naiman challenged only those in the Sacramento market.

<sup>4</sup> 47 CFR §73.3555. See *Order*, 32 FCC Rcd at 9385-86, paras. 15-17 and 9388, para. 26.

<sup>5</sup> The Commission has used the term "news distortion" to refer to programming that "deliberately distort[s] or slant[s] the news." *Complaints Covering CBS Program "Hunger in America"* 20 FCC 2d 143, 150 (1969).

<sup>6</sup> AFR at 4, 7-9 (citing, as an example of their claim, a CBS television Evening News broadcast).

arguments made to the Bureau without demonstrating error in the Bureau's resolution of the issues.<sup>7</sup> In their Reply, Petitioners claim that they did indeed adequately explain the Bureau's error in failing to find that CBS lacked basic character qualifications to be a licensee.<sup>8</sup>

5. We conclude that the Bureau actions granting the Merger and Divestiture Applications were proper. 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 unadjudicated, 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."<sup>9</sup> And nothing 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>10</sup>

6. Petitioners also reference, but do not specifically reargue, claims they made below regarding other Entercom applications that have been separately resolved by the Commission. These claims relate to the license renewal applications of former Sacramento station KDND(FM)<sup>11</sup> and Entercom's five other Sacramento stations.<sup>12</sup> Petitioners acknowledge that these claims have been resolved adversely against them in those other proceedings and that Stolz has sought reconsideration as to each issue.<sup>13</sup> However, Petitioners do not identify the Bureau's claimed errors with any specificity or

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<sup>7</sup> Entercom Opposition at 1-2.

<sup>8</sup> Reply at 2-3.

<sup>9</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, Order and Policy Statement, 102 FCC 2d 1179, 1223 (1986) (subsequent history omitted) (*Character Policy Statement*). When considering whether allegations of misconduct at one station should restrict the transferability of commonly owned stations, the Commission considers whether the "behavior [is] so fundamental to a licensee's operation that it is relevant to its qualifications to hold any station license." *Id.* Conduct that "shocks the conscience and evoke[s] almost universal disapprobation" pertains in a different context (whether certain non-FCC misconduct is cognizable for character qualification), *Character Policy Statement*, 102 FCC 2d at 1205 & n.60, distinct from the analysis of whether conduct at one station is relevant to a licensee's qualifications to hold other station licenses, *see Order*, 32 FCC Rcd at 9386, para. 17 & n.49 (applying the 'behavior fundamental to a licensee's operation' standard in the latter context).

<sup>10</sup> The cases Petitioners cite in support of their position that consideration should be given to conduct outside the stations at issue does not involve news distortion and provides no support for Petitioners' claims here. Specifically, in *Contemporary Media, Inc.*, the licensee's principal was a felon convicted of multiple counts of child molestation; in the instant matter there is no criminal charge, let alone a conviction. *See Contemporary Media, Inc.*, Decision, 13 FCC Rcd 14437 (1998), *recon. denied*, Order, 14 FCC Rcd 8790 (1999), 214 F.3d 187 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 920, 121 S.Ct. 1355 (2001). Unadjudicated non-FCC misconduct, such as the criminal wrongdoing alleged by Stolz, AFR 8-9, is not relevant to a licensee's character qualifications unless it "shock[s] the conscience." *Character Policy Statement*, 102 FCC 2d at 1205 & n.60. Stolz has not provided any evidence to support his allegations that CBS violated 18 USC §§ 241, 245(b), 351, and 1505, nor has he asserted that there is any administrative or judicial proceeding pending regarding the alleged wrongdoing. We therefore have no basis to conclude that these unadjudicated allegations warrant designation of the CBS television stations for a hearing. Finally, we find that the language from *Red Lion*, quoted in the AFR, has no relevance to this proceeding. *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 379, 389-90 (1969).

<sup>11</sup> For clarity and simplicity, former station KDND, identified in the Commission's broadcasting database as DKDND, will be referred to as KDND.

<sup>12</sup> *Dennis J. Kelly, Esq., etc.*, Letter, 32 FCC Rcd 6880 (MB 2017), *pet. for recon. dismissed*, Letter, 1800B3-ATS (Nov. 21, 2017), *app. for review pending*; *Entercom License, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 7149 (2017), *recon. dismissed in part and denied in part*, Order, DA 18-472 (OGC May 8, 2018), *app. for review pending* (*KDND License Renewal MO&O*).

<sup>13</sup> AFR at 12. The Commission has rejected each of these claims in those proceedings. *Entercom License, LLC*, *supra* n.12; *Entercom Sacramento License, LLC, Applications for Renewal of Licenses*, Memorandum Opinion and

support their request for relief with any analysis of the facts or law.<sup>14</sup> Instead, they merely list these issues in an appendix. Section 1.115 of the Commission's rules requires that an application for review "specify with particularity" the grounds on which Commission review is warranted.<sup>15</sup> Petitioners failed to meet this burden; we therefore dismiss these claims.<sup>16</sup>

7. For the reasons set forth above, we find the Bureau correctly concluded that there are no substantial and material questions of fact regarding the license transfer and assignment applications, and we uphold its decision.

8. Accordingly, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,<sup>17</sup> and Sections 1.115(b) and (g) of the Rules,<sup>18</sup> the December 11, 2017, Application for Review filed by Edward R. Stolz II and Deborah J. Naiman IS DISMISSED to the extent described in paragraph 6 herein and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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Order, FCC 18-83 (June 26, 2018), *review denied*. Stolz provides no reasoned basis for the Commission to reconsider here its conclusions in those proceedings.

<sup>14</sup> Petitioners state that "[t]he issues are being repeated [in the AFR] to keep them alive in the event that Petitioners herein seek judicial review of the FCC final order in this matter." *Id.*

<sup>15</sup> 47 CFR § 1.115(b)(2); *see Application of Red Hot Radio, Inc.*, 19 FCC Rcd 6737, 6745 (2004) ("Our rules do not allow for a 'kitchen sink' approach to an application for review, rather the burden is on the Applicant to set forth fully its argument and all underlying relevant facts in the application for review.") (citing 47 CFR § 1.115(b)(2)(i)).

<sup>16</sup> To the extent Stolz's reply to Entercom's opposition discusses an issue listed in the appendix to the AFR, that discussion is outside the scope of the opposition and is therefore procedurally defective. 47 CFR § 1.115(d) ("replies to oppositions shall be limited to matters raised in the opposition.").

<sup>17</sup> 47 U.S.C. § 155(c)(5).

<sup>18</sup> 47 CFR § 1.115(b) and (g).