

Before the  
Federal Communications Commission  
WASHINGTON, DC 20554

In re	)	
	)	
Application of Bowers Broadcasting	)	
Corporation and AJG Corporation for	)	File Nos.: BAL-20130815ACK and
Consent to the Assignment of	)	BALH-20130815ACL
Stations WCLG (AM) and WCLG-FM	)	
Morgantown, West Virginia	)	Facility ID Nos. 3 and 6553
	)	

To: Media Bureau, Audio Division

**PETITION FOR RECONSIDERATION**

Pursuant to Section 1.106 of the Rules, AJG Corporation (“AJG” or “Petitioner”), through its counsel, hereby respectfully requests reconsideration of certain collateral conditions imposed by the Audio Division on its grant of the above-captioned application in *WCLG(AM)* and *WCLG-FM*, 1800B3-MM, released February 3, 2015 (the “Decision”).<sup>1</sup> The conditions, which will adversely affect AJG, are based on inaccurate hearsay and are unnecessarily broad. The Decision should be reconsidered and the conditions imposed should be modified, as discussed below.

1. Reliance on Inaccurate Hearsay “Facts” from BIA Is Unlawful.

The Decision imposes certain restrictions on the Petitioner, compliance with which is required in order for AJG to consummate the assignment of the licenses of Stations WCLG and WCLG-FM (the “Stations”). The material conditions include (i) termination of a Sales Representation Agreement between AJG and a subsidiary of West Virginia Radio Corporation

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<sup>1</sup> The deadline for the filing of this Petition for Reconsideration normally would have been March 5, 2015, 30 days after the release of the Decision. However, the Commission was closed on March 5 due to a snow emergency. This pleading is being submitted the next business day and therefore is timely filed.

(“WVRC”) that has been in place for more than 14 years, (ii) a pledge that AJG will not enter into any further agreements with respect to programming or advertising on “any same-market AJG or WVRC station as described in Section 73.3555 Note 2, subsection j, k and l,” (iii) cessation of sharing of managerial staff, and (iv) a blanket prohibition on “any communication whatsoever, direct or indirect, oral or written” between Lauren M. Driscoll (the President of AJG and the Trustee of the trusts that hold all of AJG’s stock) or “any officer, director, employee or agent of AJG” and John R. or David A. Raese or any “officer, director, employee or agent” of any Raese-owned company or any affiliate or subsidiary thereof “regarding the management or operation of WCLG(AM) and WCLG-FM.” (Decision at pp. 8-9.)

These conditions are based on inaccurate information about AJG derived, without verification, from the BIA Kelsey Media Access Pro Database (“BIA”). In several significant respects, those facts are simply wrong, as detailed in the attached Declaration of Jack W. Murphy, Jr., Vice President of AJG.

According to the Decision, BIA states that Dale Miller is General Manager of AJG’s WFGM. That is not correct, as verified in Mr. Murphy’s Declaration. Since March 2009, Mr. Murphy has been the General Manager of all AJG stations. Dale Miller, who is employed by WVRC, does not hold any employment position with AJG.

The Decision also states, citing BIA, that Mr. Murphy is Sales Manager of WVRC’s Station WAJR. Mr. Murphy declares that is not correct and that he does not hold any employment position with WVRC.

Again relying on BIA, the Decision states the mailing address for AJG is 1251 Earl L. Core Road, Morgantown, West Virginia. Again, that is not correct. Mr. Murphy confirms that for

several years, AJG's mailing address for WFGM-FM and WKKW has been Post Office Box 542, Dellslow, West Virginia 26531.

The Decision also cites BIA as the source of the supposed "fact" that AJG's WFGM and WKKW have a local marketing agreement ("LMA") with WVRC stations WAJR, WAJR-FM, WVAQ and WWLW. That is not correct.<sup>2</sup> Mr. Murphy's Declaration states there is no local marketing agreement between any AJG station and WVRC. There is, as AJG has reported, a Sales Representation Agreement dated November 8, 2000, between AJG and a WVRC subsidiary. That agreement, which has been characterized as a "Joint Sales Agreement," pertains to WKKW only.

BIA states that WVRC's "ultimate owners," John Raese and David Raese, are also the ultimate owners of WFGM-FM and WKKW. *See* Decision at p. 7 n. 37. That is not correct. The ultimate owners of AJG are two trusts controlled by Ms. Driscoll as an independent trustee. *See* Murphy Declaration at p. 1. The two trusts were created through a single trust document titled "Descendants Trust" and dated May 2, 2000. *See* Decision at p. 2 n. 8.

The Decision's reliance on BIA data is unwarranted. The Commission recognizes BIA/Kelsey as the definitive source for determining, for multiple ownership purposes, the number

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<sup>2</sup> Similarly, and allegedly "consistently," BIA shows that all four of the WVRC-owned stations, WAJR (AM), WAJR-FM, WVAQ (FM), and WWLW-FM-have an LMA with AJG-owned stations WKKW (FM) and WFGM (FM). This last allegation is preposterous. As a practical matter, a station cannot be the programmer in an LMA and the licensee. Reciprocal agreements of this sort do not exist. There is nothing "consistent" about such a fantastic arrangement. AJG has no LMA with any other licensee except the "bridge" LMA with the Assignor herein, Bowers Broadcasting Corporation. It is a party to a Sales Representation Agreement as to one of its stations, WKKW (FM). Thus, BIA's "conclusion" that these illusory LMAs make "WVRC's ultimate owner, the Raeses, the ultimate owner of AJG-owned stations..." (Decision at n. 37) is baseless. BIA has no authority or expertise sufficient to reach such a legal conclusion.

of stations included in Arbitron (now Nielsen) rated Metro Markets.<sup>3</sup> But the Commission has not delegated any other data collection functions to BIA/Kelsey. The information listed in the BIA database regarding station personnel or contractual agreements has no Commission imprimatur. Just like a newspaper, BIA/Kelsey is a private entity that endeavors to gather information for the use of its subscribers. That information, just like what is published in a newspaper, is in essence hearsay. While the information BIA gathers may often be accurate, there is no assurance – as the discussion above indicates – it is unfailingly accurate. BIA data are not subject to official notice. The Decision’s reliance on hearsay BIA data is indistinguishable from the Objectors’ attempt to make their case based on newspaper articles. *See DFW Radio License, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 804, 810 & n. 51 (2014). Moreover, as shown above, much of the BIA data cited cannot be relied upon because it is wrong.<sup>4</sup>

2. The Decision’s Broad “No Communication” Condition Far Exceeds the Restriction Mandated by the Commission’s 1984 Attribution Order.

The Decision imposes an excessively broad “no communication” condition extrapolated from the Commission’s 1984 *Attribution Order*.<sup>5</sup> The condition requires that neither Ms. Driscoll, the Trustee of the trusts that own AJG, nor any officer, director, employee or agent of AJG have any communication whatsoever, direct or indirect, oral or written, with (1) Messrs. John R. or David A. Raese, or (2) any officer, director, employee or agent of any Raese-owned company or

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<sup>3</sup> 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13727 (2003).

<sup>4</sup> The information BIA currently lists with respect to AJG management personnel is different than what was reported as of July 29, 2014, the date referenced in the Decision at p. 6. But that information is still, in large measure, wrong. In the coming days, Mr. Murphy will endeavor to have BIA correct its records.

<sup>5</sup> *Corporate Ownership Reporting and Disclosure by Broadcast Licensees, Amendment of Section 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, 1023 (1984).

any affiliate or subsidiary thereof, regarding the management or operation of WCLG (AM) and WCLG-FM. (Decision at pp. 8-9).

AJG can and will accept a restriction barring direct communications between Ms. Driscoll as the Trustee, and the Raeses as Grantors with respect to the management or operation of WCLG and WCLG-FM. Indeed, AJG will be willing to accept a condition barring AJG and WVRC from sharing senior managerial staff in the operation of same-market stations (outside of the context of the Sales Representation Agreement discussed below). But to bar all communications between any employee or agent of AJG and any employee or agent of any Raese-owned company, affiliate or subsidiary is overbroad and would be unnecessarily burdensome. Such a condition would prohibit such ordinary functions as a WVRC employee passing to an AJG employee a copy of an advertiser's commercial produced at a WVRC station or pooling news coverage of a local event or coordinating a response to an emergency. We ask the Audio Division to modify this condition as set forth at the end of this pleading.

Significantly, the conditions discussed in the body of the Decision (i.e., in the first full paragraph on page 8) do not include complete ban on all communications between employees and agents of AJG and WVRC. Instead, AJG-owned stations in the Morgantown-Clarksburg-Fairmont Metro simply would be precluded from sharing managerial staff with WVRC-owned stations in the same market. As noted above, AJG is willing to accept a substantially similar condition.

3. Requiring Termination of the Sales Representation Agreement is Unwarranted.

The Sales Representation Agreement between AJG and a WVRC subsidiary pertaining to WKKW has been in place for more than 14 years and is a matter of record with the Commission, having been filed with the Commission shortly after it was signed in November 2000 and then again in February 2005. Even accepting that the Sales Representation Agreement constitutes an attributable "Joint Sales Agreement" under subsection k.1 of Note 2 of 47 C.F.R. 73.3555, the

multiple ownership rule,<sup>6</sup> the Decision provides no reason for requiring termination of this long-standing agreement. *While the agreement may result in the attribution of WKKW to WVRC, it does not result in the attribution of WVRC's stations to AJG.* AJG's proposed acquisition of WCLG and WCLG-FM therefore does not contravene the multiple ownership rules. Stated simply, the WKKW Sales Representation Agreement is not germane to the question of whether AJG's proposed acquisition of WCLG and WCLG-FM comports with the Commission's Rules. Moreover, requiring the termination of the agreement will disrupt, without cause, AJG's well-established expectations with respect to WKKW. Given the other conditions that AJG is willing to accept, the continued efficacy of the Sales Representation Agreement will not constitute in any way an unauthorized transfer of control of WKKW to WVRC. Since, as shown, BIA data suggesting common control of AJG and WVRC is incorrect, there is no basis in fact to require the termination of this agreement.

#### 4. Conclusion.

In light of the above, including the material errors in the BIA data upon which the Audio Division based the Decision, AJG respectfully requests that the Decision's ordering paragraph and the Form 732 with respect to the above-captioned assignment application be modified to provide as follows:

IT IS FURTHER ORDERED, that the applications (File Nos. BAL-20130815ACK and BALH-20130815ACL) for assignment of the WCLG (AM) and WCLG-FM licenses from Bowers Broadcasting Corporation to AJG Corporation, ARE GRANTED, CONDITIONED UPON AJG Corporation's submission to the Bureau, prior to consummation, of a sworn statement from Ms. Lauren M. Kelley Driscoll that: (1) she will not communicate with Messrs. John R. or David A. Raese regarding the management or operation of WCLG (AM) and WCLG-FM; (2) AJG-owned

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<sup>6</sup> The Decision refers to Note 2 "subsections j, k and l"). Decision at p. 8 & n. 46 (emphasis added). The letter "l" in these references actually is to a numeral one (1) and the cited text is part of Note 2 subsection k.

stations in the Morgantown-Clarksburg-Fairmont Arbitron Metro will not share broadcast managerial staff with WVRC-owned stations; (3) AJG will enter into no further agreements with WVRC with respect to either programming or advertising on any same-market AJG or WVRC station as described in Section 73.3555 Note 2, subsections j and k; and (4) AJG has requested that BIA update its records to accurately reflect the pertinent information regarding AJG's stations.

Respectfully submitted,

AJG CORPORATION

Date: March 6, 2015

By: 

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**Declaration of Jack W. Murphy, Jr.**

**I, Jack W. Murphy, Jr., do hereby declare and state under penalty of perjury:**

**I am Vice-President of AJG Corporation ("AJG"), licensee of Stations WKKW (FM), Facility ID 45253, Fairmont, West Virginia; WFGM-FM, Facility ID 21170, Barrackville, West Virginia, and WFBY (FM), Facility ID 71690, Weston, West Virginia, and the proposed assignee of Stations WCLG, Facility ID 3, and WCLG-FM, Facility ID 6553, both Morgantown, West Virginia.**

**Since March 2009, I have been General Manager of AJG's stations.**

**I have reviewed the letter of the FCC Audio Division, dated February 3, 2015 (the "Letter Decision") granting the application (BAL-20130815ZACK and BALH-20130815ACL) for consent to assign Stations WCLG and WCLG-FM to AJG, but imposing several conditions on the consummation of the proposed assignment.**

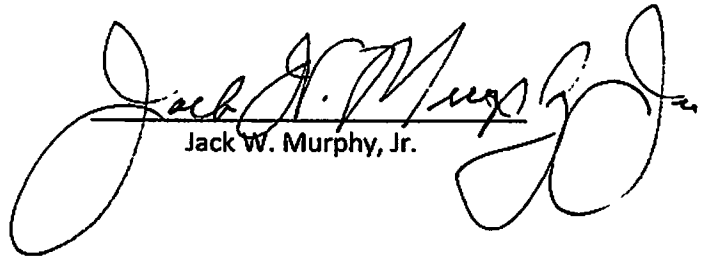
**The Letter Decision relies on certain supposed "facts" set forth in the BIA Kelsey Media Access Pro Database ("BIA") to indicate ties between the operation of AJG's stations and those of West Virginia Radio Corporation ("WVRC"). In several important respects, the BIA listings recited in the Letter Decision are simply wrong, as indicated below:**

- 1. BIA states Dale Miller is General Manager of AJG's WFGM. That is not correct. Since March 2009, I have been the General Manager of all AJG stations. Dale Miller, who is employed by WVRC, does not hold any employment position with AJG.**
- 2. BIA states I am Sales Manager of WVRC's Station WAJR. That is not correct. I do not hold any employment position with WVRC.**
- 3. BIA states the mailing address for AJG is 1251 Earl L. Core Road, Morgantown, West Virginia. That is not correct. For several years, AJG's mailing address for WFGM-FM and WKKW has been Post Office Box 542, Dellslow, West Virginia 26531.**
- 4. BIA states that AJG's WFGM and WKKW have a local marketing agreement with WVRC stations WAJR, WAJR-FM, WVAQ and WWLW. That is not correct. There is no local marketing agreement between any AJG station and WVRC. There is, as AJG has reported, a Sales Representation Agreement dated November 8, 2000, between AJG and a WVRC subsidiary. That agreement, which has been characterized as a "Joint Sales Agreement," pertains to WKKW only.**
- 5. BIA reports that WVRC's "ultimate owners," John Raese and David Raese, are also the ultimate owners of WFGM-FM and WKKW. That is not correct. The ultimate owners of AJG are two trusts controlled by independent trustee Lauren M. Kelly Driscoll, who also is the President of AJG. The trusts were created in 2000 for the benefit of the descendants of John Raese and David Raese.**



I have no idea how BIA gathers the information regarding station personnel listed in its database. But I certainly did not give BIA the incorrect information recited in the Letter Decision. I note that the BIA database now lists different persons as holding senior management positions with AJG's stations. Those listings still contain numerous errors. I am attempting to get BIA to correct its database with respect to AJG and to require that in the future I be contacted if at any time BIA wishes to update those listings.

Signed March 4, 2015



Jack W. Murphy, Jr.

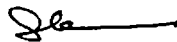
**CERTIFICATE OF SERVICE**

I, Sandi Kempton, an Assistant with the office of Fletcher, Heald & Hildreth PLC, hereby certify that a true and correct copy of the foregoing "Petition for Reconsideration" was sent on this 6<sup>th</sup> day of March, 2015, via First-Class United States mail, postage pre-paid, or as otherwise specified, to the following:

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Sandi Kempton