



FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

March 9, 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Entravision Holdings, LLC
2415 Olympic Boulevard
Suite 6000 West
Santa Monica, CA 90404

Re: WHTX-LP, Hartford, CT
Facility ID Number 26337
BPTTL-20030606ABP
BESTA-20050420AEW

Dear Sirs:

This refers to the above-captioned applications filed on behalf of Entravision Holdings, LLC (Entravision) for displacement relief application for modification of facilities and a request to extend Special Temporary Authority (STA) to operate WHTX-LP, Hartford, Connecticut, with modified facilities as proposed in the displacement application.

By way of background, Entravision became the licensee of WHTX-LP on February 28, 2003 pursuant to Commission consent.¹ The previous licensee of the station sought authority for the station to remain silent on February 10, 1999 while a displacement application it had filed remained pending.² After assuming control of the station in 2003, Entravision filed the above-noted displacement application proposing to change WHTX-LP's channel, to increase power and antenna radiation center and to move the station's transmitter site from Hartford to Springfield, Massachusetts.³ On October 21, 2003, Entravision was granted its initial STA to permit it to operate WHTX-LP with the facilities proposed in the 2003 facilities modification displacement application. STA was subsequently extended.

¹ See BALTVL-20021004ADK.

² The licensee stated that continued operation on Channel 10 was no longer possible due to interference concerns, requiring it to file its displacement application. The displacement application was later dismissed at the request of the applicant dated November 26, 2002.

³ See BPTTL-20030606ABP.

Objections to the displacement application and the instant STA request were filed by Meredith Corporation (Meredith), licensee of WFSB-TV, Hartford, and WSHM-LP, Springfield. Briefly, Meredith claims that the displacement application cannot be granted because (1) the underlying license has expired as a matter of law and (2) the displacement application proposes a wholly different channel and service area while a multitude of channels exist for WHTX-LP to continue service to the station's currently authorized service area. Meredith therefore claims that the license for WHTX-LP was forfeited, and that, in any event, continued STA to permit Entravision to operate WHTX-LP is inappropriate.

The Underlying Authorization

Section 312(a) of the Communications Act of 1934, as amended (the Act), provides in part that "if a broadcasting station fails to transmit broadcast signals for any consecutive twelve-month period," the station's license expires as a matter of law, "notwithstanding any provision, term or condition to the contrary," and the license is automatically forfeited.⁴ In fact, on October 11, 2002, the staff notified the prior licensee that the station had remained dark beyond the statutory period; that the station license expired as a matter of law; and that the station's call sign had been deleted pursuant to Section 312(g) of the Act.⁵ However, the license was reinstated after the licensee submitted a response that "at no time was WHTX-LP off the air for 12 consecutive months."⁶

Throughout its objections, Meredith claims that WHTX-LP was not operational from February 10, 1999, when the previous licensee notified the Commission that the station went silent after being displaced by the operation of Station WTNH-DT, New Haven, Connecticut, until Entravision returned the station to the air pursuant to STA granted on October 21, 2003. Meredith states that the Commission's staff correctly recognized that the station remained silent for longer than the statutory period when it informed the previous licensee that the station's operating authority was forfeited pursuant to Section 312(g) of the Act. It asserts that although the staff erroneously accepted the former licensee's claim that it had transmitted a signal for brief but undisclosed time periods essentially once a year, that reinstatement was ineffective because Section 312(g) is a self-executing Congressional directive which the staff cannot disregard. Meredith argues that WHTX-LP's token operations do not satisfy the terms of the statute, which is

⁴ 47 U.S.C. §312(a).

⁵ See Letter from Video Division to Harvard Broadcasting, Inc., dated October 11, 2002.

⁶ See Harvard Broadcasting, Inc., Petition for Reconsideration filed October 24, 2002. The license was reinstated on November 15, 2002. In this regard, the licensee referenced letters it sent to the Commission, each filed less than one year apart, which stated only that the station resumed on-air operations. In each case, that notification was followed shortly by a request for STA to remain silent while its displacement application was pending.

not intended to permit a broadcaster to remain off the air indefinitely under grants of STAs.⁷

In opposition pleadings, Entravision claims that the previous licensee transmitted the station's signal "for a brief period every 11 ½ months, and the Video Division accepted" that statement and reinstated the license. It therefore claims that Meredith is ultimately seeking untimely reconsideration of the reinstatement of the WHTX-LP license, which is a long- final action.⁸ In addition, Entravision states that it acquired and moved forward with its efforts to operate the station based in part on the finality of the decision to reinstate the license.⁹ It argues that because Meredith now takes issue with the reinstatement of the WHTX-LP authorization, "that decision cannot be allowed to trump Entravision's reliance on the finality of Commission decisions."¹⁰

Discussion. When the WHTX-LP license was reinstated, there was nothing in the submissions to the Commission to the effect that this station went on the air for "brief periods of time" every 11 ½ months in essence to avoid the consequences of Section 312 of the Act as Entravision now suggests. It identified neither the facilities with which it resumed broadcast operations, the duration of its resumed operations, nor the reason the station was forced to go dark after allegedly resuming operations in each instance. In light of the more complete scrutiny of these events occasioned by the pleadings filed in this proceeding, it does not appear that the previous licensee was even capable of resuming authorized operations with facilities it claimed it lost via displacement from WTNH-DT. Thus, even if the license reinstatement and/or the STA grants were made in error, as now appears to be the case, the staff's prior actions do not negate the impact of Section 312(g) because it offers no discretion to the staff -- it statutorily directs that the license in question expires as a matter of law, and that error cannot be perpetuated or turned into a windfall of rights to which Entravision would not otherwise be entitled.¹¹ Moreover, to the extent that Entravision did its due diligence with respect to this matter and the Commission's actions before acquiring this station, it assumed this circumstance when it actually acquired the station. Moreover, having determined that the authorization for Station WHTX is forfeited, the displacement application will be dismissed and STA authority cancelled.

Accordingly, the license for station WHTX-LP IS FORFEITED, and the call sign IS HEREBY DELETED. Moreover, in view of this action, the above-captioned

⁷ Further in this regard, Meredith notes that WHTX-LP's STA requests and notification letters also do not state what the station transmitted during its brief periods of operation.

⁸ Entravision Opposition to Petition to Deny filed Dec 11, 2003, pp.2-3.

⁹ *Id.*, at 4.

¹⁰ *Id.*

¹¹ *See, e.g., See State of Oregon v. FCC*, 102 F. 3d 583 (D.C.Cir.1996); *Florida Institute of Technology v. FCC* 952 F.2d 549, 553 (D.C.Cir.1992); and *International Broadcasting Network*, 2 FCC Rcd 2544, 2545 (1987).

applications for Special Temporary Authority for the station to remain silent and for modification of facilities are moot, and ARE HEREBY DIMISSED. Finally, STA authority to continue to operate the station from the facilities in Springfield IS HEREBY CANCELLED.

Sincerely,

Hossein Hashemzadeh
Associate Chief, Video Division
Media Bureau

cc: Barry Freidman, Esquire (Certified Mail – Return Receipt Requested)
John R. Feore, Jr., Esquire