



**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

July 20, 2009

Latin America Broadcasting of Texas, Inc.  
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DAIJ Media, LLC  
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Plural Entertainment, Inc.  
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Arlington, VA 22209-3801

Re: KCVH-LP, Houston, TX  
File No. BALTTL-20090220ACY  
Facility ID No. 7079

Dear Counsel:

This refers to the above-captioned application to assign the license for KCVH-LP, Houston, Texas, from Latin America Broadcasting of Texas, Inc. ("LABT") to DAIJ Media, LLC. ("DAIJ"). A "Petition to Dismiss or To Hold in Abeyance" was filed by Plural Entertainment, Inc. ("Plural"), LABT and DAIJ (collectively "the parties") filed an opposition pleading, and Plural filed a reply.

In the petition, Plural relates that it obtained a monetary judgment against LABT in a civil suit pending in the District Court of Texas, and has applied for the appointment of a receiver for the licensee of KCVH-LP. It maintains that the proposed assignment "appears to be part of a series of actions . . . to use Commission procedure to circumvent a Texas judgment and the pending application for a receiver."

In this regard, Plural asserts that after obtaining its judgment, KCVH-LP ceased operations and, on the next day, the purchase agreement between the parties was executed, and the subject assignment application was filed. It contends that LABT sought Special Temporary Authority (STA) for KCVH-LP to remain silent for "financial" reasons although an "affiliate" of the licensee was "the seller" in another transaction at the Commission. Plural also argues that the Asset Purchase Agreement between the parties provides for LABT to receive only one-third of the purchase price at

closing, with remaining payments deferred until after the time that Commission consent to the transaction becomes a “final” decision.

Plural recognizes that the Commission has consistently held that it is not the proper forum for the resolution of private disputes which are properly addressed in local courts of competent jurisdiction. Nevertheless, Plural argues that the Commission has also held that it will not grant an application which appears to sanction an evasion of bankruptcy law.<sup>1</sup> Plural argues that, under these circumstances, the Commission should apply that policy to Texas state law in this case and dismiss the application or hold it in abeyance pending resolution of the Texas state court proceeding to afford that court “the full opportunity to implement the appropriate state remedies.”

In the parties’ joint opposition pleading, they explain that Plural obtained a default monetary judgment in state court against both LABT and a related company for enforcement of a contractual claim, which LABT is currently challenging in the state court proceeding.<sup>2</sup> The parties argue that Commission intervention into this private contractual dispute is not warranted solely on the basis of a default monetary judgment, and that Plural has offered nothing to demonstrate that grant of the instant application would be *prima facie* inconsistent with the public interest. They maintain that absent a final court judgment raising issues within the Commission’s jurisdiction, the Commission does not ordinarily withhold consent to an otherwise acceptable application and should not do so here.

In its reply pleading, Plural suggests the parties opposition pleading “highlights the validity of the case law cited by Plural” and concedes sufficient facts to validate its claims. It also argues that they make disingenuous claims regarding the contractual issues pending in the Texas court and have offered no dispute concerning the validity of cases it cites in support of immediate Commission intervention in this matter.

**Discussion.** Plural has not set forth specific allegations that raise a substantial and material question of fact under Section 309(d)(1) of the Communications Act sufficient to show that grant of the subject application would be *prima facie* inconsistent with the public interest, convenience and necessity. Plural’s ongoing state court litigation over a private contractual matter under appropriate governing state law does not preclude the grant of this application, and the public interest is not served by our deferring action due to ongoing or even possible future litigation. The Commission has consistently held that it is not the proper forum for resolving a private dispute, as it has neither the authority nor the machinery to adjudicate such claims. *See, e.g., Decatur Telecasting, Inc.*, 7 FCC Rcd 8622, 8624 (1992). Unlike the cases cited by Plural where the Commission was required to intervene to assure the protection of a court’s ability to enforce its judgments or orders, there is nothing pleaded or apparent to indicate that that the Texas will be precluded by any Commission action to enforce its judgment in the local court proceeding.

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<sup>1</sup> *See O.D.T. International*, 9 FCC Rcd 2575 (1994).

<sup>2</sup> LABT asserts that it has no business relationship with Plural and intends to appeal the imposition of the default judgment on that basis.

For example, *O.D.T. International, supra*, cited by plural in support of Commission involvement in this matter, involved essentially the competing involuntary assignment application to a bankruptcy court-appointed trustee and the voluntary assignment application of to an individual member of the licensee corporation under the bankruptcy court's jurisdiction. In that case, Commission intervention to grant the application of the trustee was deemed necessary to prevent an insider trading of the corporate assets so as to gut the bankrupt by transferring from it the FCC license -- which would have the ultimate effect of undermining the ability of the bankruptcy court to protect creditors and others. In that case, the Commission took into account the existence of a bankruptcy court order appointing the trustee and the federal policies inherent in bankruptcy law to protect innocent creditors. In this case, not only has the appropriate state court not entered any order for the appointment of a trustee, there is nothing pleaded or apparent to indicate that the grant of the instant assignment application will undermine the Texas' court's ability to enforce any temporary or final order it may issue in the proceeding currently pending before it. Therefore we find nothing in this matter that would require us to deviate from our usual course to defer action in such cases properly resolved in the local court of appropriate jurisdiction. Our consent to the instant assignment is not intended to prejudice or in any way influence any state court proceeding with respect to the parties' rights under governing state law. In this regard, our action granting the transfer application is permissive rather than compulsory. The parties close at their own risk, and remain subject to the determination of the state court as to their contractual rights and obligations. Our grant of the tendered assignment application indicates only that the applicants are *qualified* under our rules and policies to assign their interests in the construction permit as may be appropriate under state law.

Your remaining allegations likewise fail to raise a *prima facie* case or a substantial and material question of fact as to the appropriateness of the grant of the instant assignment application. The Commission does not interpret or enforce the purchase price payment schedule that you object to in the Asset Purchase Agreement -- that is a private rights provision between the parties subject to governing state law for which the Commission has no jurisdiction.

In light of the above, your pleading fails to indicate that the grant of the subject assignment application must be denied. Accordingly, IT IS ORDERED That the "Petition to Dismiss or To Hold in Abeyance" filed by Plural Entertainment, Inc. IS DENIED.

Moreover, we have examined the subject assignment application and find that the parties are qualified and that a grant would serve public interest, convenience and necessity. Therefore, IT IS ORDERED That the application to assign the license for KCVH-LP, Houston, Texas, from Latin America Broadcasting of Texas, Inc. to DAIJ Media, LLC. IS GRANTED.

Sincerely,

Hossein Hashemzadeh  
Associate Chief, Video Division  
Media Bureau