



Federal Communications Commission
Washington, D.C. 20554

July 28, 2008

DA 08-1743

Gregory L. Masters, Esq.
Wiley, Rein and Fielding, LLP
1776 K Street, N.W.
Washington, DC 20006

Re: KSFV-LP, San Fernando Valley, CA
Applications for Analog Low Power
Television Displacement Relief,
Class A Eligibility and License
File Nos. BPTVL-20021018AAZ,
BLTVA-20021125ABK and
BLTVA-20041104AKL
Fac Id: 49704

Dear Counsel:

This concerns the above-referenced applications of Venture Technologies Group, LLC (Venture) for analog low power displacement relief, Class A eligibility and license for KSFV-LP, San Fernando Valley, California. On February 5, 2004, the Video Division of the Media Bureau granted the displacement relief and Class A eligibility applications and denied informal objections filed by the University of Southern California (USC), KTLA, Inc. (KTLA) and Radio Television S.A. de C.V. (RT).¹ USC filed an "Application for Review" of the Video Division's decision. The Video Division decision inadvertently did not consider issues raised in a petition to deny filed by Pasadena Area Community College District (Pasadena) and comments filed by National Public Radio (NPR). For the reasons set forth below, we consider the Pasadena and NPR pleadings as petitions for reconsideration, treat the USC "Application for Review" as a petition for reconsideration, deny all of those petitions, affirm the Video Division's decision and grant the license application covering the construction of KSFV-LP's displacement facilities.

Background. KSFV-LP is a Class A low power television station operating on Channel 26 at San Fernando Valley, California. In its displacement application, KSFV-LP sought to operate on channel 6. USC objected to the application because KSFV-LP proposed to mount its antenna on the same tower that houses USC's station – KUSC-FM, Los Angeles, California. USC argued that such collocation would cause interference to KUSC-FM. In its decision, the Video Division denied USC's objection noting that Venture had amended its application to propose another transmitter site 61 meters away from the current co-located site, changed the antenna model for its proposed facility, and changed the height above mean sea level. The Video Division concluded that these changes resolved USC's interference concerns.

¹ Venture subsequently filed the license application to cover the construction of the channel 6 facility.

KTLA is the licensee of KTLA-TV, Channel 5, Los Angeles, California, and objected to the KSFV-LP channel 6 displacement application because it calculated that 97.4% of KSFV-LP's population would receive interference from KTLA-TV and would be unable to view the station. KTLA also argued that KSFV-LP's operation on channel 6 could limit KTLA's ability to make future modifications to KTLA-TV. The Video Division denied KTLA's objection noting that the Commission's rules do not require a low power station to serve any certain percentage of population in its community of license. Although low power stations are not permitted to cause interference to full power stations, the Commission's rules do not prohibit a low power station from receiving interference from existing stations. Furthermore, the Video Division found that, as a Class A eligible station, KSFV-LP is entitled to interference protection from KTLA-TV as to future modifications of the KTLA-TV facility.

RT is the licensee of XETV, Tijuana, Mexico, and argued that KSFV-LP's operation on channel 6 would cause interference to nearly one-quarter million potential XETV viewers in violation of U.S./Mexico treaties and FCC rules. The Video Division decision denied RT's objection concluding that the VHF LPTV Agreement in force between the United States and Mexico specifies that LPTV assignments may be authorized without coordination if certain conditions regarding power, antenna height above average terrain, and distance from the border are met. The Video Division found that Venture had amended its application for KSFV-LP to a site, power and height that met the limits set forth in the Agreement. Therefore, the Video Division found that KSFV-LP's application did not require Mexican approval.

At the time of the Video Division's decision, there were pending the "petition to deny" by Pasadena and NPR's comments.² In its pleading, Pasadena argues that "permitting a Channel 6 television station to operate anywhere in [the Los Angeles area] is a veritable recipe for disaster." Pasadena states that grant of KSFV-LP's application would "adversely affect noncommercial radio policies established for reserved band FM radio stations throughout Greater Los Angeles." Because of the immediate adjacency of reserved band FM stations and Channel 6 stations, Pasadena argues that "a significant potential for destructive interference exists." In its comments, NPR similarly argued that grant of KSFV-LP's application could negatively affect noncommercial educational radio broadcasting in the Los Angeles market. Not only would KSFV-LP's operation on channel 6 cause interference to FM stations, NPR also argues that it could preclude future modifications by noncommercial educational radio stations.

Discussion. Due to an oversight, the channel 6 interference issue raised in the Pasadena and NPR pleadings was not previously considered in this proceeding. Therefore, we shall treat these pleadings as petitions for reconsideration of the Video Division decision. In addition, because there is an unresolved question of fact or law raised in the Pasadena and NPR pleadings,

² Section 73.3584(a) of the rules states that petitions to deny will not be entertained against low power displacement applications. See 47 C.F.R. § 73.3584(a). Petitions to deny that are filed against these applications are instead treated as informal objections. See 47 C.F.R. § 73.3587. Also pending at the time of the release of the Video Division's decision were "petitions to deny" filed by RT and USC that repeat the arguments in their earlier informal objections. Although these pleadings were not specifically mentioned in its decision, the arguments raised by RT and USC in their petitions were considered and rejected by the Video Division.

pursuant to Section 1.115(c) of the rules, we will consider USC's Application for Review as a petition for reconsideration as well.³

We conclude that Pasadena and NPR have failed to demonstrate that grant of the KSFV-LP displacement application for channel 6 was a violation of the Commission rules. The staff analyzed the channel 6 application, including possible interference to other stations, and determined that the application complied with Commission rules. Neither Pasadena nor NPR provide any evidence that actual interference will occur to any noncommercial educational radio stations in the Los Angeles area. Should actual interference occur, it shall be Venture's responsibility to correct at its expense any condition of interference.⁴ Venture acknowledged this fact, but noted that the unsupported allegation of such interference cannot form the basis for denying its application. Furthermore, KSFV-LP cannot be denied displacement relief because of the speculative possibility that a grant of its application may preclude future modifications by Los Angeles area NCE radio stations. Channel 6 is an eligible channel for KSFV-LP to seek for displacement relief and Venture has demonstrated that its operation on this channel complies with all Commission rules.

In its Application for Review, USC: (1) raises the channel 6 interference issue first raised by Pasadena and NPR in their pleadings, (2) rehashes the early argument concerning compliance with the U.S. - Mexican treaty and (3) rehashes the argument about interference to KSFV-LP's channel 6 operation from KTLA-TV. With respect to the channel 6 interference issue, we conclude above that the grant of the KSFV-LP displacement application was consistent with the Commission's rules including those concerning protection of noncommercial educational radio facilities. USC fails to raise any new or compelling argument or evidence to cause us to find otherwise.

USC once again argues that the grant of the KSFV-LP application was contrary to the VHF LPTV Agreement in force between the United States and Mexico. This issue was thoroughly briefed and considered in the Video Division's decision. The Video Division correctly found that Venture had amended its application for KSFV-LP to a site, power and height that met the limits set forth in the Agreement. Therefore, the Video Division correctly concluded that KSFV-LP's application did not require Mexican approval. We find no reason to reverse that decision.

Finally, USC once again argues that KSFV-LP's operation on channel 6 will result in 97.4% of KSFV-LP's population receiving interference from KTLA-TV and not being able to view the station. USC argues this is not efficient use of spectrum. The Video Division previously denied this argument finding that the Commission's rules do not require a low power station to serve any certain percentage of population in its community of license. Although low power stations are not permitted to cause interference to full power stations, the Commission's rules do not prohibit a low power station from receiving interference from existing stations. USC's

³ See 47 C.F.R. § 1.115(c).

⁴ See 47 C.F.R. § 74.703.

Application for Review merely recites this argument again. Once again, we find no reason to reverse the Video Division's decision.⁵

While its Application for Review was pending, USC entered into a Settlement Agreement with Venture. The Agreement provides that Venture shall "accept a condition upon the KSFV-LP channel 6 license – such condition to run permanently with the license regardless of whoever is or may henceforth become the Station licensee." The condition provides that Venture must accept interference from KUSC-FM and that KUSC-FM will not be subject to the interference provisions in Section 73.525 of the rules should it file an application for modification in the future. In addition, the Agreement provides that USC will dismiss its objection to the KSFV-LP channel 6 application and will not object to future modification applications filed by Venture. However, should a modification application for KSFV-LP be filed in the future and USC and Venture disagree on whether the proposed facilities would interfere with KUSC-FM's facilities or otherwise degrade the signal or operation of KUSC-FM, USC maintains the right to protest the modification.

We deny the Joint Request for Approval of Settlement Agreement between USC and Venture. The Agreement provides that Venture will forfeit its right to challenge future modifications to KUSC-FM's facilities, while USC will retain the right to challenge future modifications to KSFV-LP. Should the parties disagree as to the effect a modification to KSFV-LP's facilities would have upon the operation of KUSC-FM, USC will continue to have the right to protest the KSFV-LP modification. Approval of this Agreement would not serve the public interest because it gives USC interference protection and modification rights to which its station is not entitled under the Commission's rules. In addition, it unfairly limits Venture's right to modify the KSFV-LP facilities in compliance with the Commission's rules in order to serve the public. Furthermore, these conditions would be placed on the KSFV-LP license and bind any successor. We disfavor agreements that include restrictions with "potential public interest detriment."⁶ Accordingly, we deny the joint request and the proposed settlement between USC and Venture.

WHEREFORE, the above facts considered, IT IS ORDERED, That the "Application for Review" of the University of Southern California IS DENIED.

IT IS FURTHER ORDERED, That the Petition to Deny of the Pasadena Area Community College District IS DENIED.

IT IS FURTHER ORDERED, That the comments filed by National Public Radio ARE DENIED.

IT IS FURTHER ORDERED, That the Joint Request for Approval of Settlement Agreement of the University of Southern California and Venture Technologies Group, LLC, IS DENIED.

⁵ Also before us is a Motion for Stay filed by USC and related pleadings. Given our action today, the Motion for Stay is now moot.

⁶ See, e.g., *Nirvana Broadcasting Corp.*, 4 FCC Rcd 2778, 2779 (Rev. Bd. 1989) citing *Intercontinental Radio, Inc.*, 62 RR 2d 1565, 1567 (1985).

IT IS FURTHER ORDERED, That the Motion for Stay of the University of Southern California IS DISMISSED AS MOOT.

IT IS FURTHER ORDERED, That the application (File No. BLTVA-20041104AKL) of Venture Technologies Group, LLC for license for KSFV-LP IS GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Lawrence Bernstein, Esq. – Counsel for USC
Neil Jackson, Esq. – Counsel for National Public Radio, Inc.
Barbara K. Gardner, Esq. – Counsel for RT
John Crigler, Esq. – Counsel for Pasadena
Thomas Van Wazer, Esq. – Counsel for KTLA