



Federal Communications Commission
Washington, D.C. 20554

December 28, 2018

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RE: KAAP-LD, Santa Cruz, CA
Application for Construction Permit
LMS File No. 0000054935
Fac. ID No. 167425

Dear Counsel:

This concerns the above-referenced displacement application for digital low power television station KAAP-LD, Santa Cruz, California (KAAP-LD or Station), filed by Diya TV, Inc. (Diya). KAAP-LD is currently operating on digital channel 11 and seeks to move to digital channel 14. On December 3, 2018, Word of God Fellowship, Inc. (WOGF), the licensee of low power television station KDTS-LD, San Francisco, California, filed an informal objection.¹ Diya's application is mutually exclusive with a displacement application filed by WOGF.² For the reasons set forth, we dismiss Diya's application because it was not eligible to file a displacement application for KAAP-LD.

Background. Diya became the licensee of KAAP-LP (formerly KOTR-LP), an analog low power television station operating on channel 2 in Santa Cruz, California (Fac. ID No. 2871) in April 2018.³ The analog license was cancelled at Diya's request on July 3, 2018.⁴ Prior to cancellation of analog KAAP-LP, the previous licensee of that station obtained a construction permit for a digital companion channel on channel 11 in 2009.⁵ Diya filed a license to cover application for digital KAAP-LD on May 31, 2018.⁶

In the *Incentive Auction Report and Order*, the Commission announced that there would be a special window filing opportunity for "operating" low power television and TV translator stations (LPTV/translator stations) displaced by the incentive auction and repacking process to file displacement applications (Special Displacement Window or Window).⁷ To be eligible to file in the Special

¹ LMS Pleading File No. 0000063910. Also before us are Diya's Opposition filed December 17, 2018 and WOGF's Reply filed on December 26, 2018.

² See *Incentive Auction Task Force and Media Bureau Announce Settlement Opportunity For Mutually Exclusive Displacement Applications Filed During the Special Displacement Window*, Public Notice, DA 18-1108 (rel. Oct. 30, 2018) at Appendix A.

³ File No. BALTVL-20180305AAB, granted April 19, 2018.

⁴ See LMS File No. 0000055941.

⁵ File No. BDCCDTL-20081205ACL, granted Feb. 20, 2009.

⁶ See LMS File No. 0000054776.

Displacement Window, an LPTV/translator station had to be both “operating” and “displaced.” The Commission defined “displaced” stations for purposes of filing in the special window as LPTV/translator stations: (1) subject to displacement by a full power or Class A television station on the repacked television band (channels 2-36) as a result of the incentive auction and repacking process; (2) licensed on frequencies repurposed for new, flexible use by a 600 MHz Band wireless licensee (channels 38-51); or (3) licensed on frequencies that will serve as part of the 600 MHz Band guard bands (which includes the duplex gap) (referred to collectively as “incentive auction matters”).⁸

On May 26, 2016, the Media Bureau announced, pursuant to delegated authority, that “operating” LPTV/translator stations are those that had licensed their authorized construction permit facilities, or had an application for a license to cover on file with the Commission, as of the release date of the *Closing and Channel Reassignment Public Notice*, which occurred almost a year later on April 13, 2017.⁹ The Media Bureau explained that it was announcing the eligibility licensing deadline well in advance of the release of the *Closing and Channel Reassignment Public Notice* in order “to provide LPTV and TV translator station permittees with ‘sufficient warning of this crucial deadline to allow them to complete construction and license permitted facilities.’”¹⁰ The Bureau further cautioned that “[p]ermittees of digital LPTV and TV translators that are not operating on the date of release of the [*Closing and*] *Channel Reassignment Public Notice* will have to wait until the completion of the special displacement window for operating LPTV and TV translator stations before being able to file a displacement application and propose a channel from the smaller universe of unused television channels.”¹¹ In the Public Notice announcing that the Special Displacement Window would occur from April 10, 2018 to May 15, 2018, the Media Bureau reiterated the operating and displacement eligibility criteria for participation.¹²

Diya filed the above-referenced application for newly-licensed KAAP-LD during the Window representing that the channel 11 digital facility had been displaced and seeking displacement channel 14. In its Informal Objection, WOGF argues that Diya was not eligible to participate in the Special Displacement Window as it did not have a facility that was both operating and displaced by one of the auction related matters.¹³ WOGF states that the facility for which Diya filed its displacement application – the digital companion facility on channel 11 – may have been displaced but was not operating on April

⁷ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd at 6835-36, para. 659 (2014) (*Incentive Auction Report and Order*).

⁸ See 47 CFR § 73.3700(g)(1); *Incentive Auction R&O*, 29 FCC Rcd at 6836, para. 659.

⁹ See *Media Bureau Announces Date By Which LPTV and TV Translator Stations Must Be “Operating” In Order To Participate In Post-Incentive Auction Special Displacement Window*, Public Notice, 31 FCC Rcd 5383 (MB 2016) (*Operating PN*); *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (2017).

¹⁰ *Operating PN*, 31 FCC Rcd at 5384.

¹¹ *Id.* at 5384-85.

¹² *Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, and Make Location and Channel Data Available*, Public Notice, 32 FCC Rcd 1234, 1237-38, para. 5 (2018) (*Window PN*). The deadline was later extended through June 1, 2018. *Incentive Auction Task Force and Media Bureau Extend Post Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (2018).

¹³ WOGF Informal Objection at 3-4.

13, 2017.¹⁴ Therefore, WOGF concludes that KAAP-LD was not eligible to participate in the Special Displacement Window.¹⁵

Diya responds that, although KAAP-LD, the channel 11 digital companion facility for KAAP-LP, was not operating as of the April 13, 2017 “operating” deadline, the analog facility was operating and therefore Diya was eligible to file an application for KAAP-LD in the Special Displacement Window.¹⁶ According to Diya, it was eligible to file a displacement application for the digital companion channel construction permit in the Window “because an analog LPTV station and its digital companion are treated as one and the same unified facility.”¹⁷ Diya maintains that the Commission’s treatment of digital companion LPTV stations has been consistent during the entire LPTV digital transition and that the “digital companion and its analog predecessor are one and the same station.”¹⁸ Diya concludes that it was eligible to file the above-referenced application because the “single, unified station had to be on the air - a requirement that was fulfilled by KAAP.”¹⁹

In its reply, WOGF observes that Diya does not dispute that as of April 13, 2017, the former licensee of KAAP-LP only had a construction permit for its digital companion channel and that “[t]he only issue, therefore, is whether Diya can rely on its analog license to operate on Channel 2, which was **not displaced**, to establish its eligibility to participate in the Special Displacement Window.”²⁰ According to WOGF, while for “general licensing purposes, an analog LPTV station and its digital companion are treated as the same ‘station,’ this does not mean that they are the same ‘facility’ – particularly as to relates to whether the facility is operating and displaced for the purpose of eligibility for the Special Displacement Window.”²¹ WOGF further argues that Diya’s “attempt to link an analog license to an eight year-old construction permit for a digital companion channel for displacement purposes” is inconsistent with the plain language of Commission Orders and Public Notices.²²

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Diya Opposition at 4.

¹⁷ *Id.* at 2 citing *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 25 FCC Rcd 13833, 13845, para. 29 (2010) (*LPTV DTV Second Report and Order*).

¹⁸ Diya Opposition at 4.

¹⁹ *Id.* at 4.

²⁰ WOGF Reply at 1-2.

²¹ *Id.* at 2.

²² *Id.* at 3-4. WOGF cites to the *Third Digital LPTV Report and Order*, where the Commission extended the construction deadline for all digital construction permits until one year after the post-auction transition is complete in order to provide digital construction permit holders enough time to analyze the outcome of the incentive auction and repacking process and determine the best route to convert their analog facilities. *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, 30 FCC Rcd 14927, 14930-33, paras. 6-9 ((2015).

Discussion. We find that Diya was ineligible to file an application in the Special Displacement Window as the facility for which it filed a displacement application, KAAP-LD, was not “operating” on April 13, 2017, as required by the Window eligibility criteria. Although the KAAP-LD digital companion channel facility was displaced as a result of one of the incentive auction matters,²³ Diya did not complete construction of these facilities and file a license to cover until after the April 13, 2017 deadline. Instead, it waited until May 31, 2018, the day before the extended Special Displacement Window closed, to file a license to cover. Furthermore, although the Station’s analog facility, KAAP-LP, was licensed and operating by April 13, 2017, those facilities on channel 2 were not displaced²⁴ and have since been cancelled at Diya’s request. Therefore, because Diya did not have an “operating” facility that was displaced as a result of an incentive auction matter by the deadline, it was ineligible to participate in the Window.

We emphasize that Diya and the Station’s former licensee were on clear notice, since May 2016, that a displacement application for KAAP-LD could be filed during the Special Displacement Window only if the digital facility was constructed with a license or license application on file by release of the *Closing and Channel Reassignment Public Notice*.²⁵ Diya’s citation to Commission policy with respect to the assignment and expiration of digital companion channel authorizations is immaterial to whether Diya could file a displacement application for the KAAP-LD construction permit.²⁶ Although a licensee’s digital companion channel and analog channel “authorizations” are considered part of a “unified license,”²⁷ as WOGF points out they are considered separate facilities for technical and displacement purposes. Moreover, it is possible, as in this case, that a licensee’s digital companion channel facility may be displaced while its analog facility is not or vice versa. As noted above, Diya’s analog KAAP-LP facility on channel 2 was not displaced and was cancelled in July 2018 at Diya’s request. Because only KAAP-LD’s digital companion channel facility on channel 11 was displaced, it remains the only one for which a displacement application could have been filed in the Window. And because KAAP-LD’s digital companion channel facility on channel 11 was not in fact “operating” on April 13, 2017, Diya was not eligible to file an application in the Window. As explained in the *Operating PN*, Diya may file a displacement application for KAAP-LD when the Media Bureau resumes accepting displacement applications on a first-come, first-serve basis.

²³ See *supra* at 1-2.

²⁴ With respect to the TV bands, the Commission’s rules define “displacement” as an analog LPTV or TV translator station being “predicted to cause or receive interference to or from an authorized TV broadcast station.” See 47 CFR § 73.3572(a)(4). The staff’s analysis using TVStudy shows that interference to and from KAAP-LP on channel 2 was not affected by auction related matters.

²⁵ See *supra* at 2.

²⁶ For example, Diya points to language clarifying that paired analog and digital companion authorizations may not be separately assigned (Diya Opposition at 2) and that a permittee that does not complete construction of its digital facility prior to the expiration date of its unbuilt analog construction permit will forfeit both of its construction permits. Diya Opposition at 3.

²⁷ See Diya’s Opposition at n.3 citing *LPTV DTV Second Report and Order* generally.

Accordingly, for the foregoing reasons, the Informal Objection filed by Word of God Fellowship, Inc. **IS GRANTED** and the displacement application (LMS File No. 0000054935) for KAAP-LD, Santa Cruz, California filed by Diya Broadcasting, Inc. **IS DISMISSED**.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. A. Kreisman', with a stylized flourish at the end.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Marcus Lamb – President, Word of God Fellowship, Inc.
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