



Federal Communications Commission  
Washington, D.C. 20554

April 30, 2019

America-CV Station Group, Inc.  
13001 N.W. 107<sup>th</sup> Avenue  
Hialeah Gardens, FL 33018

RE: WJWN-TV, San Sebastian, PR  
Application for Digital-To-Digital  
Replacement Translator  
LMS File No. 0000054764  
Fac. ID No. 58342

Dear Applicant:

This concerns the above-referenced application for digital-to-digital replacement translator (DTDRT) filed by America-CV Stations Group, Inc. (ACSG), licensee of WJWN-TV, San Sebastian, Puerto Rico (WJWN). On September 3, 2018, Caguas Community Television (CCT), licensee of low power television station W44DH-D, Caguas, Puerto Rico, filed an informal objection (Objection).<sup>1</sup> For the reasons set forth, we dismiss ACSG's application as defective.

*Background.* ACSG is the licensee of WJWN, a full power television station that was repacked from channel 39 to channel 33 as a result of the Commission's incentive auction and repacking process. In the engineering statement included with the application, ACSG explains that it filed for a DTDRT to recover a "gap region" which WJWN suffered "as a direct result of Auction 1000 and the repack process." ACSG includes a map that purports to show the "gap region" between WJWN's pre-transition licensed contour and the contour for its post-transition construction permit facility. ACSG maintains that the proposed DTDRT provides "100% fill-in service to the lost WJWN-TV gap region . . . ." However, ACSG demurs, doing so produces a significant *de minimis* expansion. ACSG argues that "it is not possible to configure a single transmitter to fill-in a geometrically long thin region without significant *de minimis* expansion. . . ."

CCT is the licensee of W44DH-D, a low power television station that was displaced as a result of the incentive auction and repacking process. CCT submitted an application in the Commission's displacement application filing window for low power television stations that were displaced by the incentive auction and repacking process (Special Displacement Window).<sup>2</sup> CCT's displacement application for W44DH-D and ACSG's DTDRT application for WJWN are mutually exclusive; however, under the Commission's rules, ACSG's DTDRT application receives a processing priority and, should it be granted, would result in the dismissal of CCT's displacement application.

CCT objects to ACSG's DTDRT application arguing that it does not comply with the Commission's rules for the DTDRT service.<sup>3</sup> CCT argues that ACSG's proposed DTDRT impermissibly

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<sup>1</sup> LMS Pleading File No. 0000059362. Also before us are ACSG's opposition filed September 14, 2018 (Opposition).

<sup>2</sup> See LMS File No. 0000053906; *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, 33 FCC Rcd 1234 (IATF/MB 2018) (*Special Displacement Window PN*); *Incentive Auction Task Force and Media Bureau Extend Post Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (IATF/MB 2018).

<sup>3</sup> CCT Objection at 1.

expanded the WJWN contour beyond a *de minimis* amount.<sup>4</sup> CCT includes its own map depicting WJWN's pre- and post-auction contours and that of the proposed DTDRT and CCT argues that the proposed DTDRT "greatly expands the service contour of full service station WJWN-TV, way beyond its normal contour."<sup>5</sup> CCT notes further that WJWN is a full-time satellite station of WJPX(DT), San Juan, Puerto Rico, a full power television station that CCT maintains "completely saturates the proposed coverage area" of ACSG's proposed DTDRT.<sup>6</sup> CCT notes further that the DTDRT will be operating from the same transmitter site as WJPX(DT). For these reasons, CCT argues that ACSG has not demonstrated that there is a loss area that is being filled by its proposed DTDRT.<sup>7</sup> Because it would prevent the grant of its displacement application for W44DH-D, CCT requests that the DTDRT application be dismissed.

ACSG responds that Caguas erroneously states that the DTDRT application "failed to demonstrate that the loss area caused by the repack would be filled in by the proposed (DTDRT)."<sup>8</sup> ACSG points to the engineering narrative included with the application that ACSG maintains "clearly demonstrates that the proposed (DTDRT) would fill in the loss area."<sup>9</sup>

As for CCT's argument that proposed DTDRTs must not expand the contour beyond a *de minimis* amount," ACSG responds that CCT "ignores the fact that the Commission stated it would determine whether such an expansion is 'de minimis' on a case-by-case basis."<sup>10</sup> Although it concedes that its proposed DTDRT expands the WJWN coverage area, ACSG argues that "this is not *de facto* in violation of Section 74.787 of the Commission's rules." Rather, ACSG maintains, "the Commission opted to permit coverage area expansion for the very situation that confronts WJWN . . . it is not possible to configure a single transmitter to fill-in WJWN's loss area without expanding its coverage area."<sup>11</sup>

*Discussion.* Applications for the new DTDRT service may only be granted if the applicant demonstrates a digital loss area through an engineering study that depicts the stations' pre- and post-incentive auction digital service areas and will be required to demonstrate that the loss resulted from the station's being repacked in conjunction with the incentive auction.<sup>12</sup> Although the WJWN "gap region" is

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1-2.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> ACSG Opposition at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

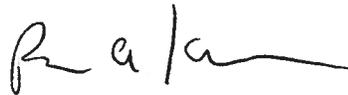
<sup>12</sup> 47 CFR 74.787(a)(5)(v); Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Third Report and Order, 30 FCC Rcd 14927, 14958 para. 68 (2015) (*Digital Low Power Third Report and Order*).

miniscule, we find that ACSG has met this first requirement.<sup>13</sup>

Applicants may propose a slight increase in the service contour but only where it can be shown that such increase is *de minimis*.<sup>14</sup> Here, we find that the increase in the WJWN service area that would result by a grant of the DTDRT application does not constitute a *de minimis* expansion as contemplated by the Commission when it created this new service. The WJWN “gap region” constitutes only miniscule amount of the new DTDRT’s service area. The overwhelming majority of the proposed DTDRT’s service area, therefore, is expansion area. When it created the new DTDRT service, the Commission recognized that stations would need flexibility in siting their DTDRT facilities and stated “it may be impossible to locate a translator that replaces digital loss areas without also *slightly* expanding the station’s pre-auction digital service areas.”<sup>15</sup> Siting a DTDRT in such a way so that the overwhelming majority of its coverage area is outside of the loss area that the station is seeking to recapture does not fall into the Commission’s definition of either “slight” or “*de minimis*.” Although ACSG maintains that it is not possible to site a facility that would fill-in WJWN’s loss area without expanding its coverage area, it offers no further proof of this fact or why it cannot site its DTDRT farther to the West, thus bringing the contour of its proposed DTDRT more within its main station service contour. The application for the proposed DTDRT constitutes an impermissible expansion of its station’s service contour, does not comply with the letter or spirit of the Commission’s DTDRT rules, and therefore must be dismissed. ACSG is free to re-file another application for a DTDRT that complies with the rules.<sup>16</sup>

Accordingly, for the foregoing reasons, the Informal Objection filed by Caguas Community Television **IS GRANTED** and the digital-to-digital replacement translator application (LMS File No. 00000) for WJWN-TV, San Sebastian, Puerto Rico filed by America-CV Station Group, Inc. **IS DISMISSED**.

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc: Francisco R. Montero, Esq. – Counsel for ACSG  
Caguas Community Television

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<sup>13</sup> As to the size of the “gap region,” a staff analysis reveals WJWN’s licensed channel 39 pre-auction facility and its proposed channel 33 post-auction facility to be functionally the same. According to an analysis with TVStudy, the difference between the pre- and post-auction facilities amounts to an area of only 8 sq. km with a population of less than 1,000 persons.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 14958, para. 69.

<sup>16</sup> We note that ACSG is seeking to recover a “gap region” that constitutes a miniscule portion of the WJWN’s service area. ACSG may consider other engineering solutions, such as a small increase in power, in order to recover this “gap region.”