

## Pleadings

Pleading File Number: **0000119396** | Submit Date:

Pleading Type: **Petition to Deny** | Status Date: **07/30/2020**

### General Information

Section	Question	Response
<b>Pleading / Appeal Type</b>	Type of Pleading or Appeal	Petition to Deny
<b>Upload Attachments</b>	Are all necessary attachments being filed with this pleading /appeal.	Yes

### Filer Information

Applicant	Address	Phone	Email	Applicant Type
<b>Mount Wilson FM Broadcasters, Inc.</b>	1500 Cotner Avenue Los Angeles, CA 90025	+1 (310) 478-5540	105@mountwilsoninc.com	Company

### Contact Representative

Contact Name	Address	Phone	Email	Contact Type
<b>Melodie A. Virtue</b> <i>FCC Counsel</i> Foster Garvey PC	1000 Potomac Street, NW Suite 200 Washington, DC 20007	+1 (202) 298-2527	melodie.virtue@foster.com	

**Certification**

Section	Question	Response
Certification	The undersigned certifies that he or she is (a) the party filing the pleading, or an officer, director, member, partner, trustee, authorized employee, or other individual or duly elected or appointed official who is authorized to sign on behalf of the party filing the pleading; or (b) an attorney qualified to practice before the Commission under 47 C.F.R. Section 1.23(a), who is authorized to represent the party filing the pleading, and who further certifies that he or she has read the document; that to the best of his or her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.	
		<i>FCC Counsel</i>  2020-07-30

Attachments

File Name	Uploaded By	Attachment Type	Description	Upload Status
<a href="#">Santa Barbara LPTV settlement.pdf</a>	Applicant	Pleadings	Petition to Dismiss Plum TV LPTV Application for Santa Barbara, CA	Done with Virus Scan and/or Conversion

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In re Applications of:	)	
	)	
DTV America 1, LLC	)	BNPDTL-20090825ATH
	)	Facility ID 182067
And	)	
	)	
Plum TV, Inc.	)	BNPDTL-20090825ACM
	)	Facility ID 181235
And	)	
	)	
Mount Wilson FM Broadcasters, Inc.	)	BNPDTL-20090825ABL
For a Construction Permit for a new	)	Facility ID 181608
LPTV Station at Santa Barbara, CA	)	

To: Secretary  
Attn: Chief, Media Bureau

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT AND  
PETITION TO DISMISS**

DTV America 1, LLC (“DTV”) and Mount Wilson FM Broadcasters, Inc. (“Mount Wilson”), hereby petition pursuant to Section 73.3525 of the Commission's Rules<sup>1</sup> for approval of the Settlement Agreement ("Agreement") attached as Exhibit A hereto. DTV and Mount Wilson (the “Settling Applicants”) also jointly request the dismissal of the Plum TV, Inc. (“Plum”) for failure to prosecute because it is no longer in business.

***Resolution by Technical Settlement between Joint Applicants.*** DTV and Mount Wilson have filed the above-referenced applications for new Low Power Television Stations which are

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<sup>1</sup> The Commission invited mutually exclusive applicants to settle in “Media Bureau Announces Settlement Opportunity for Mutually Exclusive Low Power Television and TV Translator Applications,” *Public Notice*, DA 20-576, released June 1, 2020, by announcing a settlement period which opened June 1, 2020 and closes July 31, 2020.

mutually exclusive. The Agreement provides for DTV and Mount Wilson each to amend its application so that, as amended, the mutual exclusivity between the two applications will be eliminated.

Attached to this Petition as Exhibit B are Declarations Under Penalty of Perjury executed by officers of DTV and Mount Wilson certifying as required by Section 73.3525 of the Commission's Rules that neither party to the Agreement has paid or promised any consideration to induce the other party to join in the Agreement.

***Request for Dismissal of Plum TV Application.*** DTV and Mount Wilson request that the Commission dismiss the Plum TV application because it is no longer in business, and ownership of its assets out of bankruptcy underwent a major change in control. A simple Google search bears this out:

- NY State Business Entity Search on [https://www.dos.ny.gov/corps/bus\\_entity\\_search.html](https://www.dos.ny.gov/corps/bus_entity_search.html) (last visited 7/26/2020) listed no business entities for "Plum TV".
- No results were achieved in searching on Plum TV as a corporation or as an LP/LLC on the Secretary of State of California's business search page <https://businesssearch.sos.ca.gov/> (last visited 7/26/2020).
- Plum TV filed for Chapter 11 bankruptcy protection in the Southern District of New York bankruptcy court in 2012, which was converted to Chapter 7 Bankruptcy.<sup>2</sup> See also [https://en.wikipedia.org/wiki/Plum\\_TV](https://en.wikipedia.org/wiki/Plum_TV) (last visited 7/26/2020).
- Plum TV's LinkedIn page - <https://www.linkedin.com/company/plum-tv/about/> (last visited 7/26/2020) - lists a website for [www.plumtv.com](http://www.plumtv.com) that redirects the user to <https://www.nickleighton.com/> (last visited 7/26/2020).

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<sup>2</sup> See PWD1 LLC, fdba Plum TV LLC, fka Plum TV, Inc., case number 12-10017-mg in the Southern District of New York. The docket available in PACER indicates Plum TV's Chapter 11 bankruptcy was converted to Chapter 7 on June 25, 2012, and the case was terminated on July 10, 2018. A copy of the docket can be provided on request.

Attached as Exhibit C is a Declaration from James L Winston, the contact on the Plum TV FCC application captioned above, corroborating that Plum TV is no longer in business and that his firm no longer represents the applicant. Undersigned counsel for Mount Wilson also tried to call the phone number for Plum TV listed on its application – 646-292-4200 – but received a constant busy signal.

The FCC announced in *Public Notice*, DA 09-1487, released June 29, 2009, that it would accept “rural, first-come, first-served” digital LPTV applications, starting August 25, 2009. The applications in MX group 1 each filed on the first available date of August 25, 2009. The bankruptcy, however, had the effect of changing the ownership of Plum TV’s assets through administration of the bankruptcy estate. The Commission’s rules require that when there has been a major change in ownership, the application is assigned a new file number. 47 C.F.R. Section 73.3572(b) (“A new file number will be assigned . . . where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed. . . .”). Assignment of a new file number to Plum TV, therefore, eliminates it from MX Group 1 since it can no longer be deemed filed as of August 25, 2009.

Similarly, when an applicant fails to prosecute its application, it is dismissed. *See, e.g.*, 47 C.F.R. Section 1.221(c)(an applicant who does not file a written notice that it will appear to present evidence on the date specified in a hearing designation order will cause dismissal of the application with prejudice for failure to prosecute). The Commission should take whatever steps it deems necessary to confirm whether Plum TV should continue to be considered part of this MX group. When an application has been pending since 2009, intervening events can and do

supersede an applicant's desire to proceed with its application and even, as here, interfere with its existence. A defunct bankrupt applicant should not stand in the way of the Commission finding a fair, efficient, and convenient way to resolve this MX group. If an applicant is no longer eligible to participate because of a major change and ceasing to exist, that circumstance should not require other parties to participate at auction because the ineligible applicant has not been dismissed. Plum TV is out of business – it cannot appear.

***The Public Interest will be Served by Granting the Settlement and Dismissing Plum TV.*** Approval of the Agreement and grant of this Petition will serve the public interest by clearing the way for both of the applications of DTV and Mount Wilson to be granted and by obviating the need for further proceedings or an auction to determine which of the two applications should be granted, thereby conserving the resources of the Commission. Dismissal of the defunct application of Plum TV will hasten new service to Santa Barbara by the remaining two applicants.

WHEREFORE, for the foregoing reasons, it is respectfully requested that the Agreement be approved and that the amendments to the parties' applications which are the subject of the Agreement be granted.

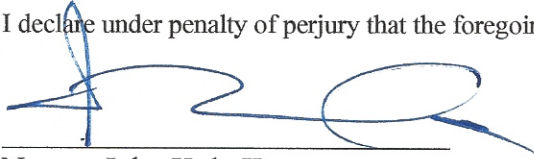
Respectfully submitted,



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Melodie A. Virtue, Esq.  
Foster Garvey PC  
1000 Potomac Street, NW  
Suite 200  
Washington, DC 20007-3501  
*Attorney for Mount Wilson FM Broadcasters, Inc.*

I declare under penalty of perjury that the foregoing is true and correct.



Name: John Kyle II

Title: Managing Member

DTV America 1, LLC

~~12717 W. Sunrise Blvd.~~ 1671 NW 144 TERRACE

Suite ~~372~~ 106

Sunrise, FL 33323



July 30, 2020



EXHIBIT A

Technical Settlement Agreement

Mutual Interference Acceptance Agreement for:

DTV America 1, LLC: BNPDTL-20090825ATH, Fac. Id 182067 Santa Barbara, CA Ch. 35  
Mt. Wilson FM Broadcasters, Inc.: BNPDTL-20090825ABL, Fac. Id 181235 Santa Barbara, CA  
Ch. 36

This agreement between DTV America 1, LLC and Mt. Wilson FM Broadcasters constitutes an understanding that, should interference issues arise during the operation of one or both facilities listed above, both parties will work together to mitigate the problem, whether through electronic means or otherwise. Both DTV America 1 and Mt Wilson FM Broadcasters have conducted independent interference analysis studies and both parties agree that the adjacent channel interference would be minimal and could be eradicated on either channel with proper filtering at the transmitter location if necessary.

DTV America I, LLC



John N. Kyle II  
Manager

7/30/20  
Date

Mt. Wilson FM Broadcasters, Inc.

\_\_\_\_\_  
Saul Levine  
President

\_\_\_\_\_  
Date

EXHIBIT A

Technical Settlement Agreement

Mutual Interference Acceptance Agreement for:

DTV America 1, LLC: BNPDTL-20090825ATH, Fac. Id 182067 Santa Barbara, CA Ch. 35  
Mt. Wilson FM Broadcasters, Inc.: BNPDTL-20090825ABL, Fac. Id 181608 Santa Barbara, CA  
Ch. 36

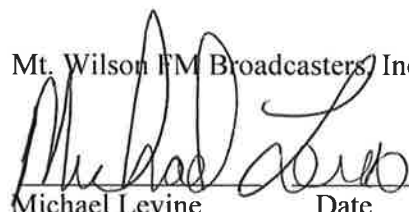
This agreement between DTV America 1, LLC and Mt. Wilson FM Broadcasters constitutes an understanding that, should interference issues arise during the operation of one or both facilities listed above, both parties will work together to mitigate the problem, whether through electronic means or otherwise. Both DTV America 1 and Mt Wilson FM Broadcasters have conducted independent interference analysis studies and both parties agree that the adjacent channel interference would be minimal and could be eradicated on either channel with proper filtering at the transmitter location if necessary.

DTV America I, LLC

\_\_\_\_\_  
John Kyle II  
Managing Member

\_\_\_\_\_  
Date

Mt. Wilson FM Broadcasters, Inc.

  
\_\_\_\_\_  
Michael Levine  
Vice President

\_\_\_\_\_  
Date

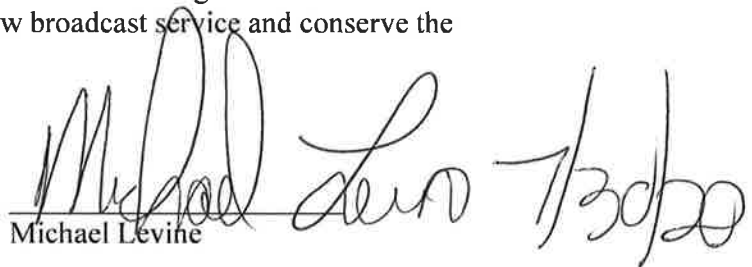
7/30/20

EXHIBIT B

DECLARATION OF MICHAEL LEVINE

Michael Levine states under penalty of perjury as follows:

1. I am Vice President of Mount Wilson FM Broadcasters, Inc. ("Mount Wilson")
2. Neither Mount Wilson, nor anyone acting on Mount Wilson's behalf, has paid or promised any consideration to DTV America 1, LLC ("DTV"), to secure its participation in the Settlement Agreement which is the subject of the foregoing Joint Petition, nor has Mount Wilson been paid or promised any consideration to secure its participation in such Agreement,
3. Mount Wilson did not file its application for the purpose of entering into a settlement agreement.
4. Mount Wilson believes that approval of the Settlement Agreement will serve the public interest because it will expedite new broadcast service and conserve the resources of the parties and the FCC.

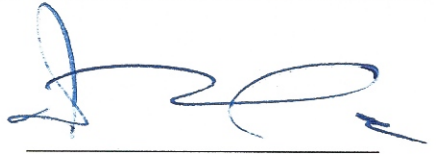
  
Michael Levine

Date: July 30, 2020

## DECLARATION OF JOHN KYLE II

John Kyle II states under penalty of perjury as follows:

1. I am the Managing Member of DTV America 1, LLC ("DTV")
2. Neither DTV or anyone acting on DTV's behalf has paid or promised any consideration to Mount Wilson FM Broadcasters, Inc. ("Mount Wilson") to secure Mount Wilson's participation in the Settlement Agreement which is the subject of the foregoing Joint Petition, nor has DTV been paid or promised any consideration to secure its participation in such Agreement,
3. DTV did not file its application for the purpose of entering into a settlement agreement.
4. DTV believes that approval of the Settlement Agreement will serve the public interest because it will expedite new broadcast service and conserve the resources of the parties and the FCC.



John Kyle II, *MANAGER*

Date: July 29, 2020

EXHIBIT C

Declaration of James L. Winston

## DECLARATION

I, James L. Winston, hereby declare under penalty of perjury as follows:

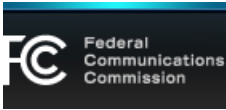
My firm, Rubin, Winston, Diercks, Harris & Cooke, LLP, was listed as counsel on the application of Plum TV, Inc., FCC File No. BNPDTL-20090825ACM, Facility ID 181235, for a new LPTV station to serve Santa Barbara, CA, on channel 36. My firm stopped representing Plum TV before it went into bankruptcy. I cannot attest to what happened to them. I can only state that, to the best of my knowledge, they are no longer in business.

The foregoing is true and correct to the best of my personal knowledge and belief.



James L. Winston

Dated: July 27, 2020



# Licensing and Management System

## Pleadings Application Submitted

Approved by OMB (Office of Management and Budget) 3060-0423  
November 2005

Download Reference Copy  
(<http://api/download/pleading/draftcopy/25076ff373865ab30173a2c074d12d11>)

- Your application has been submitted for processing.**
- Use the assigned **Pleadings/Appeals Number: 0000119396** when referencing this application in the future.

### Application Summary

File Number: 0000119396  
Pleading Type: Petition to Deny  
Status: SUB  
Date Submitted: 2020-07-30

### Applicant Information

Name: Mount Wilson FM Broadcasters, Inc.  
Title:  
Address: 1500 Cotner Avenue  
Los Angeles, CA 90025  
Phone: +1 (310) 478-5540  
Email: 105@mountwilsoninc.com

Return

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Required Browser & Plug-ins  
(<http://www.fcc.gov/encyclopedia/required-plugin-ins-players-and-readers>)

FOIA (<http://www.fcc.gov/foia>)  
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Open Government Directive  
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Plain Writing Act  
(<http://www.fcc.gov/encyclopedia/plain-writing-fcc>)  
2009 Recovery and Reinvestment Act  
(<http://www.fcc.gov/encyclopedia/american-recovery-and-reinvestment-act-2009>)