



Federal Communications Commission
Washington, D.C. 20554

June 8, 2022

Sent via Certified Mail and Electronic Mail

VCY America, Inc.
Jim Schneider
3434 W Kilbourn Ave.
Milwaukee, WI 53208
IMS@VCYAMERICA.ORG

Re: Request for Special Temporary
Authority
WDMY-LD, Toledo, OH
Fac ID No. 49188
LMS File No. 0000191356

Dear Licensee,

This concerns the above-referenced request for special temporary authority (Request) filed by VCY America, Inc. (VCY), licensee of low power television (LPTV) station WDMY-LD, Toledo, Ohio (WDMY-LD or Station). For the reasons set forth below, the Request is denied and VCY is ordered to cease and desist any and all analog operations.

Background. WDMY-LD was an LPTV station that previously operated in analog on channel 38.¹ The Station's analog channel 38 facilities were displaced by the Commission's Incentive Auction and repacking process and was designated a portion of the new wireless "duplex gap."² The Station filed a digital displacement application for channel 6 that was granted on November 26, 2018.³ The Station completed construction of its digital channel 6 facilities and began operating on October 12, 2021.⁴

In its instant Request, VCY seeks special temporary authority (STA) "to operate an analog FM audio carrier as an ancillary or supplementary service within the Station's assigned digital channel frequencies."⁵ CBC argues that "under the (Commission's) existing rules, it is permitted to offer an audio signal available at 87.75 FM on an ancillary or supplementary basis."⁶ If permitted to provide analog service, it agrees to provide "at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum on a full time (24x7) basis;"⁷ that "the video programming can be

¹ See CDBS File No. BLTT-20050805AAT.

² See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order*, GN Docket No. 12-268 et al., 29 FCC Rcd 6567, 6841, para. 672 (2014).

³ See LMS File No. 0000054740.

⁴ See LMS File No. 0000163484.

⁵ Request at 1. VCY has also filed an application for license to convert the Station to ATSC 3.0 digital. See LMS File No. 0000191355.

⁶ Request at 1 *citing* 47 CFR § 73.624(c).

⁷ *Id.* at 2.

satisfactorily viewed on consumer receiving equipment based on the ATSC 3.0 standard;”⁸ and should any interference occur to other stations, it will modify its operation so as to eliminate the interference.⁹

Discussion. We deny VCY’s request for STA. We do not find that its request to operate an analog FM radio carrier on WDMY-LD’s digital frequency would serve the public interest. Although the Media Bureau has permitted other ATSC 3.0 digital channel 6 LPTV stations to provide analog FM radio operations through an engineering STA, we find those situations to be significantly different from the one here.¹⁰ This is because each of those stations were providing similar analog FM radio operations (FM6 operations) while they were operating on channel 6 in analog mode prior to the July 13, 2021 digital LPTV transition.¹¹ The Media Bureau permitted these FM6 stations to continue to provide their existing FM6 operations, once they converted to ATSC 3.0 via an engineering STA in order to maintain the status quo while the Commission considers whether to permit channel 6 digital LPTV stations to provide analog FM radio services on an ancillary or supplementary basis in its ongoing rulemaking proceeding.¹² In contrast, WDMY-LD did not begin operating on its digital channel 6 displacement facilities until October 2021.¹³ This fact distinguishes WDMY-LD’s Request from other FM6 stations that have been granted STAs.¹⁴ Because WDMY-LD does not have a legacy analog FM6 operation to preserve, unlike other FM6 stations, we do not find the public interest would be served by grant of its Request.¹⁵

⁸ *Id.*

⁹ *Id.*

¹⁰ See, e.g., KBKF-LD, San Jose, California; WMTO-LD, Norfolk, Virginia; KXDP-LD, Denver, Colorado; WTBS-LD, Atlanta, Georgia; WRME-LD, Chicago, Illinois; KZNO-LD, Big Bear Lake, California; KEFM-LD, Sacramento, California; WEYS-LD, Miami, Florida; WDCN-LD, Fairfax, Virginia; KRPE-LD, San Diego, California; KGHD-LD, Las Vegas, Nevada; WPGF-LD, Memphis, Tennessee; and WNYZ-LD, New York, New York.

¹¹ See 47 CFR §§ 74.731(m) and 74.788(a) that provided that all LPTV stations were required to terminate analog operations and begin operating in digital no later than July 13, 2021.

¹² See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Notice of Proposed Rulemaking, MB Docket No. 03-185, FCC 22-40 (rel. June 7, 2022) (*NPRM*). In the *NPRM*, the Commission stated that the Media Bureau granted FM6 STAs “in order to preserve a pre-existing FM6 service.” *NPRM* at para. 15. The Commission also proposed limiting future FM6 service to only those stations operating with an FM6 STA on the release date of the *NPRM* in order to “ensure continued service to consumers who have relied upon this (FM6) service” and to serve the Commission’s goal of “preventing harmful interference to other services.” *NPRM* at paras. 42 and 43. In addition, the Commission sought comment on whether to permit FM6 operations by LPTV stations that, as of the release date of the *NPRM*, have pending applications for construction permits and a significant history of providing FM6 to the public. *NPRM* at para. 44.

¹³ See LMS File No. 0000163484 (application for license to cover).

¹⁴ We disagree with VCY’s assertion that, “under the FCC’s existing rules,” VCY is permitted to offer an analog FM radio service “on an ancillary or supplementary basis.” Request at 1-2. As VCY acknowledges, that question is presently before the Commission in the pending rulemaking proceeding. See *NPRM* at paras. 22-33. Until that proceeding is concluded, we do not deem that such FM operations may be conducted “under the FCC’s existing rules.”

¹⁵ VCY also argues that it did not have the opportunity to previously operate the Station on analog channel 6 because of the Station’s displacement and silent status at the time VCY acquired the Station on January 21, 2021. Request at 3. VCY argues that, but for the July 13, 2021 LPTV digital transition deadline, it would have been able to construct and operate the Station on analog channel 6 and provide service to the public. *Id.* This is purely conjecture and the fact remains that WDMY-LP does not have a legacy FM6 operations to preserve.

The above facts considered, the request for special temporary authority filed by VCY America, Inc. for WDMY-LD, Toledo, Ohio, **IS DENIED**. To the extent that the Station may have already done so, any operation of an analog FM audio carrier on the Station's digital frequency **MUST CEASE IMMEDIATELY**. We note that VCY's application for license to convert WDMY-LD to ATSC 3.0 digital remains pending. VCY must notify the Video Division within 30 days of the date of this letter if it desires for its ATSC 3.0 license application to be processed, in light of our decision here. An e-mail confirming its intent should be sent to Shaun Maher at Shaun.Maher@fcc.gov. Failure to do so within 30 days will result in dismissal of the ATSC 3.0 license application.¹⁶

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division Media Bureau

cc (via electronic mail): Kathryn Dickerson, Esq.

¹⁶ 47 CFR § 73.3568(a) (dismissal for failure to prosecute).