



Federal Communications Commission
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Re: Application of Jose Luis Rodriguez
For Authority to Modify
LPTV Station W44BC, Brentwood, NY
(File No. BMPTTL-960517UQ)

Application of Jose Luis Rodriguez
To Replace Expired Construction Permit for
LPTV Station W44BC, Brentwood, NY
(File No. BPTTL-970124JD)

Application of Jose Luis Rodriguez
For Grant of Special Temporary Authority for
LPTV Station W17CH, Selden (Patchogue), NY

Applications of Catholic Views Broadcasting,
Inc. for Modification of
LPTV Station W17CR, Plainview, NY
(File Nos. BMPTTL-20050510ACC
BLTTL-20050802AAY)
Facility ID No. 9378

Application of Catholic Views Broadcasting,
Inc. for Assignment of Construction Permit for
LPTV Station W17CR, Plainview, NY, to
WLNY-TV, Inc.
(File No. BALTTA-20050608AGG)

Dear Counsel:

This letter is in reference to the above-captioned applications, which are inextricably connected by arguments raised in a large number of pleadings filed over the course of more than a decade. The voluminous record ultimately stems from the Application for Review, filed on July 16, 1998, by Jose Luis Rodriguez (Rodriguez), in which he contends that the staff erred in denying his fifth request to replace the expired construction permit for LPTV Station W44BC, Brentwood, New York, and dismissing his application to modify the permit by, *inter alia*, changing to channel 17. For the reasons set forth below, we will treat the Application for Review as a petition for reconsideration and deny it. We also take the steps necessary to resolve the various applications.

Background. *Jose Luis Rodriguez Applications.* The Commission granted Rodriguez an initial construction permit for LPTV Station W44BC on August 26, 1991, and subsequently granted four requests to replace the permit and extend the construction period, the last on November 2, 1995. Two weeks prior to the expiration of his permit, Rodriguez filed a major modification application,¹ proposing to relocate the station and operate on channel 17. Then, nearly eight months after the permit had expired yet again, Rodriguez filed an application to replace it.²

In a letter decision dated August 13, 1997, the Video Division denied the application to replace the expired permit, citing the well-settled precedent that "a permittee's decision to file for modification to move to a new transmitter site is 'a private business decision that, standing alone, does not justify an extension.'"³ It also deleted the station's call sign and, as these actions left Rodriguez with no valid authorization, dismissed his major modification application. On June 15, 1998, the staff reaffirmed its decision, denying Rodriguez's Petition for Reconsideration, in which he argued, for the first time, that "the tower he originally selected would require extensive strengthening at a cost of many tens of thousands of dollars" and the only other useable towers would "worsen the interference to channel 51,

¹ File No. BMPTTL-960517UQ. Empire Broadcasting, L.L.C. (Empire), then the licensee of W17BM (now WEBR-CD), Manhattan, New York, filed a Petition to Deny the application on October 28, 1996. Rodriguez filed an Informal Opposition on January 24, 1997. We will refer to the station by its current call sign.

² File No. BPTTL-970124JD.

³ Letter from Hossein Hashemzadeh to Jose Luis Rodriguez, dated August 13, 1997, at 3 (First Letter Decision) (citing *Lawrence J. Bernard, Jr., Esq.*, 11 FCC Rcd 5320 (MMB 1996)).

Deer Park, New York.”⁴ It noted that Rodriguez apparently “rejected use of the authorized site solely because of the cost of strengthening the tower,” which failed to provide a sufficient basis for extension of a construction permit.⁵ Thereafter, Rodriguez filed his Application for Review.⁶

Notwithstanding the staff decisions, Rodriguez constructed a channel 17 facility – at variance from the parameters specified in his major modification application – informing the Commission of such construction in a pleading filed on December 16, 1998.⁷ He requested special temporary authority (STA) to operate the facility on December 17, 1998, arguing that it would allow him “to provide urgently needed service” to “the growing Hispanic population in and around Patchogue.”⁸ The Commission granted the STA on January 22, 1999, under temporary call sign W17CH.⁹ Rodriguez thereafter filed supplemental pleadings in connection with his pending Application for Review, notifying the Commission that W17CH was operating¹⁰ and purporting to demonstrate that it did not cause unacceptable interference to Empire’s WEBR-CD.¹¹

Catholic Views Broadcasting, Inc. Applications. On August 19, 2002, while Rodriguez’s Application for Review remained pending, the Commission granted the displacement application of Catholic Views Broadcasting, Inc. (CVB) for LPTV Station W33BV, Plainview, New York, to change

⁴ September 22, 1997 Petition for Reconsideration, at 2. None of Rodriguez’s five applications to replace an expired permit for the station suggested that his selected tower couldn’t support the windload of an additional antenna.

⁵ Letter from Hossein Hashemzadeh to Benjamin Perez, Esq., dated June 15, 1998, at 3 (*citing Hassler Productions, Inc.*, 2 FCC Rcd 811 (1987)).

⁶ Rodriguez did not serve Empire with a copy of his Application for Review. Empire filed an Informal Opposition to Application for Review on August 18, 1998, and Rodriguez filed an Informal Reply to Informal Opposition on December 16, 1998.

⁷ December 16, 1998 Informal Reply to Informal Opposition, at 2.

⁸ December 17, 1998 Request for Special Temporary Authority, at 1.

⁹ Rodriguez did not serve Empire with a copy of its STA request. Empire filed a Request for Termination of Special Temporary Authority and Notice of Violation of *Ex Parte* Rules on March 12, 1999; Rodriguez filed an Opposition to Request for Termination of Special Temporary Authority and Notice of Violation of *Ex Parte* Rules on March 25, 1999; and Empire filed a Reply to Opposition to Request for Termination of Special Temporary Authority and Notice of Violation of *Ex Parte* Rules on April 6, 1999. Further, Rodriguez filed a Motion to Strike Reply to Opposition to Request for Termination of Special Temporary Authority and, Alternatively, Request for Leave to file Further Opposition on April 19, 1999; and Empire filed an Opposition to Motion to Strike and Reply to Further Opposition to Request for Termination of Special Temporary Authority and Notice of Violation of *Ex Parte* Rules on May 4, 1999. In addition, Young D. Kwon (Kwon), the then-authorized assignee of WEBR-CD (File No. BALTTL-981123IA), filed Comments in Support of Request for Termination of Special Temporary Authority on April 6, 1999, and Rodriguez filed an Informal Response to Comments in Support of Request for Termination of Special Temporary Authority on April 27, 1999.

¹⁰ The station began operating upon receipt of the STA. Rodriguez filed a request for extension of STA on July 2, 1999, which remains pending. K Licensee, Inc. (K Licensee), which had become the licensee of WEBR-CD on June 30, 1999, upon consummation of the assignment of the station’s license from Kwon (File No. BALTTL-990412ID), filed an Opposition to Request for Extension of Special Temporary Authority on July 27, 1999. Commission staff requested, in a July 3, 2006 e-mail, that Rodriguez cease operating immediately, and the station has been off the air since at least July 5, 2006.

¹¹ February 8, 1999 Supplement to Informal Reply; February 11, 1999 Further Supplement to Informal Reply. Thereafter, Empire filed a Motion to Strike and Response to Informal Reply on March 12, 1999; Rodriguez filed an Opposition to Motion to Strike on March 25, 1999; and Empire filed a Reply to Opposition to Motion to Strike on April 6, 1999. Further, Rodriguez filed a Motion to Strike Reply to Opposition and, Alternatively, Request for Leave to File Further Opposition on April 19, 1999; and Empire filed an Opposition to Motion to Strike and Reply to Further Opposition to Motion to Strike on May 4, 1999.

operation to channel 17 under call sign W17CR.¹² Rodriguez did not file a petition to deny the CVB displacement application, which appeared on a proposed grant list on May 5, 2000 (Report No. PGL00-3), and the grant of the W17CR construction permit became final. Rodriguez did, however, file pleadings in opposition to the Commission grant, on May 27, 2005, of a minor modification application¹³ filed by CVB with respect to W17CR, contending that the grant was erroneous because the application had not been on public notice for 30 days.¹⁴ Rodriguez also opposed CVB's application¹⁵ for a license to cover the W17CR construction permit.¹⁶ As with his STA request, Rodriguez linked these pleadings with his Application for Review, asserting that the ultimate disposition of his applications was "an open proceeding the Commission must resolve before any further grant...may be made."¹⁷

In addition to modifying the W17CR construction permit, CVB filed an application seeking Commission consent to the assignment of the station to WLNY-TV, Inc. (WLNY).¹⁸ Rodriguez filed a Petition to Deny Assignment from Catholic Views to WLNY-TV on July 13, 2005, once again adopting the position that his earlier-filed major modification application for channel 17, as well as his operation of W17CH pursuant to STA, gave him "procedural rights" that would be "directly affected" by a grant of the proposed assignment.¹⁹

Supplements. Following the initial flurry of adversarial pleadings concerning the assignment,²⁰ on October 13, 2006, CVB filed a Petition for Leave to File Supplement and Supplement that included a sworn declaration that W17CH had been monitored on a weekly basis since July 2005 with "no transmission of audio or video" detected.²¹ This led Rodriguez to request a meeting with Commission staff, which took place on November 7, 2006, and was attended by counsel for CVB and WLNY. Thereafter, on January 9, 2007, Rodriguez filed his Supplemental Filing and Request for Leave to File Supplement of Jose Luis Rodriguez, maintaining that the staff requested it and that there existed "good cause" to present "changed circumstances and newly discovered facts that were neither available...at the time he filed his last respective pleading in each of the [referenced] matters, nor would...have been

¹² File No. BMPTTL-19990917AAN.

¹³ File No. BMPTTL-20050510AAC.

¹⁴ June 3, 2005 Emergency Request for Immediate Rescission of Improper Grant, at 1. Rodriguez then filed a Petition to Deny on June 13, 2005, and a Supplement to Petition to Deny on June 27, 2005. CVB filed a Notice of Intent to File Consolidated Opposition on June 17, 2005; a Motion for Extension of Time on June 27, 2005; a Consolidated Opposition on July 13, 2005; and a Supplement to Consolidated Opposition on August 4, 2005.

¹⁵ File No. BLTTL-20050802AAY.

¹⁶ Rodriguez filed an Opposition of Jose Luis Rodriguez to License to Cover on September 6, 2005, and CVB filed a Reply to Opposition of Jose Luis Rodriguez to License to Cover on September 28, 2005.

¹⁷ June 3, 2005 Emergency Request for Immediate Rescission of Improper Grant, at 2.

¹⁸ File No. BAPTTL-20050608AGG.

¹⁹ July 13, 2005 Petition to Deny Assignment from Catholic Views to WLNY-TV, at 2.

²⁰ WLNY filed an Opposition to Petition to Deny on July 26, 2005. CVB filed its own Opposition to Petition to Deny on the same date, and a Supplement to Petition to Deny on August 4, 2005. Rodriguez filed a Consolidated Reply to Oppositions to Petition to Deny on August 5, 2005. WLNY then filed a Motion to Strike or Dismiss the Consolidated Reply to Oppositions to Petition to Deny on August 9, 2005, and Rodriguez filed an Opposition to Motion to Strike or Dismiss the Consolidated Reply to Oppositions to Petition to Deny, LPTV Station W17CR on August 23, 2005. CVB also filed a Motion to Strike the Consolidated Reply to Opposition to Petition to Deny on September 13, 2005, and Rodriguez again responded with an Opposition to Motion to Strike or Dismiss the Consolidated Reply to Oppositions to Petition to Deny, LPTV Station W17CR on September 26, 2005.

²¹ October 13, 2006 Petition for Leave to File Supplement and Supplement, Declaration of Mark D'Acampora II, at Exhibit 1.

available...at that time through the exercise of ordinary diligence.”²² In it, Rodriguez not only repeated, at some length, the arguments he had raised in various proceedings, but also claimed, for the first time, that the Commission’s denial of his fifth request for replacement of the expired W44BC construction permit violated his “due process rights, was arbitrary and capricious, and was an abuse of the Commission’s discretion.”²³ Specifically, Rodriguez claimed that the staff had “predetermined” to deny him a fifth replacement and extension, demonstrating a “clear and unequivocal bias” against a grant.²⁴ He also submitted a survey of late-filed applications for extension of LPTV construction permits between 1993 and 1997, which he declared amounted to a “record and actual practice of *automatic* grants by Bureau Staff,” yielding the “very reasonable expectation that his Fifth Extension was not only permissible, but would be granted *without any issue*.”²⁵

Discussion. Rodriguez has repeatedly inserted himself into every proceeding relating to LPTV operations on channel 17 in the area of Long Island, New York, explicitly seeking to couple the outcome of such proceedings with the ultimate resolution of his applications to replace the expired construction permit for W44BC and modify it. Within the context of his multitudinous pleadings, Rodriguez has continually supplemented his Application for Review, introducing new facts and raising new legal arguments. The Commission’s rules provide that “[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass,”²⁶ but that “[s]ubject to the requirements of § 1.106, new questions of fact or law may be presented to the designated authority in a petition for reconsideration.”²⁷ Consequently, in light of the new questions of law presented, we dismiss Rodriguez’s Application for Review, pursuant to 47 C.F.R. § 1.115(c). We will, however, in the interest of equity and in order to fully develop the record, treat it as a petition for reconsideration.

We conclude that Rodriguez’s newly-raised “due process” arguments are without merit. His allegation that the staff had “declare[d] upon grant of his fourth extension request that he would never receive another, no matter what,”²⁸ flies in the face of fact. While the staff certainly had issued a stern caution to Rodriguez, its denial of his request for a fifth reinstatement and extension of the W44BC construction permit did not depend on that caution, much less rely upon it exclusively. Rather, the denial stemmed from a full consideration of the merits of the request, which supported the conclusion that Rodriguez had “fail[ed] to meet the requirements of Section 73.3534 of the Commission’s Rules.”²⁹ Moreover, Rodriguez’s belief that the staff “was extremely lenient in granting modification applications

²² January 9, 2007 Supplemental Filing and Request for Leave to File Supplement of Jose Luis Rodriguez, at 2 & n.1. K Licensee filed Comments of K Licensee, Inc. on Supplemental Filing and Request for Leave to File Supplement of Jose Luis Rodriguez on January 22, 2007, and CVB filed a Reply to Supplemental Filing and Request for Leave to File Supplement of Jose Luis Rodriguez on January 23, 2007. Both K Licensee and CVB insist that Commission staff did not request the Rodriguez filing, but simply inquired whether Rodriguez was planning to respond to CVB’s October 13, 2006 supplemental pleading.

²³ January 22, 2007 Supplement, at 12.

²⁴ *Id.* at 12-22.

²⁵ *Id.* at 17 (emphasis added).

²⁶ 47 C.F.R. § 1.115(c).

²⁷ *Id.* at Note.

²⁸ January 22, 2007 Supplement, at 13.

²⁹ First Letter Decision, at 2. The staff, *inter alia*, recounted Rodriguez’s prior representations that he had purchased the necessary equipment and that no further extensions of time to construct would be required; acknowledged the filing of his major modification application and noted that the decision not to construct at the authorized site was a business decision within his control; and observed that Rodriguez had made no showing that he was technically precluded from constructing at the authorized site.

and extension requests filed by low power television station permit holders”³⁰ and that the rationale for filing his fifth such request “should have been more than sufficient”³¹ is beside the point. The Commission has “broad discretion in determining whether an applicant has made substantial progress, or whether circumstances alleged to have prevented construction were beyond the applicant’s control.”³² His suggestion that the staff abused its discretion in his case, simply because it had granted other requests, is inapposite and unpersuasive.³³

Rodriguez’s repeated contention that he nevertheless has some priority over CVB with respect to channel 17 operations is equally unavailing.³⁴ He completely fails to recognize that CVB filed a *displacement* application and that, pursuant to the Commission’s rules, “[w]here such an application is mutually exclusive with...other nondisplacement relief applications for facilities modifications of...low power TV...stations, priority will be afforded to the displacement application(s) *to the exclusion of other applications*.”³⁵ The fact that Rodriguez filed his major modification application first does not, in this case, provide him with any precedence. Neither, despite his statements to the contrary, is Rodriguez aided by the Commission’s grant of STA to operate W17CH. Indeed, Rodriguez himself conceded as much when he requested the STA, since he “acknowledge[d] that this STA gives him *no special right to this channel*, no expectation of an extension of the STA, and no protection from displacement by or interference from Full (sic) or low power stations that are subsequently authorized.”³⁶

In short, Rodriguez has no colorable claim to operate on channel 17 and, accordingly, has no interests that would be adversely affected by grant of CVB’s applications. Beyond this clear lack of standing, we also note that CVB’s captioned applications for minor modification of the W17CR construction permit and for a license to cover such modified permit are not subject to a 30-day public notice period or petitions to deny.³⁷ Neither does Rodriguez’s “petition” against the modification application qualify as an informal objection, since it was not filed prior to grant of the application.³⁸ We will, therefore, dismiss it. We likewise deny his “petition” against the license to cover application, as Rodriguez fails to adduce any evidence whatsoever that the station was not constructed in accordance with its permit.

³⁰ January 22, 2007 Supplement, at 14.

³¹ *Id.* at 16.

³² *New Orleans Channel 20 v. FCC*, 830 F.2d 361, 365-66 (D.C. Cir. 1987).

³³ We also note that Rodriguez’s own survey of requests for extension of construction periods between 1993 and 1997 shows that the Commission denied 28 late-filed requests and even denied 54 timely-filed requests, which undermines his contention that the survey demonstrates an “actual practice of automatic grants.” January 22, 2007 Supplement, at 17.

³⁴ See June 13, 2005 Petition to Deny, at 3 (observing that Rodriguez “filed his application for major modification in May of 1996 – three years before Catholic Views or an other party came into the picture”); July 13, 2005 Petition to Deny Assignment From Catholic Views to WLNY-TV, at 2 (stating that CVB’s “application seeking to move to Channel 17 was filed...approximately 8 months AFTER the [W17CH STA] was granted, and [Rodriguez] began operations” and thus “failed to recognize” his “operational status” or “procedural rights”); September 26, 2005 Opposition to Motion to Strike or Dismiss the Consolidated Reply to Oppositions to Petition to Deny, LPTV Station W17CR, at 4 & n.4 (asserting that CVB “should have never been awarded [a permit for W17CR] in the first place, considering [Rodriguez] had previously applied for use of Channel 17 on Long Island prior to any application by [CVB]”).

³⁵ 47 C.F.R. § 73.3572(4)(ii) (emphasis added).

³⁶ December 17, 1998 Request for Special Temporary Authority for Low Power Television Station in Patchogue, NY, at 2-3 (emphasis added).

³⁷ 47 U.S.C. § 309(c).

³⁸ 47 C.F.R. § 73.3587.

With respect to CVB's application to assign W17CR to WLNY, the Commission applies a two-step analysis to a petition to deny³⁹ under the public interest standard. First, it must determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.⁴⁰ This first step "is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the [petition] were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established."⁴¹ If the petition meets this first step, the Commission then must determine whether "on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice," the petitioner has raised a substantial and material question of fact as to whether the application would serve the public interest.⁴²

Aside from repeating his claim of precedence for operation on channel 17 and seeking to incorporate by reference his pleadings against CVB's minor modification and license to cover applications for W17CR, issues which we have already disposed of, Rodriguez utterly fails to provide any specific allegations of fact that require further consideration. We therefore find that the applicants are fully qualified and conclude that the grant of the assignment application would serve the public interest.

ACCORDINGLY, IT IS ORDERED That, the Application for Review filed by Jose Luis Rodriguez is DISMISSED and, treated as a petition for reconsideration, is DENIED. IT IS FURTHER ORDERED That the July 2, 1999 Request for Extension of Special Temporary Authority for W17CH filed by Jose Luis Rodriguez IS DENIED. IT IS FURTHER ORDERED That the Emergency Request for Immediate Rescission of Improper Grant and the Petition to Deny filed by Jose Luis Rodriguez against the application for minor modification of the construction permit for W17CR, Plainview, New York, File No. BMPTTL-20050510AAC, ARE DISMISSED. IT IS FURTHER ORDERED That the Opposition of Jose Luis Rodriguez to License to Cover, filed by Jose Luis Rodriguez against the application for license to cover the modified construction permit for W17CR, Plainview, New York, File No. BLTTL-20050802AAY, IS DENIED, and the application IS GRANTED. IT IS FURTHER ORDERED That the Petition to Deny filed by Jose Luis Rodriguez against the application for assignment of license of W17CR, Plainview, New York, File No. BAPTTL-20050608AGG, IS DENIED, and That the application IS GRANTED.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Erwin G. Krasnow, Esq.

³⁹ Although we have concluded that Rodriguez lacks standing to file a petition to deny against the assignment application, we will consider his pleading as an informal objection. 47 C.F.R. § 1.41.

⁴⁰ 47 U.S.C. § 309(d)(1); *Astroline Communications Co., Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*).

⁴¹ *Gencor, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

⁴² *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(e).