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Re: KTVA-LP, Lancaster, California
File No. BPTTL-20050609ABE
Facility ID No. 6791

Counsel:

This is with respect to the above-referenced displacement application of Alma Vision Hispanic Network, Inc. (AlmaVision), the approved assignee of low power television station KTVA-LP, Lancaster, California.¹ The application proposes to change channel from 24 to 69 and to operate KTAV-LP at increased power from Mt. Wilson, a move of approximately 37 kilometers from the station's present site. Venture Technologies Group, LLC (Venture), the licensee of several low power television stations in the Los Angeles area, and KRCA License Corp. (KRCA), the licensee of KRCA-DT, channel 68, Riverside, California, filed informal objections and petitions to deny the displacement application.²

¹ See File No. BALTTTL-20050511ADX). AlmaVision provides substantially all of the programming aired on KTVA-LP, which is licensed to EICB TV West. According to AlmaVision, the parties have not consummated the assignment of license of KTVA-LP because the grant of the displacement application is a condition precedent to AlmaVision's obligation to consummate the transaction with EICB.

² AlmaVision argues at length that Venture and KRCA lack standing to object to its application. We disagree. Venture and KRCA both operate stations that will compete with a KTAV-LP facility transmitting from Mt. Wilson, and thus, have economic standing. See *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940).

Station KTVA-LP is entitled to file for displacement relief because it is located less than 265 kilometers from co-channel station KBEH-DT, channel 24, Oxnard, California.³ Section 73.3572(a)(4)(ii) of the Commission's rules provides that a low power television station "which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized DTV station pursuant to § 74.706 of this chapter . . . may at any time file a displacement relief application for a change in output channel, together with any technical modifications which are necessary to avoid interference or continue serving the station's protected service area." AlmaVision first filed a displacement application for channel 55 at Mt. Wilson, but requested dismissal of the application after QUALCOMM, Inc., the license holder of a nationwide wireless system authorized on 716-722 MHz (channel 55), notified AlmaVision that it was planning to begin installing multiple transmitters in the Los Angeles area and that its engineering analysis showed that AlmaVision's proposed operation on channel 55 would cause impermissible interference.⁴ That application, as well as the application now before us, states that "no TV channel (2 through 68) is available at any transmitter site located within 16 kilometers of the licensed KTAV-LP transmitter site." The channel 55 application noted that channel 69 was potentially available at the station's licensed site, but concluded that "this is not deemed an acceptable choice due to the reallocation of the channels 60 through frequency of the Public Safety Communications Service."

In their objections, Venture and KRCA both assert that the facility proposed in the KTVA displacement application is wholly unnecessary for displacement purposes. They argue that AlmaVision earlier acknowledged that channel 69 was available at its licensed transmitter site, but instead filed for channel 69 at Mt. Wilson, a site 38 km away and far closer to Los Angeles. They also complain that earlier, AlmaVision had represented that use of channel 69 at its authorized site was not acceptable because of public safety concerns, but failed to explain why those concerns no longer made the channel unsuitable. Finally, both parties argue that the proposed facility is "spectrally inefficient" as it would receive a significant amount of interference from the authorized operation of several stations, including KRCA-DT on channel 68, and there are other channels available at the KTAV-LP licensed site, including channels 42, 45, 67 and 69. Thus, they urge that AlmaVision's application be dismissed as a major change application filed outside of an authorized low power television filing window.

In response, AlmaVision states that upon receiving QUALCOMM's letter, it reviewed its options, i.e.: (1) continue to prosecute the channel 55 application despite notice that QUALCOMM would begin constructing its system in a matter of weeks; (2) remain on channel 24 at Lancaster despite the fact that it was entitled to file for displacement relief; or (3) find another out-of-core channel on which to operate from Mt. Wilson through the end of the DTV transition. According to AlmaVision, its only practical choice was the instant application, with the understanding that its channel 69 facility would eventually be displaced by public safety use. With respect to the assertions that channels 42 and 45 are available for use at the authorized site, AlmaVision submits engineering showing that channel 42 is not available because it would be located within the noise-limited service parameter of co-channel KWHY-DT, in violation of Section 74.706(b)(1) of the rules,⁵ and that a low power television operation on channel 45 would receive interference from K45IC, Banning, California in an amount that cannot be considered *de minimis*. With respect to channels 69 and 67, AlmaVision submitted an engineering study showing that those proposed facilities would not be in compliance with Section 74.705(b)(3) of the rules with respect to KVEA,

³ See 47 C.F.R. § 73.3572 a(4)(iv)(A)(1).

⁴ See File No. BMTTL-20050512ACK, dismissed June 20, 2005. Venture had filed an informal objection, which is now moot.

⁵ Furthermore, channel 42 would be entitled to displacement relief under Section 73.3572 of the rules, as is AlmaVision's currently authorized channel 24.

channel 52, Corona, California, and KAZA-TV, channel 54, Avalon, California. Even if the channels were usable in Lancaster, AlmaVision also submits that by operating on these channels from Mt. Wilson through the end of the DTV transition, along with other broadcasters operating on out-of-core channels, it is less likely to cause a delay in the implementation of new public safety service than if it were to operate on channel 69 in Lancaster. Finally, AlmaVision points to the channel preclusion study for the Lancaster area attached to its application, which demonstrated with specificity that channels 2 through 68 are unavailable for use at Lancaster.

With respect to the argument that the proposed facility is “spectrally inefficient,” AlmaVision cites to the Video Division decision in *James J. Chladek* ruling that the Commission is not precluded from granting a displacement application which proposes a facility which does not wholly replicate the service provided by the displaced station.⁶ In any event, according to AlmaVision’s engineer, although interference from KRCA-DT to KTAV-LP’s horizontally-polarized signal is predicted, co-location of the two station’s at Mt. Wilson will help insure that the level of interference received by KTAV-LP will be non-objectionable. In fact, co-locating with the full-service stations on Mt. Wilson is the only preventative means to permit the proposed facility to operate without causing or receiving interference. AlmaVision also disputes that channel 42 is available at its authorized site,

In reply, Venture and KRCA argue that the various channels can be used at the authorized site in Lancaster, pursuant to waivers of Sections 74.705, 74.706(b)(1), and 74.707 using OET-69 methodology and terrain shielding to show that the proposed facility would not be likely to cause interference.⁷ KRCA also disputes the amount of interference that would be received on a channel 45 facility at Lancaster. Finally, Venture points to AlmaVision’s “waffling” position on the use of channel 69 at Lancaster, arguing that KTAV-LP on channel 69 at Mt. Wilson “would limit the development of public safety use of the channel for at least 80 miles around.” Thus, according to Venture, it “strains credulity” to suppose that AlmaVision’s operation on Mt. Wilson would pose less of a risk than at its present site.

We will grant the displacement application. AlmaVision is entitled to file for displacement relief and we have confirmed that there are no channels available at the Lancaster site, other than channel 69, absent waivers of our interference protection rules. AlmaVision did not request a waiver of those rules, and we find it reasonable for an applicant to prefer to file for a facility that fully-complies with our technical requirements, rather than one requiring waivers.⁸ We also find, for the reasons set forth in Exhibit 6 to AlmaVision’s application, that in order to provide a viewable signal on channel 69, the proposed facility must be co-located with the other full service stations on Mt. Wilson. Accordingly, we conclude that the facilities proposed in AlmaVision’s displacement application are “necessary” for displacement purposes.

⁶ *Letter to James J. Chadlek*, dated January 9, 2003, Facility ID No. 30129.

⁷ In its reply, Venture asserts, for the first time, that channel 48 is also available pursuant to a waiver of Section 74.706(b)(1).

⁸ With respect to the use of channel 45, KRCA states that the amount of interference that facility would receive is “overstated” and that AlmaVision determination was not conducted with an “FCC compliant implementation of OET-69.” While the parties do not agree on the level of interference that would be received by that facility, KRCA does concede that some interference would occur, and that the operation of KTVA-LP on channel 69 on Mt. Wilson would result in approximately 5,000,000 additional viewers being able to receive AlmaVision’s Spanish-language program service. According to Census 2000, 54.1% of the population of Los Angeles County over the age of five speak a language other than English at home.

In view of the foregoing, the petitions to deny filed by Venture Technologies Group, LLC and KRCA License Corp. ARE HEREBY DENIED, and the above-referenced application filed by Alma Vision Hispanic Network, Inc. IS HEREBY GRANTED.

Sincerely,

Hossein Hashemzadeh
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