



Federal Communications Commission
Washington, D.C. 20554

April 26, 2019

Venture Technologies Group, LLC
5670 Wilshire Blvd, Suite 1620
Los Angeles, CA 90036

RE: W34DI-D, New York, NY
W25FA-D, West Orange, NY
WNJJ-LD, New York, NY
Applications for Construction Permit
LMS File Nos. 0000054804, 0000054811
and 0000054813
Fac. ID Nos. 127812, 130475 and 167314

Dear Applicant:

This concerns the above-referenced low power television (LPTV) displacement applications filed by Venture Technologies Group, LLC (Venture), licensee of W34DI-D, New York, New York; W25FA-D, West Orange, New York; and WNJJ-LD, New York, New York (Stations). New York Spectrum Holding Company, LLC (NYSH) filed informal objections (NYSH Objections) to the W25FA-D and WNJJ-LD applications and K Licensee, Inc. (KLI) filed an informal objection (KLI Objection) to the W34DI-D application.¹ For the reasons set forth, we deny the informal objections.

Background. The Stations were displaced as a result of the incentive auction and repacking process and Venture submitted the above-referenced applications in the Commission's post-incentive auction special displacement application filing window (Special Displacement Window).² Venture's displacement applications for W34DI-D and WNJJ-LD were deemed mutually exclusive and placed into MX Group 51 in Auction 104 along with NYSH's displacement application for WYXN-LD, New York, New York, and KLI's displacement application for W26DC-D, New York, New York.³ Venture's displacement application for W25FA-D was deemed mutually exclusive and placed into MX Group 90 in Auction 104 along with NYSH's displacement application for WXNY-LD, New York, New York.⁴

¹ We shall refer to these two parties collectively as the Objectors. Also before us are Venture's consolidated opposition to all three informal objections (Venture Consolidated Opposition) and NYSH's separate replies (NYSH Replies).

² See *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).

³ See *Auction of Construction Permits For Low Power Television and TV Translator Stations Schedule For September 10, 2019*, Public Notice, DA 19-229 (rel. March 29, 2019). KLI subsequently requested that its application be dismissed and they are no longer a part of MX Group 51. We will, however, consider the matters raised in their objection.

⁴ *Id.*

Objectors oppose Venture's applications on similar grounds. They argue that Venture's applications fail to comply with the limit for transmitter site changes contained in Section 73.787(a)(4) of the rules.⁵ That rule provides that digital stations may propose a change in transmitter site of not more than 48 kilometers from the reference coordinates of the existing station's community of license.⁶ Although the transmitter sites for each of Venture's proposed displacement facilities comply with the 48-kilometer limit, Objectors argue that the proposed facilities are greater than 48 kilometers from the communities of license specified in each Stations' original analog construction permit.⁷

Objectors also argue that the applications do not comply with limits imposed in the *LPTV Filing Window PN*.⁸ They point out that the Commission restricted applications filed in the window to locations more than 121 km (75 miles) from the reference coordinates of the cities listed in an attachment to the public notice. Objectors note that, for each of the Stations, Venture requested a waiver of this limit arguing that the proposed community of license is terrain shielded from cities listed in attachment and does not directly receive a television signal from any full-power station in these applicable cities. The Media Bureau granted the waivers and issued a construction permit for each of the Stations. The construction permits were subject to the condition that any future modifications to the construction permit would not result in a relocation within 121 km of the cities specified in the public notice. Objectors argue that allowing Venture to further relocate its transmitter sites would eviscerate the waivers granted when the Stations were first authorized.⁹

Venture responds that each of its displacement applications complies with the plain language of Section 74.787(a)(4) of the rules.¹⁰ Venture maintains that W25FA-D and W34DI-D are licensed to West Orange, New Jersey, and their proposed transmitter sites are located within 48 kilometers of West Orange, while WNJJ-LD is licensed to Paterson, New Jersey, and its proposed transmitter site is located within 48 kilometers of Paterson.¹¹ Venture argues that the Objectors are asking that the Commission adopt a new rule that would arbitrarily prevent a displaced station from moving more than 48 kilometers in the aggregate since its initial construction permit.¹² Venture notes that it has operated each of the Stations from the permanent facilities proposed in its respective construction permit and license applications for an extended period of time—more than five years for W25DA, more than two years for WNJJ, and more than 20 months for W34DI—before making any technical changes.¹³

⁵ NYSH Objections at 2-3 and KLI Objection at 4-5.

⁶ See 47 CFR § 74.787(a)(4).

⁷ NYSH Objections at 2-3 and KLI Objection at 4-5. Objectors cite to the decision in *DTV America Corporation*, 32 FCC Rcd 9129 (MB 2017) where the Media Bureau found that an LPTV licensee had engaged in a pattern of repeated station moves in order to circumvent certain of the Commission's geographic filing limitations.

⁸ NYSH Objections at 4 and KLI Objection at 2.

⁹ *Id.*

¹⁰ Venture Consolidated Opposition at 9.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 10-11.

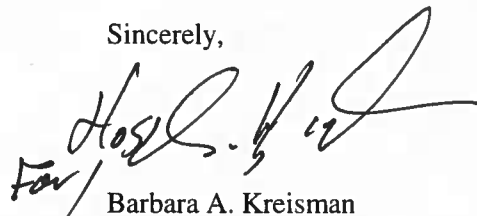
As for Objectors' arguments concerning the 2000 LPTV filing window, Venture responds that there is no basis to extend the geographic restriction that applied to applications filed in that window to the instant displacement applications.¹⁴ Venture argues that the filing restriction applied only the applications filed during the window and to any subsequent modifications to the construction permits obtained through that window.¹⁵ Venture argues that the geographic restrictions applicable to the Stations were satisfied when licenses were granted for the facilities proposed in the 2000 LPTV filing window.¹⁶ Accordingly, Venture concludes, it was under no obligation to comply with the conditions on its original construction permits when it filed the instant displacement applications.¹⁷

Discussion. We conclude that Objectors have failed to demonstrate that Venture's displacement applications do not comply with the Commission's rules. Objectors' assertion that the applications failed to comply with the 48-kilometer geographic limitation for digital transmitter site moves is factually incorrect. All three applications propose changes to the Stations' transmitter sites that are within 48 kilometers of the communities of license of the Station's current licensed facilities, as required by Section 74.787(a)(4) of the rules.

Furthermore, the condition originally imposed in conjunction with the 2000 LPTV filing window that any future modifications to the construction permit not result in a relocation within 121 kilometers of the cities listed in the *LPTV Filing Window PN* applied only to future modifications of construction permits obtained through that window.¹⁸ Once constructed and licensed, the filing limitation no longer applied. As Venture is seeking to modify its licensed digital facilities, the conditions imposed on its original analog construction permits is no longer binding.

Accordingly, for the foregoing reasons, the Informal Objections filed by New York Spectrum Holding Company, LLC and K Licensee, Inc. **ARE DENIED.** Venture's applications remain mutually exclusive and will be resolved in Auction 104.

Sincerely,

A handwritten signature in black ink, appearing to read "Hog S. H. 12", with a stylized flourish at the end.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Ari S. Meltzer, Esq. – Counsel for Venture
Peter Tannenwald, Esq. – Counsel for NYSH
Melodie A. Virtue, Esq. – Counsel for KLI

¹⁴ *Id.* at 11.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ This is demonstrated by the fact that when Venture attempted to modify the construction permits obtained during the window, it was required by the Media Bureau to once again request waiver of the filing limitation.