



Federal Communications Commission
Washington, D.C. 20554

MAY 12 2009

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Venture Technologies Group, LLC
c/o Gregory L. Masters, Esq.
Wiley Rein
1776 K Street, N.W.
Washington, D.C. 20006

Roy William Mayhugh
c/o Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016

Re: KNLA-LP, Los Angeles, California
File No. BRTTL-20060810AMM
Facility ID No. 72270

Dear Counsel:

This is with respect to the June 26, 2008 informal objection filed by Roy William Mayhugh against the above-referenced application for renewal of license of low power television station KNLA-LP, Los Angeles, California, licensed to Venture Technologies Group, LLC ("VTG").

Background and Informal Objection: Mayhugh initially filed a consolidated petition to deny in November 2006 against the KNLA-LP renewal application and the renewal applications for five other low power and Class A television stations licensed to VTG, arguing, *inter alia*, that the applications should be designated for an evidentiary hearing because VTG has a history of violations of Commission rules and had been involved in applications where there were unresolved character issues. By letter dated May 21, 2008, the staff denied the petition and granted five of the six renewal applications. It did not grant the KNLA-LP renewal application, however, because of a procedural hold placed on that application by another Bureau.

Mayhugh filed a petition for reconsideration of the denial of the consolidated petition to deny,¹ and also filed the instant informal objection to the KNLA-LP renewal application. According to Mayhugh, there are further reasons why the KNLA-LP renewal application should be denied; two other stations licensed to VTG – KSCZ-LP, Greenfield, California and KEBK-LP, Bakersfield, California – allegedly were not constructed as authorized and were not airing programming on the day that Mayhugh visited the sites. In addition, Mayhugh asserts that the antenna farm at which KEBK-LP is located was not entirely fenced when he visited the site, that the Enforcement Bureau has issued a Notice of Violation to VTG's station KSFV-LP, Los Angeles, California, for operating its aural transmitter in excess of the

¹ Mayhugh's petition for reconsideration of the May 21, 2008 letter decision is being denied by separate letter.

level permitted by the rules, and that VTG filed a digital companion channel application for another station that does not comply with the Commission's technical rules.

Section 309(k)(1) of the Communications Act provides that we are to grant the renewal application for a broadcast station if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience and necessity; (2) there have been no serious violations of the Act or the Commission's rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.² When Congress amended the renewal standard in 1996,³ "it expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought."⁴ Accordingly, facts regarding the construction and operation of other low power television stations cannot be considered in determining whether grant of the KNLA-LP renewal application is in the public interest.⁵ While Mayhugh repeatedly asserts that these facts, and VTG's response to the informal objection, demonstrate that VTG lacks candor, we agree with VTG that the matters raised are simply technical issues that can arise during or after the construction of a facility. Accordingly, we will grant the renewal application as required by Section 309(k)(1).

Abuse of Process: VTG argues that Mayhugh's informal objection "is part of a pattern of abusive filings with the Commission," and that "Mayhugh is litigating against VTG for personal profit." According to VTG, "it has been amenable to a mutual withdrawal of all pleadings that Mayhugh and VTG have filed against each other, but Mayhugh is aiming for a cash settlement." In support, VTG attaches a copy of an April 6, 2007 email from Mayhugh to a VTG principal stating that "your offer of mutual withdrawal of all actions without any remedy to the damage your filings have caused me is not acceptable." The email also referred to damage caused by VTG's objection to Mayhugh "moving [channel] 12 and [channel] 3 to Mt. Wilson" and demanded a payment of \$50,000 for dismissal of pleadings against VTG.

According to Commission records, Mayhugh is the licensee of stations K67AO, Palmdale, California and K59AO, Ridgecrest, California. The previous licensee of K67AO filed a displacement application to change from out-of-core analog channel 67 to analog channel 12.⁶ That application was granted by public notice dated March 20, 2006 and Mayhugh then filed an application to flash-cut to digital operations on channel 12, which was granted on May 3, 2006.⁷ VTG filed an informal objection to the flash-cut application the day before the grant of the application appeared on public notice, which it resubmitted as a petition for reconsideration.⁸ By letter dated May 1, 2007, the staff concluded that the grant of the analog displacement application was *void ab initio* because the application had never

² 47 U.S.C. § 309(k)(1).

³ See Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

⁴ *Sagittarius Broadcasting Corp.*, 18 FCC Rcd 22551, 22555 (2003).

⁵ Mayhugh does assert, in his reply, that the licensee of KTRO-LP, Palmdale, California, filed an informal objection against VTG's pending application for a license to cover construction of a digital companion channel for KNLA-LP (File No. BLDTL-20081110AAG), alleging interference to a full power television station in the Los Angeles area. There is no low power television station with that call sign, however, and the Commission's Consolidated Data Base System ("CDBS") does not reflect the filing of any objections to VTG's pending license application. In any event, such an objection would not form a basis for designating the KNLA-LP renewal application for hearing under Section 309(k)(1).

⁶ File No. BPTTV-20041129ABP.

⁷ File No. BDFCDTT-20060320AAE.

⁸ In its filings, VTG asserted that the application, which proposed a facility within the U.S.-Mexico border zone, required coordination with Mexico.

appeared on a proposed grant list. Accordingly, it rescinded the grant of the displacement application, and also rescinded the grant of the digital flash-cut application, because Mayhugh did not have a license or construction permit for channel 12, a prerequisite to filing a flash-cut application.⁹ The displacement application was duly placed on public notice and granted on September 24, 2007. With respect to K59AO, Commission records show that Mayhugh filed a digital flash-cut application for channel 3 and that VTG filed “Comments on Application” on June 26, 2006, asserting that the application required coordination with the Mexican government.¹⁰ The application has been referred to the Mexican government, as required by the Letter of Understanding between the United States and Mexico. Mexico has objected to grant of the application and an amended proposal has been referred to Mexico at Mayhugh’s request.

In a January 30, 2009 response to VTG’s complaint of abusive filing, Mayhugh states that his “primary goal since 2006 has been simply to persuade VTG to abandon its baseless, anti-competitive efforts” against Mayhugh’s stations, and that his “initial action” against VTG, *i.e.*, the filing of a petition to deny the renewal applications of KNLA-LP and five other stations licensed to VTG, “was merely a *defensive* necessity, after VTG’s barrage of anti-competitive FCC pleadings” against Mayhugh’s stations.¹¹ Mayhugh also states that he again offered to withdraw his pleadings for an undisclosed amount of money in October 2008, that VTG declined the offer, and that “[i]f we cannot settle, then I will persist in raising questions about [VTG’s] actions and its basic qualifications.”¹² Two weeks later, Mayhugh had filed informal objections to VTG applications for a new digital companion channel at Chicago, Illinois,¹³ for digital displacement channels for stations KSFV-LP, Los Angeles, California, KILA-LP, Cherry Valley, California, and **KEBK-LP, Bakersfield, California**¹⁴ and for minor modification of station W05CS-D, Port Jervis, New York.¹⁵ In each case, Mayhugh filed a one page objection, attaching the January 30, 2009 reply, stating that it raises questions regarding VTG’s basic qualifications.

The Commission’s abuse of process policies and determinations are designed to inhibit the filing of non-bona fide pleadings or applications for the purpose of delay or extracting a profit.¹⁶ The filing of petitions to deny and informal objections:

are specifically intended to enable interested parties to provide factual information to the Commission as to whether grant of an application would serve the public interest. To the extent that they are used for other than their intended purpose, *e.g.*, for private financial gain, to settle personal claims, or as an emotional outlet, the public interest is disserved. Beyond the costs to licensees and the public, consideration of meritless challenges wastes Commission resources.

Richard R. Zaragoza, Esq., 23 FCC Rcd 2642, n.21 (Audio Div. 2008). In this case, Mayhugh admits that his filings were in response to VTG’s valid objection to the grant of the K67AO digital application and observation that the application for K59AO also required international coordination. Mayhugh also

⁹ The staff denied Mayhugh’s petition for reconsideration by letter dated May 23, 2007, and his application for review of that action remains pending.

¹⁰ File No. BDFCDTT-20060320AAT.

¹¹ Reply at p. 9 and n.18 (emphasis in original).

¹² Reply at Appendix A, ¶¶ 6-7.

¹³ File No. BDCCDVL-20080917ABX.

¹⁴ File Nos. BDISDVA-20090114ABC, BDISDVA-20090114ABN, and **BDISDVA-20090114AES**.

¹⁵ File No. BMPDVL-20090130AUQ.

¹⁶ See *TRMR, Inc.*, 11 FCC Rcd 17081, 17086-87 (1996).

states that absent a monetary settlement with VTG, he intends to continue to file objections to VTG's applications, which he has done. Based upon the record before us, we admonish Mayhugh for engaging in an abuse of the Commission's processes. In addition, we will dismiss the informal objections recently filed against the five VTG applications identified above.

In view of the foregoing, the informal objection filed by Roy William Mayhugh IS HEREBY DENIED and, having found the applicant qualified and that grant of the application would serve the public interest, convenience and necessity, the application for renewal of license of station KNLA-LP, Los Angeles, California, IS HEREBY GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read 'B A K', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau