

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of)
)
VENTURE TECHNOLOGIES)
GROUP, LLC)
)
For Construction Permit for a New)
Low Power Television Station on)
Channel 33 at Banning, California)
(Facility ID #128327))

File No. BNPTTL-20000831AVX

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Chief, Mass Media Bureau

OPPOSITION TO PETITION TO DENY

Venture Technologies Group, LLC (“VTG”), by its attorney, hereby opposes the Petition to Deny (“Petition”) filed on February 19, 2002 by Costa de Oro Television, Inc. (“Costa”), licensee of KSMV-LP, Los Angeles, California, against VTG’s captioned application for a new low power television (“LPTV”) station on Channel 33 at Banning, California. Costa’s Petition should be dismissed because it is premature.

VTG’s application for Channel 33 at Banning is a “short form” application filed on August 31, 2000 during the Commission’s Auction No. 81 window for the filing of certain new and major change applications for LPTV, TV translator and Class A stations.¹ Applicants filing in the window were required to provide only FCC Form 175 and enough technical information for the staff to identify mutual exclusivity between the

¹ See *Public Notice*, “Notice and Filing Requirements Regarding July 31 through August 4, 2000 Limited Low Power Television/Television Translator/Class A Television Auction Filing Window,” Report No. AUC-00-81-A (Auction No. 81), DA 00-1383 (June 23, 2000) (“Auction 81 Notice”). The filing window was subsequently extended to allow filing of the technical portions of the auction applications through August 31, 2000.

window applicants.² On February 13, 2001, the staff issued a public notice listing the window applications that were not mutually exclusive with any other proposal submitted in the filing window.³ These “singleton” applicants were directed to file complete FCC Form 346 applications for their proposals by a specified date. The staff would study these applications for acceptability and would subsequently announce by public notice those which were acceptable for filing and ready for grant. Only then would proposals filed in the Auction No. 81 window be subject to petitions to deny.⁴

VTG’s application for Channel 33 at Banning was not among the “singleton” proposals in the Auction No. 81 window. Rather, the Banning Channel 33 application was listed on a separate public notice as one that was mutually exclusive with other window applications.⁵ These mutually exclusive applicants were afforded an opportunity to enter into settlement agreements or engineering solutions to resolve their mutual exclusivities, after which construction permits will be awarded from among the remaining mutually exclusive applicants by auction.⁶ VTG amended its application during the initial settlement period to break mutual exclusivity in its group. The

² See First Report and Order, *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 13 FCC Rcd 15920, 15975, ¶ 143 (1998). Specifically, LPTV applicants in the Auction No. 81 window were required to file only the Tech Box portion and Question 12 of Section III of FCC Form 346. Auction 81 Notice at 3.

³ See *Public Notice*, “Low Power Television Auction No. 81 Non-Mutually Exclusive Proposals,” DA 01-383 (February 13, 2001).

⁴ *Id.* at 3.

⁵ See *Public Notice*, “Low Power Television Auction No. 81 Mutually Exclusive Proposals Subject to Auction,” DA 01-1289 (May 25, 2001). VTG’s application was listed in MX Group M132 as mutually exclusive with five other applicants. *Id.*, Attachment A, p. 6.

⁶ *Id.* at 2. The initial period for settlements and technical solutions of mutual exclusivities closed on August 23, 2001. The Commission subsequently afforded an additional settlement period, which closed on January 22, 2002. See *Public Notice*, “Auction No. 81 Additional Settlement Period Announced,” DA 01-2716 (November 20, 2001).

Commission, however, has not yet designated the Banning Channel 33 application as a "singleton" or announced the application's acceptance for filing. Only at that point will petitions to deny lie. Costa's Petition, therefore, is premature and should be dismissed summarily.

Respectfully submitted,

**VENTURE TECHNOLOGIES GROUP,
LLC**

By: 

Gregory L. Masters

WILEY REIN & FIELDING LLP
1776 K Street NW
Washington DC 20006
(202) 719-7000

Its Attorney

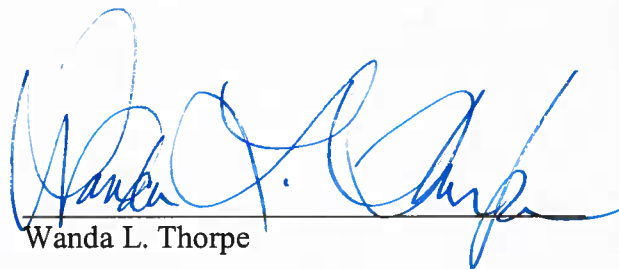
March 1, 2002

CERTIFICATE OF SERVICE

I, Wanda L. Thorpe, a secretary in the law firm of Wiley, Rein & Fielding, hereby certify that on this 1st day of March, 2002, I caused copies of the foregoing Opposition to Petition to Deny to be mailed via first-class, postage prepaid mail to the following:

Barry A. Friedman, Esq.
Thompson Hine LLP
1920 N Street, NW
Suite 800
Washington, D.C. 20036
Counsel to Costa de Oro Television, Inc.

* Hossein Hashemzadeh
Supervisory Engineer
Low Power Television Branch
Video Services Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 2-C866
Washington, D.C. 20554



Wanda L. Thorpe

* By hand