



Federal Communications Commission
Washington, D.C. 20554

June 25, 2003

DA 03-2067

Bruce D. Jacobs, Esq.
Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1128

Re: Trans Video Communications, Inc., File No. BMLIF-19870429DF
Station KNZ69, Brooklyn, New York

Dear Mr. Jacobs:

On March 14, 1996, your client Grand MMDS Alliance New York F/P Partnership (Grand Alliance) submitted Informal Comments in connection with the above-referenced application filed by Trans Video Communications, Inc. (TVC) seeking authorization to modify Station KNZ69, Brooklyn, New York.¹ In connection with Grand Alliance's Informal Comments, Grand Alliance asks that we condition the grant of TVC's application "on TVC's withdrawal from the F Channel Block frequencies."² For the reasons stated below, we deny Grand Alliance the relief it seeks through its Informal Comments.

Grand Alliance is the licensee of Multipoint Distribution Service Station WMY467, operating on the F Group channels in New York, New York. Grand Alliance became the conditional licensee of Station WMY467 on May 6, 1997, after it filed its Informal Comments.³ TVC is the licensee of grandfathered Instructional Television Fixed Service (ITFS) Station KNZ70, Queens, New York, which also operates on the F Group channels. TVC is also the licensee of ITFS Station KNZ69, Brooklyn, New York, which operates on the B Group channels. By the instant application, TVC seeks to modify the license for Station KNZ69 to relocate its transmitter from its current location in Brooklyn to the Empire State Building.

Grand Alliance does not object to the grant of TVC's application, but asks that we condition the grant of TVC's application on TVC's withdrawal from the F Group channels.⁴ Grand Alliance "submits these comments in light of recent developments which may impact on the resolution of its own pending application for the F channel Block MMDS license in this market."⁵ Grand Alliance argues that the relocation of TVC's B Group facilities would eliminate the need for TVC to employ Station KNZ70 as a relay station.⁶

¹ Informal Comments filed by Grand Alliance on Mar. 14, 1996 (Informal Comments). TVC filed an Opposition to Informal Comments (Opposition) on Mar. 27, 1996. Grand Alliance provided a reply on Apr. 15, 1996.

² *Id.* at 1.

³ Mass Media Bureau Multipoint Distribution Service Actions, *Public Notice*, Report No. D-925-A (rel. May 7, 1997).

⁴ Comments at 1.

⁵ *Id.*

⁶ *Id.* at 2.

Based on the information before us, we conclude that grant of the relief requested by Grand Alliance is not warranted under the circumstances presented; therefore, we will not condition the grant of TVC's application as Grand Alliance requests. Grand Alliance has failed to cite any provision of the Communications Act of 1934, as amended, the Commission's rules, or a Commission policy that would authorize support the Commission requiring TVC to surrender its F Group channels in return for a grant of the modification of its B Group authorization. Grand Alliance does not allege that TVC's operation of Station KNZ69 violates the Commission's Rules. Accordingly, we conclude that grant of TVC's application with the requested condition is unnecessary and unwarranted.⁷

Lastly, TVC suggests that Grand Alliance's comments were improperly filed for the purpose of delaying action on TVC's application.⁸ We disagree. We find nothing to suggest that the pleadings filed by Grand Alliance violated the Commission's general practice rules governing pleadings.⁹ In the absence of a demonstrable showing of abuse of the Commission's processes,¹⁰ we decline to take any action against Grand Alliance on this basis.

Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 73.3534(a) of the Commission's Rules, 47 C.F.R. § 73.3534(a), that the relief sought in the Informal Comments filed by the Grand MMDS Alliance New York F/P Partnership on March 14, 1996 IS DENIED.

IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.52 of the Commission's Rules, 47 C.F.R. § 1.52, that the request of Trans Video Communications, Inc. contained in its March 27, 1996 "Opposition to Informal Comments" that we issue sanctions against Grand Alliance for filing its Informal Comments IS DENIED.

⁷ TVC argues that Grand Alliance lacks standing to file comments regarding the grant of TVC's application. Opposition at 2-3. Standing, however, is not a prerequisite for filing informal comments. 47 C.F.R. § 1.41. *See, e.g.,* Applications of WINV, Inc., Assignor, and WGUL-FM, Inc., Assignee, *Memorandum Opinion and Order*, 14 FCC Rcd 2032 ¶ 2 (1998).

⁸ Opposition at 8-10. A strike pleading is a pleading filed in bad faith for the primary purpose of blocking, impeding, or delaying the grant of an application. William P. Johnson and Hollis P. Johnson, d/b/a Radio Carrollton, *Decision*, 69 FCC 2d 1139, 1150 ¶ 24 (1978), *clarified*, 69 FCC 2d 424 (1978), *recon. denied*, 72 FCC 2d 264 (1979), *aff'd mem. sub nom. Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. Oct. 15, 1980), *cert. denied*, 450 U.S. 1041 (1981).

⁹ 47 C.F.R. § 1.52.

¹⁰ The term "abuse of process" has been defined as "the use of a Commission process, procedure or rule to achieve a result which that process, procedure or rule was not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of that process, procedure, or rule." Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuse of the Renewal Process, *First Report and Order*, 4 FCC Rcd. 4780, 4793 n.3 (1989); *see* Silver Star Communications-Albany, Inc., *Memorandum Opinion and Order*, 3 FCC Rcd. 6342, 6352 ¶ 41 (1988); Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Process, *Notice of Proposed Rulemaking*, 2 FCC Rcd. 5563, 5563 ¶ 2 (1987); *see also* Policy Regarding Character Qualifications In Broadcast Licensing, *Report, Order and Policy Statement*, 102 FCC 2d 1179 (1986), *recon. granted in part and denied in part*, 1 FCC Rcd. 421 (1986), *appeal dismissed mem. sub nom National Assoc. for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987) (strike pleadings, harassment of opposing parties, and violation of ex parte rules constitute abuse of process).

IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309 and Section 74.912 of the Commission's Rules, 47 C.F.R. § 74.912, that the Licensing and Technical Analysis Branch SHALL PROCESS the application File No. BMLIF-19870429DF filed on April 29, 1987 by Trans Video Communications, Inc. consistent with the applicable Commission rules and procedures.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

cc: William D. Wallace Esq.
Crowell & Moring, L.L.P.
1001 Pennsylvania Avenue, NW
Washington, DC 20004

j:\pspwd\Spann\TransVideo(3) 062003

CC: D. Terry
H. Zeiler
R. Melson
J. Borkowski
G. Intoccia
J. Schauble
S. Stone
P. Daronco
M. Spann
G. Vadas
M. Shultz
T. Simmons
R. Taylor