

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Applications of
VICTOR GINORIO GOMEZ
For Authority to Modify Broadband Radio Service
Station WHT654, E-Group Channels, San Juan,
Puerto Rico, and for Special Temporary Authority
File Nos. 20010205AAA, 20010205AAB

MEMORANDUM OPINION AND ORDER

Adopted: November 27, 2006

Released: November 28, 2006

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODCUTION

1. In this Memorandum Opinion and Order, we address the petitions to deny filed on March 22, 2001, by Hispanic Information and Telecommunications Network, Inc. (HITN). HITN seeks denial of the application and Special Temporary Authority (STA) request filed by Victor Ginorio Gomez (Gomez) for authority to modify Broadband Radio Service (BRS) Station WHT654, San Juan, Puerto Rico. For the reasons stated below, we dismiss the Petitions.

II. BACKGROUND

2. On February 5, 2001, Gomez filed an application to modify Station WHT654, which operates on the E-Group channels at San Juan, Puerto Rico, to add digital modulation. On the same date, Gomez filed the STA Request, which sought authority to add digital modulation pending action on the

1 Petitions to Deny (filed Mar. 22, 2001) (Petitions).

2 Application for Modification of BRS Station WHT654 at San Juan, P. R., File No. 20010205AAA (filed Feb. 5, 2001)(Modification Application).

3 Request for Special Temporary Authority to Modification the BRS Station WHT654 at San Juan, P. R., File No. 20010205AAB (filed Feb. 5, 2001)(STA Request).

4 On July 29, 2004, the Commission released a Report and Order and Further Notice of Proposed Rulemaking that transforms the rules governing the Multipoint Distribution Service (MDS) and the Instructional Television Fixed Service (ITFS) in order to encourage the deployment of broadband services by commercial and educational entities. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al.; WT Docket Nos. 03-66, et al., Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004). To better reflect the forward-looking vision for these services, the Commission renamed MDS the Broadband Radio Service and ITFS the Educational Broadband Service. Because the new rules have taken effect, we will refer to BRS and EBS by the new names.

5 Modification Application.

Modification Application.⁶ The applications appeared on public notice as accepted for filing on February 8, 2001.⁷

3. On March 22, 2001, HITN filed the Petitions.⁸ HITN is the licensee of EBS Station WNC706, Fajardo, Puerto Rico and, at the time it filed the Petitions, had applications pending for new EBS stations at Jajuya, Puerto Rico⁹ and Rio Grande, Puerto Rico.¹⁰ HITN argues in its Petitions that the Gomez application is defective because it failed to study the potential for adjacent channel interference to its licensed station WNC706 and its pending Jajuya and Rio Grande applications.¹¹ Second, HITN claims that in lieu of an interference study, Gomez relies upon a strained reading of the Declaratory Ruling and Order of July 10, 1996¹² to conclude that “no new interference will be introduced into a market when digital modulation techniques are utilized in conjunction with a previously authorized analog service.”¹³ Third, HITN further claims that Gomez mistakenly treats the two different modulated signals (analog and digital) as equal in magnitude. HITN contends that the digital signal (utilizing the same operating parameters, except for the modulation scheme, as the analog facility) should be treated as having as much as 6 to 7 dB more power than the analog signal when assessing the potential for interference.¹⁴ HITN makes the same arguments against the STA Request.

4. Gomez opposed HITN’s Petitions on April 4, 2001.¹⁵ Gomez first argues that the Petitions should be dismissed as untimely.¹⁶ He also argues that the Petitions fail to comply with Sections 21.902(i)(6)(ii)(B) – (D) of the Commission’s Rules because they did not include an engineering analysis indicating that the Modification Application or STA Request would cause interference.¹⁷ Third, Gomez faults HITN for failing to make an effort to reach an agreement (regarding the potential for interference) with Gomez as required by Section 21.902(i)(6)(ii)(B) of the Commission’s Rules.¹⁸ Gomez also argues that HITN’s treatment of the digital versus analog signals for determining adjacent channel interference is flawed.¹⁹

⁶ STA Request.

⁷ See Mass Media Bureau Public Notice, Applications Accepted for Filing, *Public Notice*, Report No. 165 (rel. Feb. 8, 2001) (Accepted for Filing PN).

⁸ Petitions.

⁹ File No. 19950322DY. This application was granted on November 4, 2003 and assigned call sign WND679.

¹⁰ File No. 19950316DG. This application was dismissed on March 13, 2002.

¹¹ Petitions at 2. Adjacent channels are Gomez E1 to HITN D4.

¹² Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations, *Declaratory Ruling and Order*, 11 FCC Rcd 18839 (1996).

¹³ Petitions at 2.

¹⁴ Petitions at 3.

¹⁵ Opposition to the Petitions to Deny (filed Apr. 4, 2001) (Opposition).

¹⁶ Opposition at 2.

¹⁷ Opposition at 3.

¹⁸ *Id.*

¹⁹ Opposition at 6-7.

III. DISCUSSION

5. We dismiss the Petitions as untimely. On February 8, 2001, the former Mass Media Bureau accepted the applications for filing and set March 12, 2001 as the deadline for filing petitions to deny.²⁰ HITN's Petitions were filed with the Commission on March 22, 2001, ten days past the deadline. HITN neither sought a waiver to allow consideration of late-filed Petitions nor explained why it failed to file timely Petitions. Accordingly, we dismiss the Petitions as untimely.

6. Nonetheless, we note that the Commission may independently analyze and address the interference issues raised by HITN.²¹ In this case, we have reviewed the pleadings and determined that there is no basis for denying Gomez's Modification Application. HITN failed to include in its Petitions an engineering analysis demonstrating that the proposed operation of Station WHT654 using digital modulation would cause any interference to its authorized or previously proposed facilities. We also conclude that Gomez has demonstrated that using digital modulation would not cause any more interference than analog modulation. In light of our conclusion that the modification application can be processed, we will dismiss the STA Request as moot.

IV. ORDERING CLAUSES

7. Accordingly, IT IS 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 Petitions to Deny filed by the Hispanic Information and Telecommunications Network, Inc. on March 22, 2001 ARE DISMISSED.

8. 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 Sections 74.903 and 74.912 of the Commission's rules, 47 C.F.R. §§ 74.903, 74.912, that the licensing staff of the Broadband Division SHALL PROCESS the application for modifications of license filed by Victor Ginorio Gomez on February 5, 2001 (File No. 20010205AAA) in accordance with this letter and the Commission's Rules and policies.

9. 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 73.3542 of the Commission's rules, 47 C.F.R. § 73.3542, that the request for special temporary authority filed by Victor Ginorio Gomez on February 5, 2001 (File No. 20010205AAB) IS DISMISSED AS MOOT.

10. 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

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

²⁰ The public notice stated that petitions to deny would be due in 30 days. The thirtieth day after February 8, 2001 was Saturday March 10, 2001. Because that day was a holiday, petitions to deny were due the next business day, Monday, March 12, 2001. See 47 C.F.R. § 1.4(j).

²¹ See Stephanie Engstrom, *Memorandum Opinion and Order*, 18 FCC Rcd 16144, 16146 ¶ 7 (WTB PSPWD 2003).