



Federal Communications Commission
Washington, D.C. 20554

DA 10-1649
Released: August 31, 2010

Howard Jaeckel, Esq.
CBS Broadcasting, Inc.
Third Floor
524 West 57th Street
New York, NY 10019

John W. Zucker, Esq.
ABC, Inc.
16th Floor
77 West 66th Street
New York, NY 10023

Re: KYW-DT
Philadelphia, PA
Applications for License
BLCDT-19981125KK and
BLCDT-20090326ABH
Fac. Id. 25453

WPVI-DT
Philadelphia, PA
Applications for License
BLCDT-19981112KE and
BLCDT-20090612ACL
Fac. Id. 8616

Dear Licensees:

This concerns the above-referenced applications of CBS Broadcasting, Inc. (CBS), licensee of KYW-DT, Philadelphia, Pennsylvania; and ABC, Inc. (ABC), licensee of WPVI-DT, Philadelphia, Pennsylvania (collectively referred to as the "Stations") for licenses to cover the Stations' digital television facilities. On March 10, 2010, Global Radio, LLC (Global), licensee of WNWR(AM), Philadelphia, Pennsylvania, filed an Informal Objection to the applications.¹ For the reasons set forth below, we dismiss as moot the Informal Objection and grant the applications.

Background. WNWR operates from a transmitter site located at 7354-60 Ridge Avenue, Philadelphia, Pennsylvania. In 1998, the Stations sought to construct a new tower at the intersection of

¹ Also before the Commission are: Global's "Consolidated Informal Objections," filed February 19, 1999 (Consolidated Informal Objections); CBS' and ABC's "Joint Opposition to Consolidated Informal Objections," filed September 20, 1999 (Joint Opposition); Global's "Consolidated Reply," filed January 12, 2000 (Consolidated Reply); Global's "Supplement to Informal Objections," filed May 9, 2000; Global's "Petition For Reconsideration or In the Alternative Revocation of Program Test Authority," filed June 7, 2010 (Petition for Reconsideration); and CBS' Response to Petition For Reconsideration, filed August 9, 2010 (Response to Petition).

Culp Street and Domino Lane in Philadelphia. The WNWR towers and Stations' new tower site are approximately 1,500 feet apart.

In 1998, the Stations filed applications proposing to locate their DTV facilities on the new tower.² Global filed comments on the applications requesting that the Commission ensure that the Stations comply with the provisions contained in Section 73.1692 of the Commission's Rules for protecting nearby directional AM radio stations against adverse effects from new tower construction. In a letter dated June 24, 1998, the Chief of the Video Division of the (Mass) Media Bureau granted the Stations' applications, taking note of Global's comments, and reminding the Stations that, "should any adverse impact be exposed, then it shall be the responsibility of each of the Stations to find a suitable solution to this problem.

Following the grant of the construction permit applications, the Stations constructed their DTV facilities. A consulting engineer jointly-selected by Global and the Stations performed the required before and after measurements as required by Section 73.154 of the Commission's Rules. The Stations maintain that the measurements show that installation of their DTV facilities "has not adversely affected the directional antenna system of WNWR."³ Global disagrees, arguing that the measurements actually show that, in the case of every radial measured, the field at each such azimuth increased in intensity following the construction of the Stations' new tower.⁴

In 2005, Global filed an application to modify the WNWR license to "reflect revised operating parameters for the directional antenna system employed by (WNWR) which resulted from the construction of new digital television facilities in the immediate vicinity of WNWR's transmitter site."⁵ In the application for modification, Global stated that it had made a "minor adjustment of the daytime directional antenna pattern," and that as a result the "WNWR daytime antenna system is in proper adjustment and in full compliance with the terms of the station's authorization." Global made no direct mention of the Stations' facilities nor did it allege that the Station's facilities had adversely affected the WNWR array.

In 2008, the Stations filed new applications for construction permits to "maximize" their DTV facilities.⁶ Global did not oppose these applications. The applications were later granted in 2008 and the Stations completed construction of the maximized facilities and in March and June 2009 filed the above-referenced license applications. In January 2010, the previous license applications, having been rendered moot, were routinely dismissed. Global filed a "Petition for Reconsideration or In the Alternative Revocation of Program Test Authority" arguing that the 1998 license applications should not have been dismissed.

² See File Nos. BPCDT-19980422KE (WPVI-DT) and BPCDT-19980319KE (KYW-DT).

³ Joint Opposition at 2.

⁴ Consolidated Informal Objections at 6.

⁵ See File No. BZ-20051201CKF.

⁶ See File No. BPCDT-20080620ABO (KYW-DT) and BPCDT-20080208ADW (WPVI-DT).

Discussion. Section 73.1692 of the Rules provides that, when a broadcast entity proposes to construct a new facility within 0.8 kilometers of an AM non-directional array or within 3.2 kilometers of an AM directional array, it must ensure that the construction does not adversely affect the AM station. Based upon the record in this case, we find that Global has failed to substantiate its claim that the directional array of WNWR was adversely affected by the Stations' new digital facilities constructed in 1998. We find the data collected in this proceeding inconclusive on the question of adverse effect and, given the amount of construction that has occurred in the vicinity of the WNWR array since the construction of the Stations' facilities in 1998,⁷ we conclude that Global has not specifically demonstrated that the Stations' facilities were the cause of any purported problems the WNWR array may have experienced.

Even if Global were able to conclusively show an adverse effect on the WNWR array, we find that issue no longer relevant. In 2005, Global filed for and was granted a modification to the WNWR license specifying revised operating parameters for the station. In its modification application, that was granted by the staff on August 18, 2006, Global represented that WNWR's operating parameters were "in full compliance with the terms of the station's authorization." No direct mention was made of the Stations' facilities or any adverse effect that may have occurred from their construction in 1998. We find that the 2005 WNWR license modification effectively incorporated the impacts of the various new towers on the AM station's directional antenna system and thus, rendered issues relating to the 1998 tower construction moot. Having represented that it is no longer operating outside of its license parameters, we find that there is no longer any adverse effect to consider in this case and Global's previous claim is now moot.⁸

We take this opportunity to remind parties that seek to construct a new tower or materially modify an existing tower within the protected area around the WNWR array, of their responsibilities pursuant to Section 73.1692 of the Rules. Furthermore, we note that the Commission has adopted new "moment method modeling" techniques for determining adverse affects of new construction on AM tower arrays.⁹ If construction near the WNWR array is proposed again in the future, and if the parties are unable to agree as to the costs relating to converting WNWR to the new moment method modeling system, we may announce that the expense of such a conversion will be borne equally by WNWR and the next party which constructs a new tower or materially changes an existing tower.

⁷ In addition to the Stations' DTV facilities constructed in 1998, we note the separate tower and DTV facilities constructed by the two other network affiliates (WCAU-DT – the NBC affiliate and WTXF-DT – the Fox affiliate) in 1998, and the 2002 construction by American Towers, Inc., of a new facility at 400 Domino Lane, Philadelphia – all within the protected area of WNWR's array.

⁸ As for the routine dismissal of the Stations' earlier applications for license, we find that this action was proper. The Stations completed construction of their DTV facilities authorized in 1998 and filed applications for license in November of that year. Upon authorization of their "maximized" facilities in 2008 and 2009, and completion of those facilities later in 2009, the Stations correctly filed new applications for license and the earlier filed-license applications were correctly dismissed as moot. Contrary to Global's belief, this routine action in no way harmed its standing or prevented it from pursuing its interest in this case.

⁹ See An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, *Second Report and Order*, 23 FCC Rcd 14267 (2008); see also "Media Bureau Clarifies Procedures For AM Directional Antenna Performance Verification Using Moment Method Modeling," *Public Notice*, 24 FCC Rcd 2583 (MB 2009).

Accordingly, IT IS ORDERED, That the Consolidated Informal Objections and Informal Objection of Global Radio, LLC, ARE DISMISSED AS MOOT.

In addition, ITS IS ORDERED, That the Petition for Reconsideration or, In the Alternative, Revocation of Program Test Authority of Global Radio, LLC, IS DENIED.¹⁰

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Barry Friedman, Esq. – Counsel for Global Radio, LLC

¹⁰ The license applications for KYW-DT and WPVI-DT (BLC DT-20090326ABH and BLC DT-20090612ACL) will be considered separately.