

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

In the Matter of Application of)	
)	
HISPANIC INFORMATION AND)	File No. BPLIF-19951016BH
TELECOMMUNICATIONS NETWORK, INC.)	
)	
For Authority to Construct New Instructional)	
Television Fixed Service Station On the D Group)	
Channels, Winston-Salem, North Carolina)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: October 6, 2004

Released: October 13, 2004

By the Commission:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we consider an Application for Review filed on October 27, 2003, by Hispanic Information and Telecommunications Network, Inc. (HITN).¹ HITN requests Commission review of the staff's dismissal of the above-captioned application for authority to construct an Instructional Television Fixed Service (ITFS) station in Winston-Salem, North Carolina. For the reasons stated herein, we deny HITN's AFR.

II. BACKGROUND

2. ITFS stations are intended primarily to provide a formal educational and cultural development in aural and visual form.² ITFS licensees make use of the spectrum to provide formal classroom instruction, distance learning, and videoconference capability to a wide variety of users.³

3. On February 25, 1993, the Commission imposed a freeze on the acceptance of new and major change ITFS applications.⁴ However, as an exception to that freeze, the Commission stated that it would continue to accept (but not process) applications in which the applicant relies on the National Telecommunications and Information Administration (NTIA) for construction funds. This exception was granted because NTIA required applicants to file applications with the Commission before seeking

¹ Application for Review (filed Oct. 27, 2003) (AFR). HITN filed a supplement to the AFR on March 19, 2004. Supplement to Application for Review (filed Mar. 19, 2004) (Supplement).

² 47 C.F.R. § 74.931.

³ *Id.*

⁴ Amendment of Part 74 of the Commission's Rules With Regard to the Instructional Television Fixed Service, MM Docket No. 93-24, *Notice of Proposed Rulemaking*, 8 FCC Rcd 1275, 1277 ¶ 9 (1993).

funding.⁵ The Commission stated that such applications would be cut-off as of the end of the first filing window.⁶

4. On May 12, 1994, HITN filed an application for a new ITFS station on the D Group channels⁷ at Winston Salem, North Carolina.⁸ Because HITN's new station application for Winston Salem was filed under the filing exception and during the filing freeze, it was determined that it would be considered filed during the October 16 - October 20, 1995 filing window.⁹ The application was given a filing date of October 16, 1995. On November 9, 1995, along with all the applications received during this filing window, HITN's application appeared on Public Notice as tendered for filing.¹⁰

5. On April 3, 1998, the Acting Chief of the Distribution Services Branch (Branch), Video Services Division of the former Mass Media Bureau dismissed the application.¹¹ The HITN application was dismissed because its proposed facility was predicted to cause harmful interference to the receive sites of ITFS Station WHR683, licensed to North Carolina A & T University (NCA&T), licensed on the adjacent C group channels, and to the protected service area (PSA) of Multichannel Multipoint Distribution Service (MMDS) Station WMH597, Greensboro, North Carolina, licensed to Greensboro Wireless, Inc.

6. On May 11, 1998, HITN filed a Petition for Reconsideration.¹² Concurrent with the filing of its Petition, HITN submitted an amendment to its application requesting the deletion of channel D1 from HITN's original proposal.¹³ In its Petition HITN argues that, with regard to Station WMH597, it should only be required to protect a 15-mile radius protected service area (PSA) around Station WMH597 (which was the rule requirement when HITN submitted its application) as opposed to the 35-mile radius PSA standard in effect during the filing window in which the HITN application was considered cut-off.¹⁴ With respect to Station WHR683, HITN admitted that it overlooked the potential interference to the receive sites of Station WHR683.¹⁵ By its amendment (deletion of Channel D1) to the original proposal, HITN argued that deletion would resolve the interference problem to Station WHR683.¹⁶

7. On September 25, 2003, the Chief of the former Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau granted the Petition in part and denied

⁵ *Id.*

⁶ *Id.*

⁷ The D Group channels are located at 2554-2560 MHz (D1), 2566-2572 MHz (D2), 2578-2584 MHz (D3), and 2590-2596 MHz (D4). *See* 47 C.F.R. § 74.902(a).

⁸ File No. BPLIF-19951016BH (filed May 12, 1994).

⁹ This application relied on NTIA funding.

¹⁰ *See* ITFS Public Notice, Report No. 23631A, *Public Notice* (rel. Nov. 9, 1995).

¹¹ *See* Letter from Clay C. Pendarvis, Acting Chief, Distribution Services Branch, Video Services Division, Mass Media Bureau to HITN (dated Apr. 3, 1998) (Branch Letter). Public notice of the dismissal was given on April 9, 1998. *See* Broadcast Actions, Report No. 44216, *Public Notice* (rel. Apr. 9, 1998).

¹² Petition for Reconsideration (filed May 11, 1998) (Petition).

¹³ *See* Amendment (filed May 11, 1998) (Petition, Exhibit 2).

¹⁴ *See* Petition at 4.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

the Petition in part.¹⁷ The Division agreed with HITN that HITN was only required to protect a 15-mile PSA surrounding the transmitter site surrounding Station WMH597 because HITN's application was submitted before the 35-mile PSAs were established in June of 1995.¹⁸ With respect to Station WHR683, however, the Division concluded that HITN's application was defective because it failed to provide the required interference protection.¹⁹ The Division rejected HITN's attempt to amend its application to delete its request for Channel D1 because the amendment was proffered after the application was dismissed and four years after the subject application was initially filed.²⁰ On October 24, 2003, HITN submitted the instant AFR.

III. DISCUSSION

8. In its AFR, HITN makes four arguments in support of reinstating its application. First, HITN argues that its proposed facilities would potentially cause predicted interference to only one of the four channels in the previously authorized adjacent channel group.²¹ Therefore, HITN argues that there is no basis to dismiss its application with respect to the other three channels.²² Second, HITN claims that with respect to deciding whether to reinstate the HITN application, the Division erred when it refused to accept and consider the HITN amendment.²³ Third, HITN contends that the reinstatement and partial grant of HITN's application would best serve the public interest.²⁴ Further, HITN argues, in a supplement to the AFR, that the Commission's recent decision on HITN's application for a new ITFS station at Trenton, New Jersey²⁵ allows applicants to request a partial grant of their application if their request is made prior to the filing of the AFR.²⁶

9. We reject HITN's arguments and deny the AFR. First, HITN's argument that its proposed facility would cause interference to only one adjacent channel, Channel C4, is incorrect.²⁷ HITN claims that the Branch observed that HITN's proposed D1 channel could cause interference to receive sites trying to receive service from the adjacent C4 channel of Station WHR683.²⁸ This statement is incorrect. Channel D1 is not adjacent to Channel C4. Channel D1 is adjacent to channels C1 and C2.²⁹ Because HITN admits that its proposed facility would cause interference to the receive sites of adjacent-

¹⁷ See Hispanic Information and Telecommunications Network, Inc., *Order on Reconsideration*, 18 FCC Rcd 19300 (WTB PSPWD 2003) (Division Order).

¹⁸ *Id.* at 19301-02 ¶ 8.

¹⁹ *Id.* at 19303 ¶ 12.

²⁰ *Id.*

²¹ AFR at 5.

²² *Id.*

²³ AFR at 7.

²⁴ AFR at 8.

²⁵ See Hispanic Information and Telecommunications Network, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 814 (2004) (*HITN Trenton*) (*recon. pending*).

²⁶ See Supplement.

²⁷ AFR at 5.

²⁸ *Id.*

²⁹ The term adjacent, when used in conjunction with interference considerations, means immediately adjacent. Channels C1 (2548-2554 MHz) and C2 (2560-2566 MHz) are adjacent to Channel D1 (2554-2560 MHz). See 47 C.F.R. § 74.902(a).

channel Station WHR683,³⁰ HITN's proposed facilities would cause interference to all channels on which it is adjacent to Station WHR683. Channels D2, D3, and D4, which HITN proposed to operate on, are adjacent to channels C2, C3 and C4, which Station WHR683 is licensed to operate on.³¹ Therefore, HITN's proposed operation would have caused interference to Station WHR683 on all of its proposed channels. In responding to HITN's statement, the Division merely agreed with HITN's assertion that there was adjacent channel interference. The Branch and the Division never indicated that the deletion of the D1 channel from HITN's proposal would eliminate adjacent channel interference.³² It was HITN that contended that the idea of the deletion of one channel (D1) would resolve the interference problem with Station WHR683. Therefore, HITN's proffered amendment proposing to drop the D1 channel from its proposal would not eliminate interference to Station WHR683.

10. We need not consider further whether the Division erred in refusing to accept HITN's amendment deleting Channel D1 because HITN's application would still be defective even if the amendment was accepted. We also need not consider HITN's arguments concerning the *HITN Trenton* order because that argument also relates to whether the amendment should be accepted.

11. Finally, we reject HITN's argument that the reinstatement and partial grant of HITN's application would best serve the public interest. As noted, HITN's proposed operation would cause interference to Station WHR683. While we do not dispute that HITN's proposed programming could serve the public interest, it is incumbent upon applicants to present proposals that comply with the Commission's Rules. In this case, HITN has never submitted a technical proposal that would provide the necessary level of interference protection to Station WHR683. Accordingly, we conclude that the public interest would be served by affirming the dismissal of HITN's defective application.

IV. CONCLUSION AND ORDERING CLAUSES

12. We affirm the Branch's and the Division's conclusion that HITN's application was defective with regard to its interference considerations and would remain that way even if HITN's tendered amendment deleting Channel D1 was accepted. Consequently, we deny HITN's AFR.

13. ACCORDINGLY, IT IS ORDERED that pursuant to Sections 4(i) and 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(5) and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review filed by Hispanic Information and Telecommunications Network, Inc. on October 27, 2003 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁰ Petition at 2.

³¹ Channels D2 (2566-2572 MHz), D3 (2578-2584 MHz), and D4 (2590-2596 MHz) are adjacent to Channels C2 (2560-2566 MHz), C3 (2572-2578 MHz), and C4 (2584-2590 MHz). *See* 47 C.F.R. § 74.902(a). In other words, Channel D2 is immediately adjacent to Channels C2 and C3. Channel D3 is immediately adjacent to Channels C3 and C4. Channel D4 is immediately adjacent Channel C4.

³² *See* Branch Letter, Division Order.