

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

In the Matter of Application of)	
)	
HISPANIC INFORMATION AND)	File No. BPLIF-19951016AT
TELECOMMUNICATIONS NETWORK, INC.)	
)	
For a New Station Construction Permit/License in)	
the Instructional Television Fixed Service,)	
Channel Group D1-D4 in Trenton, New Jersey)	
)	

ORDER ON RECONSIDERATION

Adopted: January 5, 2005

Released: January 10, 2005

By the Commission:

I. INTRODUCTION

1. We have before us a petition for reconsideration filed by the Hispanic Information and Telecommunications Network, Inc. (HITN) on February 9, 2004.¹ HITN seeks reconsideration of a *Memorandum Opinion and Order*² affirming the October 16, 1997 dismissal by the Video Services Division (Division) of the former Mass Media Bureau³ of an application filed by the HITN to construct and operate an ITFS station on the D Channel Group in Trenton, New Jersey.⁴ For the reasons discussed below, we dismiss HITN's Petition.

II. BACKGROUND

2. On May 12, 1994, HITN filed an application seeking an authorization to construct an ITFS station at Trenton, New Jersey.⁵ On May 12, 1995, HITN amended its application by filing a supplemental interference analysis.⁶ HITN's amended application appeared on public notice as tendered for filing on November 9, 1995.⁷ The Commission's engineering staff reviewed the application and determined that the proposed operations would cause interference to receive sites licensed to Stations

¹ Petition for Reconsideration (filed Feb. 9, 2004) (Petition).

² Hispanic Information and Telecommunications Network, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 814 (2004) (*Commission MO&O*).

³ Letter from Barbara A. Kreisman, Chief, Video Services Division, Mass Media Bureau, FCC to Benjamin Perez, Esq., Abacus Communications Company (Oct. 16, 1997) (Dismissal Letter).

⁴ See FCC File No. BPLIF-19951016AT.

⁵ HITN prepared and filed this application simultaneously with and part of an application filed at the National Telecommunications and Information Administration.

⁶ HITN Minor Amendment to ITFS D – Group in Trenton, NJ (filed May 12, 1995)(Amended Application).

⁷ See ITFS Public Notice Report No. 23631A (rel. Nov. 9, 1995)

WLX250 and WLX823.⁸ As a result of this determination, on June 9, 1997, the Distribution Services Branch (Branch) of the former Video Services Division (Division), Mass Media Bureau dismissed HITN's application.⁹ The Branch cited co-channel and adjacent channel interference conflicts as the basis for the application's dismissal.¹⁰

3. On July 9, 1997, HITN requested reconsideration of the Branch's dismissal of its application.¹¹ HITN argued that the Branch incorrectly concluded that the HITN application failed to demonstrate interference protection to the receive sites of Stations WLX250 and WLX823.¹² In support of its non-interference claim, HITN referenced interference studies from its amended application (Exhibits B and C).¹³ Exhibit B is an adjacent channel interference study purporting to show the desired/undesired (D/U) ratios at Station WLX250's twenty receive sites. HITN concludes that the twenty receive sites meet the minimum 0 dB D/U ratio required by our Rules.¹⁴ Exhibit C purported to be a co-channel interference study that shows the D/U ratios of Station WLX823's seven receive sites. HITN concludes that six of the seven sites meet the minimum 45 dB D/U ratio required by our Rules.¹⁵ HITN asserted that it would pay for installation of an upgraded receive antenna at the remaining site (R6), to achieve a D/U ratio exceeding the required 45 dB.¹⁶

4. On August 4, 1997, the Branch denied HITN's First Petition.¹⁷ In reaching its decision, the Branch cited HITN's technical showing and found that interference would be caused to four receive sites licensed to Station WLX250.¹⁸ In addition, with regard to the WLX823 R6 receive site, the Branch determined that HITN had not identified an appropriate substitute antenna that would achieve the required D/U ratio. Therefore, HITN had not shown that an antenna upgrade would resolve interference to Station WLX823.¹⁹

5. On September 3, 1997, HITN sought further reconsideration of the Branch's dismissal of its application and denial of its First Petition.²⁰ In the alternative, HITN requested consideration of its Second Petition as an Application for Review under Section 1.115(b)(2)(iv) of our Rules.²¹ HITN in its

⁸ New Jersey Public Broadcasting is the licensee for Station WLX250 and WHYY, Inc. is the licensee for Station WLX823.

⁹ Letter from Clay C. Pendarvis, Acting Chief, Distribution Services Branch, Video Services Division, Mass Media Bureau, Federal Communications Commission (FCC) to HITN, Attn: Jose Luis Rodriguez (Jun. 9, 1997) (Dismissal Letter) at 1.

¹⁰ *Id.* citing 47 C.F.R. §§ 74.903(a)(1), (2).

¹¹ Petition for Reconsideration (filed Jul. 7, 1997) (First Petition).

¹² *Id.* at 2.

¹³ See First Petition, Exhibit B and C; See also Amended Application Studies 2 and 3.

¹⁴ See First Petition, Exhibit B; See also Amended Application Study 3.

¹⁵ See First Petition, Exhibit C; See also Amended Application Study 2. The non-compliant receive site (R6) is located at coordinates 40°-04"-51' N. Lat, 74°-59"-52' W. Long.

¹⁶ First Petition at 2.

¹⁷ Letter from Clay C. Pendarvis, Acting Chief, Distribution Services Branch, Video Services Division, Mass Media Bureau, FCC to Nancy Soto, Esq., HITN (Aug. 4, 1997) (Second Dismissal Letter).

¹⁸ *Id.* at 2. The undesired signal is greater than the desired signal at four WLX250 receive sites, therefore the D/U ratio is less than the required 0 dB.

¹⁹ Second Dismissal Letter at 1.

²⁰ Second Petition for Reconsideration (filed Sept. 3, 1997) (Second Petition).

²¹ *Id.* at 1.

Second Petition conceded that its interference study for Station WLX250 was flawed because it failed to use the correct technical configuration for Channel C2 licensed to Station WLX250.²² HITN included a revised interference study with its Second Petition.²³ The revised study contained a corrected technical configuration for the C2 channel. HITN, through numerous receive antenna upgrades for Station WLX250, concluded that it had resolved the interference concerns.²⁴ Several of HITN's proposed receive antenna upgrades require Station WLX250 to use twelve-foot dishes. HITN proposed a similar solution for Station WLX823's receive site R6.²⁵

6. On October 16, 1997, the Division denied HITN's Second Petition.²⁶ The Division concluded that HITN's Second Petition was repetitious in violation of Section 1.106(k)(3).²⁷ With regard to HITN's alternative request to treat its Second Petition as an application for review, the Division concluded that the Commission's rules prohibit applicants for review from raising questions of law or fact upon which the designated authority has been afforded no opportunity to pass.²⁸ On November 17, 1997, HITN filed an Application for Review.²⁹

7. On January 8, 2004, the Commission denied HITN's AFR.³⁰ We concluded: 1) HITN's proposal to delete one of the four requested D Group channels would not cure interference to Station WLX250;³¹ 2) HITN's "channel deletion" proposal was defective because it had not presented it previously;³² 3) HITN had failed to explain why it had not proposed a partial grant earlier;³³ 4) HITN had notice of the requirement to provide detailed information concerning the receive site antenna it proposed for Station WLX823's receive site R6;³⁴ and 5) HITN's argument that the Division applied a new requirement to HITN's application at the petition for reconsideration stage lacked merit.³⁵ On February 9, 2004, HITN submitted the instant Petition.

III. DISCUSSION

8. Section 1.106(b)(2) of the Commission's Rules³⁶ provides:

Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the

²² *Id.* at 1-2.

²³ *Id.* at Exhibit 1.

²⁴ *Id.* at 3.

²⁵ *Id.* at 3.

²⁶ Letter from Barbara A. Kreisman, Chief, Video Services Division, Mass Media Bureau, FCC to Benjamin Perez, Esq., Abacus Communications Company (Oct. 16, 1997) (Third Dismissal Letter).

²⁷ See *id.* at 1-2 citing A.G.P., Inc., *Memorandum Opinion and Order*, 11 FCC Rcd 4628, 4629 (1996).

²⁸ See Third Dismissal Letter at 2 citing 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(c).

²⁹ Application for Review (filed Nov. 17, 1997)(AFR).

³⁰ *Commission MO&O*.

³¹ *Id.*, 19 FCC Rcd at 816-817 ¶ 8.

³² *Id.* at 817 ¶ 9.

³³ *Id.* at 817 ¶ 10.

³⁴ *Id.* at 817-18 ¶¶ 11-13.

³⁵ *Id.* at 818 ¶ 14.

³⁶ 47 C.F.R. § 1.106(b)(2).

following circumstances are present:

- (i) The petition relies on facts which relates to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or
- (ii) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

A review of HITN's petition shows that HITN does not present any new facts or changed circumstances in its petition. Instead, HITN simply reargues matters that the Commission previously considered and rejected in ruling on its application for review or cites facts that it could have presented to the Bureau earlier. We summarily dismiss HITN's Petition to the extent that it rehashes arguments previously considered and rejected. It is well established that "rehearing will not be granted merely for the purpose of debating matters on which the tribunal has once deliberated and spoken."³⁷

9. To the extent HITN raises new arguments, we conclude that these arguments should not be considered because they are not based upon new facts or changed circumstances. For example, HITN contends that notwithstanding any defect in its application, the public interest supports at least a partial grant of its application.³⁸ HITN had every opportunity to make this argument before the Mass Media Bureau and in the AFR. We therefore dismiss the Petition to the extent it makes argument not presented in the AFR.

IV. CONCLUSION AND ORDERING CLAUSE

10. We dismiss the Petition because it seeks to relitigate issues we have previously decided without presenting new facts or circumstances or because it presents a new argument that should have been presented earlier. We reject HITN's argument that the Commission should have deemed HITN's application in the public interest and therefore granted. We therefore dismiss the Petition.

11. Accordingly, **IT IS ORDERED** that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Hispanic Information and Telecommunications Network, Inc. on February 9, 2004 **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁷ WWIZ, Inc., *Memorandum Opinion and Order*, 37 FCC 685, 686 ¶ 2 (1965), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965).

³⁸ Petition at 9.