

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

In the Matter of)	
)	
Paxson Communications License Company, LLC)	File No. BALCT-20020730ABO
(Assignor))	Facility ID No. 35512
)	
and)	
)	
Univision Communications, Inc.)	
(Assignee))	
)	
For Consent to the Assignment of the License for)	
Station KTFF(TV), Porterville, California)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2006

Released: March 2, 2007

By the Commission: Commissioner Copps issuing a statement.

1. By this *Memorandum Opinion and Order*, we deny an Application for Review filed by Kimberly Mayhew (Petitioner) seeking review of a February 7, 2003, letter ruling (“Grant Letter”) granting the application to assign KTFF(TV), Porterville, CA, (formerly KPXF(TV)) from Paxson Communications License Company, LLC (Paxson) to Univision Communications, Inc. (Univision).¹ The Bureau conditioned the grant upon compliance with any further order of the Commission requiring amendment or deletion of a Station Agreement for Overnight Programming, Use of Digital Capacity, and Public Interest Programming (Station Agreement) between Paxson and the Christian Network, Inc. (CNI).²

2. Under the Station Agreement, CNI has the right to program KTFF(TV)’s primary analog and digital channel from 1 am to 6 am, Eastern and Pacific Time, seven days a week. If, during the transition to digital television, the licensee decides to commence multicasting using 2 multicast channels, then the licensee must also make available a third digital channel for CNI’s exclusive use, so long as certain conditions are met. In her original Petition to Deny, the Petitioner argued that the Station Agreement violated, among other things, the Commission’s Right-to-Reject and Time Optioning rules, and was inconsistent with the Commission’s policies governing the transition to digital television and the

¹ Letter from W. Kenneth Ferree, Chief, Media Bureau, to John P. Feore, Jr., *et al.* (rel. Feb. 7, 2003). Univision and Paxson filed Oppositions on March 28, 2003 and April 2, 2003, respectively.

² The Bureau similarly granted, with the same condition, the unopposed applications to assign the licenses of WMPX(TV), Waterville, Maine, and WPXO(TV), Christiansted, Virgin Islands, from Paxson subsidiaries to CMCG Portland License, LLC. File Nos. BALCT-20021126ABH and BALCT-20021126ABL.

length of programming contracts.³ On March 10, 2003, the staff issued a letter requesting further information concerning several provisions of the Station Agreement.⁴

3. The Petitioner argues that it “was contrary to the Communications Act to grant the assignment rather than defer action pending” the staff review of the Station Agreement,⁵ and contends that the staff, in any case, did not make an affirmative determination that the public interest was served by granting the application. The Petitioner further maintains that the Station Agreement raises a substantial and material question of fact precluding grant of the application in this case. The Petitioner also contends that the staff could not bifurcate the proceeding on the basis that the Station Agreement and application did not raise any character issues, and challenges the precedent cited by the staff in approving bifurcation.

4. Paxson responds that the staff’s actions were consistent with previous cases in which the Commission deferred potential enforcement actions so long as it could make the basic qualifications findings, and that the Commission has also applied this policy where the issues raised related to an assignee, as opposed to an assignor. Univision argues that the staff did make an affirmative public interest finding and that “[t]o the extent the Commission ultimately provides guidance to the parties on any necessary modifications of the [Station Agreement], that guidance pertains to neither the qualifications of the parties, nor to the acceptability of the proposed assignment.”⁶ Univision contends that the Station Agreement was tangential to the application since it would have continued to exist regardless of whether the application was granted.

5. The Commission must formally designate an application for hearing only when, based on the totality of the evidence, there is a “substantial and material question of fact” concerning whether grant of the applications would serve the public interest.⁷ As the staff stated in the Grant Letter, it “reviewed the application and related pleadings and find [s] that the applicants are fully qualified and that grant of the assignment applications are in the public interest, convenience, and necessity.” We agree that, in this case, the petition to deny did not raise a substantial and material question of fact as to whether grant of the applications would be in the public interest. The Commission “is usually hesitant to designate a renewal or assignment application for evidentiary hearing on grounds of technical or legal violations in the absence of misrepresentation or lack of candor,” or absent a showing that the number, nature, and extent of the violations suggest that the applicant cannot operate the station in the public interest.⁸ The

³ 47 C.F.R. §§ 73.658(e), 73.658(d), and 73.624. The Petitioner also alleged that the Station Agreement violated Section 73.1150(a) of the Commission’s rules, which prohibits an assignor from retaining a reversionary interest in a license. 47 C.F.R. § 73.1150(a). The staff resolved this issue in the Grant Letter, finding that the Petitioner had failed to raise a substantial and material question of fact regarding whether Paxson held a “level of influence or control over CNI sufficient to consider the continuation of the Station Agreement as a reversionary interest in KPXF(TV).” Grant Letter at 5.

⁴ Letter from W. Kenneth Ferree, Chief, Media Bureau, to John P. Feore, Jr., *et al.* (rel. Mar. 10, 2003).

⁵ Application for Review at 1. Paxson has challenged the Petitioner’s standing to file this Application for Review, arguing that the Petitioner “has no connection to the [Station Agreement], is not injured by the [Station Agreement], and cannot benefit from denial” of the assignment application. Opposition to Application for Review at 2. The staff, however, determined that the Petitioner had standing since “she declares that she resides within the viewing area of KPXF(TV), and regularly views the station.” Grant Letter at 1. *See also Office of Communications for the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966); *Chet-5 Broadcasting, L.P.*, 14 FCC Rcd 13041 (1999). We affirm the staff’s determination and find that the Petitioner is “aggrieved” within the meaning of the Commission’s rules.

⁶ Univision Opposition at 3.

⁷ 47 U.S.C. § 309(d)(2); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1562 (D.C. Cir. 1988).

⁸ *Duchossois Communications Co. of Maryland*, 10 FCC Rcd 6688 (1995) (¶ 28).

petitioner's allegations that Paxson violated the network/affiliate agreement rules do not raise a substantial and material fact regarding misrepresentation or lack of candor. Even assuming that the Station Agreement did violate the Right-to-Reject and Time Optioning Rules, as asserted by the Petitioner, such violations would not raise a character issue in this case. A proceeding examining the Commission's network-affiliate rules remains pending, and it was unclear at the time the parties entered into the Station Agreement to what extent, if any, a network could condition an affiliate's right to reject programming provided by the network.⁹ Consequently, even if we were ultimately to conclude that the parties violated the Right-to-Reject and Time Optioning Rules, that would not reflect adversely upon Paxson's truthfulness or reliability as a licensee or otherwise establish that it lacks the qualifications to operate a station in the public interest.¹⁰

6. We also disagree that the existence of an ongoing inquiry by necessity raises a "substantial and material question of fact" concerning whether the grant itself serves the public interest. Bifurcation is a potential procedural remedy in cases, such as this, which raise complex and important policy issues, but do not call into question the character qualifications of the applicants.¹¹ As previously stated by the Commission, "[i]t is well-settled that the Commission may grant an assignment application despite the potential for subsequent enforcement action, if it can make the necessary qualifications findings."¹² We therefore hold that the Bureau properly bifurcated the issues raised regarding compliance with our station affiliation rules from those relating to basic licensee qualifications.

7. Accordingly, IT IS ORDERED, That the Application for Review filed by Kimberley Mayhew IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹ See *Review of the Commission's Regulations Governing Programming Practices of Networks and Affiliates*, 10 FCC Rcd 11951, 11963 (1995).

¹⁰ See *Policy Regarding Character Qualifications*, 102 F.C.C.2d 1179 (1986).

¹¹ See, e.g., *Stockholders of Infinity Broadcasting Corporation*, 12 FCC Rcd 5012, 5015-16 n.1 (1996); *KRTH(FM)*, 9 FCC Rcd 7112 (1994); *KLUV(FM)*, 10 FCC Rcd 4517 (MMB 1995); *Mountain Signals, Inc.*, 6 FCC Rcd 2874 (MMB 1991).

¹² *FM Broadcasters of Douglas County*, 10 FCC Rcd 10429, 10430 (1994)

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Paxson Communications License Company, LLC (Assignor) and Univision Communications, Inc. (Assignee) For Consent to the Assignment of the License for Station KTFF(TV), Porterville, California (File No. BALCT-20020730ABO, Facility ID No. 35512)*

While I support today's decision, I would have preferred an outcome whereby the Commission resolved all issues simultaneously with the grant of assignment that was made back in 2003. The petitioner has raised genuine questions about, among other things, possible violations of the right to reject rule and time option rule. Yet by segregating the license transfer from questions about the licensee's compliance with our rules, analysis of serious issues is put off and denied timely resolution. So I urge the Commission to move forward and resolve these underlying questions—without further delay.