

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

In the Matter of)	
)	
Powell Meredith Communications Company)	File No. BDISTTL-20060802ANR
)	Facility ID No. 16657
Application for Modification to Low Power)	
Television Station KBFY-LP, Fortuna, Arizona)	

MEMORANDUM OPINION AND ORDER

Adopted: September 27, 2016

Released: September 28, 2016

By the Commission: Commissioner Clyburn concurring.

I. INTRODUCTION AND BACKGROUND

1. For the reasons set forth below, we dismiss in part as moot and otherwise deny a pleading dated September 25, 2012 entitled “Petition for Reconsideration and Request for a FULL COMMISSION review with the current FCC Commissioners” (Application for Review), filed by Amy Meredith of Powell Meredith Communications Company (collectively, PMCC).¹ The Application for Review is the latest in a series of pleadings by PMCC challenging the 2007 rescission by the Video Division of the Media Bureau (Division) of its grant earlier that year of the above-captioned displacement application (Application) for Low Power Television (LPTV) Station KBFY-LP, Fortuna, Arizona (Station).²

2. On January 19, 2007, the Division granted PMCC’s Application to modify its Channel 41 Station authorization to operate on Channel 53 at Henderson, Nevada, more than 375 kilometers from the Station’s authorized community of license of Fortuna, Arizona. On July 17, 2007, the Division rescinded the grant, explaining that “[a]lthough our preliminary review of this application indicated that a facility could technically operate as proposed at Henderson, it is now apparent that such a move does not comply with the Commission’s minor-change and displacement application rules because it shows no 74 dBu overlap with the station’s currently authorized facility.” In so acting, the Division noted that PMCC’s claimed inability to obtain Mexican clearance of a proposal that would comply with those rules did not justify its noncompliance with them.³

3. PMCC filed a Petition for Reconsideration and request for reinstatement on August 16, 2007, arguing that the Division lacked authority to rescind its Application grant six months after the grant appeared on public notice. The Division denied the Petition on May 24, 2010, holding that the initial

¹ Though mistitled as a petition for reconsideration, in light of PMCC’s reference therein to a request for “full Commission review” and given the procedural history, which has already included multiple pleadings by PMCC, we will consider the pleading as an application for review by the Commission.

² Broadcast Applications, Public Notice, Report No. 46408 (rel. Jan. 24, 2007).

³ Letter from Hossein Hashemzadeh, Associate Chief, Video Division, Media Bureau to Powell Meredith Communications Company (rel. Jul. 17, 2007) (*Rescission Letter Order*) at 1-2, citing Section 73.3572(a)(4)(ii) of the Commission’s rules, 47 C.F.R. 73.3572(a)(4)(ii), which allows an LPTV station displaced by the operation of a full power television station to file a displacement application, provided that the proposal contemplates operation of the displaced station within its authorized protected service area; *see also* Broadcast Applications, Public Notice, Report No. 26532 (rel. Jul. 20, 2007).

grant was made in error because the PMCC proposal violated the aforementioned rules.⁴ The Division rejected PMCC's argument that PMCC had not been provided the "rights" afforded other broadcasters, concluding that the Station was treated no differently than any authorization holder in similar circumstances. It encouraged PMCC to file a compliant displacement application in the upcoming filing window scheduled for July 2010.⁵

4. On May 26, 2010, PMCC filed a letter again requesting reinstatement of the Application's grant. On September 18, 2012, the Division dismissed that request as moot. The Division explained, "[t]he Commission required all existing LPTV stations in the 700 MHz band (Channels 52-69) to cease operations as of December 31, 2011, and those channels are not available for new facilities, such as you have proposed." The Division noted, however, that "[y]ou may file a new application for displacement that complies with the Commission's Rules."⁶

5. In its Application for Review, PMCC raises several challenges to the Division actions, questioning both the legality of the 2007 rescission, and the authority of the Division to dismiss, as moot, the May 26, 2010, request for reinstatement of the grant of the Application.⁷ PMCC argues that the Division's "harsh and illegal actions" were the result of PMCC being female-owned,⁸ that "PMCC bought expensive equipment, signed leases and started construction only to have the grant rescinded,"⁹ and that rescission months after the fact violated Commission "policy [not] to rescind any type of grant that was not currently interfering with any other facility."¹⁰ PMCC requests that it "be afforded the same respects [sic] and treatment as the male owned LPTV's were given in the 2006 and 2007 time period."¹¹

II. DISCUSSION

6. In the Order cited in the Division's *Mootness Letter*, the Commission formally announced in 2011 that all low power television stations operating on out-of-core channels 52-69 must cease operations on those channels by December 31, 2011. As stated in that letter, in view of that Commission action, we are unable to grant the original relief requested here – displacement of the Station to channel 53 in Henderson, Nevada - because that channel is no longer available for television service.¹² Accordingly, even if the Division had not rescinded its earlier grant of the Application, PMCC would have been required to cease operation on Channel 53 by that December 31, 2011 deadline. In light of this

⁴ Letter from Hossein Hashemzadeh, Associate Chief, Video Division, Media Bureau to Powell Meredith Communications Company (rel. May 24, 2010) at 2 (subsequent citations omitted).

⁵ *Id.* at 2.

⁶ Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau to Powell Meredith Communications Company (rel. Sep. 18, 2012) at 1 (citations omitted) (*Mootness Letter*). See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10743 (2011) (*LPTV DTV Second Report and Order*). Low power licensees had first been notified in 1997 that they would eventually need to clear this band. *Id.* at 10743-44.

⁷ Application for Review at 3 ("This dismissal of a full commission review by the LPTV department and [the Deputy Division Chief] should prove my point, he did not [have] authority to dismiss the Petition for full Commission review . . .").

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *LPTV DTV Second Report and Order* at 10743-48.

fact, we need not consider PMCC's remaining arguments and hereby dismiss them as moot.¹³ As the Division noted to PMCC in 2012, PMCC may file a new displacement application that complies with our rules on a channel available for broadcast operations, when and if a future displacement window opens, and if the application is otherwise grantable.

III. ORDERING CLAUSE

7. Accordingly, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended and Section 1.115(g) of the Commission's Rules,¹⁴ the September 25, 2012 "Petition for Reconsideration and Request for a FULL COMMISSION review with the current FCC Commissioners," treated as an Application for Review, is DISMISSED in part as moot and is otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹³ At page 3 of its Application for Review, PMCC takes issue with the Division's dismissal, as moot, of PMCC's May 26, 2010 submission, rather than deferring to action on it by the Commission. This argument is also mooted by our action here, affirming the Bureau's dismissal for the reasons stated in its *Mootness Letter*. With regard to PMCC's claim of gender discrimination, it has provided no evidence to support that allegation. As the Division noted in 2010, in applying the minor change and displacement application rules, it treated PMCC the same as similarly-situated parties at the time, which were subject to the same rules. *See Powell Meredith Communications Co.*, Memorandum Opinion and Order, 31 FCC Rcd 4300, 4301 (MB 2016) (dismissing PMCC's request for review of staff's reconsideration of its denial of a request for further tolling of a radio construction permit *inter alia*, for lack of any evidence of gender-based or other discrimination).

¹⁴ 47 USC §155(c)(5); 47 C.F.R. § 1.115(g).