



Federal Communications Commission
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Re: Petitions for Reconsideration
MB Docket No, 03-15, RM 9832

Gentlemen:

On June 12, 2009, pursuant to statutory mandate, full power television stations completed their transition from analog to digital service, and the full power analog television service terminated.¹ At that time, there remained pending petitions filed by Acme Communications, Inc. ("Acme"), Television Capital Corporation of Portland ("TCC") and Ramar Communications II,

¹ 47 U.S.C. §309 Note.

Ltd. (“Ramar”) seeking reconsideration of the Commission’s decision, in its 2004 Second DTV Periodic Report and Order (the “Second DTV Periodic Order”),² to terminate proceedings through which the petitioners here either sought new full power analog television allotments, or changes to an existing analog allotment. We dismiss as moot these petitions for reconsideration of the Second DTV Periodic Order because the proceedings underlying these petitions seek an analog authorization which we are statutorily prohibited from issuing.³

Specifically, Ramar and TCC seek reconsideration of the Second DTV Periodic Order’s directive that all pending petitions for a new full power analog television allotment, or changes to an existing allotment, in which the agency had not yet issued a Notice of Proposed Rule Making be dismissed.⁴ When the Commission adopted the Second DTV Periodic Order, TCC had on file an application for a construction permit for a new analog full service television station at Portland, Oregon, and an associated rule making proceeding to change the proposed new station’s allotted channel.⁵ Similarly, Ramar had pending a petition for rulemaking to change the community of license of analog station KTEL-TV from Carlsbad to Moriarty, New Mexico.⁶ The FCC had not issued a Notice of Proposed Rule Making with respect to either the TCC or the Ramar petitions before adoption of the Second DTV Periodic Order.

With respect to Acme, prior to adoption of the Second DTV Periodic Order, the staff had already dismissed Acme’s petition for rule making for a new analog allotment at Lexington, Kentucky without having issued a Notice of Proposed Rule Making.⁷ Acme filed a petition for reconsideration of this action, which remained pending at the time the Commission adopted the Second DTV Periodic Order. In the Second DTV Periodic Order the Commission dismissed all pending petitions for reconsideration of dismissals of rule making petitions for new full power analog television allotments that had not advanced to the Notice stage, thus dismissing the Acme petition for reconsideration.⁸ Acme seeks reconsideration of the Second DTV Periodic Order’s

² *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order. 19 FCC Rcd 18279 (2004).

³ The Media Bureau takes this action pursuant to the authority delegated to it under Section 1.429(l) of the Commission’s Rules. 47 C.F.R. § 1.429(l). That section provides that the relevant bureau may dismiss a petition for reconsideration of a Commission action if that action “plainly do[es] not warrant consideration by the Commission.” *Id.* In this case, the fact that the Communications Act prohibits the Commission from granting the requested relief renders the petitions for reconsideration moot and thus plainly does not warrant Commission consideration.

⁴ *Second DTV Periodic Order* at 18307.

⁵ Subsequently, the Media Bureau dismissed the TCC application, File No. BPCT-19960920WH, because the proposed channel 40 operation did not comply with the Commission’s interference and technical rules. In the same letter, the Bureau noted the dismissal of the related petition for rulemaking. *See* Letter from Clay Pendarvis, Associate Chief, Video Division, Media Bureau to Television Capital Corporation of Portland and Sinclair Communications of Portland, Inc. (dated July 19, 2007).

⁶ *See* Petition for Rulemaking MB 03-262.

⁷ *See* Letter from Clay Pendarvis, Associate Chief, Video Division, Media Bureau to Vincent A. Pepper, Counsel for ACME Communications, Inc. et al (dated Aug. 5, 2002). In that letter, the Media Bureau dismissed the Acme petition for rule making on the grounds that the proposal therein failed to meet the interference protection requirements for digital stations and allotments. The Second DTV Periodic Order review dismissed Acme’s petition for reconsideration of the Bureau dismissal letter.

⁸ *Second DTV Periodic Order* at note 138. The Second DTV Periodic Order mandated the dismissals of certain pending rule making proceedings in an effort to create a stable database in order to facilitate the digital channel election process and the technically challenging development of a new DTV Table of

dismissal of its petition for reconsideration. Ultimately, underlying these pleadings, TCC, Acme and Ramar all seek changes to the analog table of allotments which, by statute, no longer exists.

In the Balanced Budget Act of 1997 Congress added a new section to the Communications Act of 1934, as amended (the “Act”), prohibiting the FCC from renewing analog full power television broadcast licenses to authorize operation beyond a specified digital television transition date, subject to extension under certain circumstances.⁹ Later, Congress again amended the Act, adding a provision obligating the Commission to take affirmative steps to ensure that all analog full power television stations cease broadcasting, and to terminate their licenses, by the June 12, 2009 digital television transition deadline.¹⁰ Specifically, the statute mandated that the Commission “require cessation of broadcasting by full-power stations in the analog television service” by the deadline.¹¹ Accordingly, because these statutory provisions preclude us from issuing the analog authorizations ultimately sought, we **DISMISS** as moot the Petitions for Reconsideration of the Second DTV Periodic Order filed by Acme Communications, Inc., Television Capital Corporation of Portland and Ramar Communications II, Ltd.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Allotments. It also announced a freeze on the filing of new petitions for rulemaking for new digital television allotments. That freeze remains in effect.

⁹ Pub. L. No. 105-33, § 3003 (1997), codified as 47 U.S.C. §309(j)(14)(A). The Balanced Budget Act of 1997 set December 31, 2006 as the digital television transition deadline.

¹⁰ The Digital Television Transition and Public Safety Act of 2005 (DTV Transition Act), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 3002(b)(1) (2006). In the DTV Transition Act Congress extended the digital transition deadline to February 17, 2009, Pub. L. No. 109-171, § 3002(a)(1), and then to June 12, 2009 in the DTV Delay Act, Pub. L. No. 111-4, § 3002(a)(1), both codified as 47 U.S.C. §309 Note.

¹¹ DTV Transition Act, § 3002(b)(2).