

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

In re Applications of

RKO GENERAL,  
INC. (KHJ-TV)  
Los Angeles, California

Docket No. 16679  
File No. BRCT-58

For renewal of Broadcast License

FIDELITY  
TELEVISION, INC.  
Norwalk, California

DOCKET NO. 16680  
File No. BPCT-3655

For Construction Permit for  
New Television Broadcast  
Station

WILLIAM G. SIMON *et al.*  
Transferors

and

File No. BTCCT-870420KL

THE WALT DISNEY COMPANY  
Transferee

For Consent to Transfer of File Nos. BPCT-870420KJ,  
Control of License for KHJ-TV BLCT-870420KH,  
and Related Applications BLCT-870420KI

LOS ANGELES File No. BPCT-881028KG  
TELEVISION,  
A CALIFORNIA LIMITED  
PARTNERSHIP

Application for Construction  
Permit for a New Television  
Station at Channel 9, Los  
Angeles, California

**ORDER**

Adopted: January 13, 1989; Released: January 26, 1989

By the Commission: Commissioner Dennis dissenting  
and issuing a separate statement.

1. Before the Commission are: (1) a Petition for Acceptance of Application filed October 28, 1988 by Los Angeles Television, A California Limited Partnership (LATV); and (2) a Joint Opposition to Petition for Acceptance of Application filed November 10, 1988 by RKO General, Inc., Fidelity Television, Inc., and The Walt Disney Company. LATV seeks authorization to construct

a television station to operate on channel 9 in Los Angeles, California, which is now used by KHJ-TV, a station controlled by Disney.

2. LATV notes that under the Commission's rules the license terms for California television stations ordinarily expire on December 1, 1988. 47 C.F.R. § 73.1020(a). Thus, under ordinary circumstances the licensee of KHJ-TV would have been required to file a renewal application by August 1, 1988 and mutually exclusive applicants for construction permits could have been filed by November 1, 1988. 47 C.F.R. §§ 73.3516(e), 73.3539(a). LATV contends that acceptance of its application is appropriate under these rules.

3. Additional considerations, however, affect the applicability of these rules to KHJ-TV. For 23-years, KHJ-TV was the subject of a comparative renewal proceeding involving its former licensee, RKO, and Fidelity, a mutually exclusive applicant for a construction permit. During the period that the station was in hearing, established Commission policy suspended the filing of renewal applications by RKO and foreclosed the filing of mutually exclusive applications for construction permits. *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 662-64 (D.C. Cir. 1984).

4. On April 20, 1987, RKO and Fidelity proposed to terminate the hearing proceeding by means of a settlement agreement involving the transfer of the station to Disney. As part of the settlement, the parties asked the Commission to make any order approving the settlement and terminating the hearing proceeding effective upon the parties' notification of closing under the agreement "to protect the status of RKO and Fidelity in the Channel 9 application proceeding . . ." Petition for Approval of Settlement Agreement and Related Relief filed April 20, 1987 at 19. The agreement itself provided for the closing to occur on the tenth day after release of the Commission order approving the agreement -- but that if the closing did not occur by March 31, 1988, Disney could defer the closing until December 15, 1988. Agreement for Settlement, Acquisition and Merger § 10.1(i).

5. The manifest intent of this provision was to ensure that, if the Commission approved the settlement between March 31, 1988 and the end of the license term, Disney would not be forced into a situation where it would receive a license with only a few months remaining before it expired. Disney, which agreed to pay 324 million for the station, was evidently concerned that, if it had held the license only for a short period, this would be insufficient to enable it to establish a meritorious broadcast record and therefore earn entitlement to a renewal expectancy in the event that mutually exclusive applications for channel 9 were filed. It appears that if the Commission declined to give effect to the deferral provision and tried to force a closing before the end of the license term, Disney would not have been required, under the terms of the parties' agreement, to go through with the settlement. As a result, the important benefits to the public interest which the Commission found in the settlement would be lost. Agreement for Settlement, Acquisition and Merger § 8.1.4(c). Disney's concern for protecting its position is both understandable and reasonable, especially in view of the fact that Disney was prepared to run on a record of just a few months, if the closing had occurred as late as March, 1988.

6. The Commission approved the settlement on August 19, 1988. *RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd 5057 (1988), appeal docketed sub nom. *Los Angeles Television A California Limited Partnership v. FCC*, No. 88-1673 (D.C. Cir. Sept. 16, 1988). In approving the agreement, the Commission specifically approved the parties' request that the action would become effective with respect to the parties' hearing rights on notification of closing. 3 FCC Rcd at 5066 n.30. The parties closed on December 2, 1988, and Disney received a license that will expire December 1, 1993.

7. Additionally, in approving the agreement, the Commission rejected an argument by LATV that it should be permitted to file an application for a construction permit mutually exclusive with the renewal application for KHJ-TV. 3 FCC Rcd at 5064 ¶¶ 48-49. In this regard, footnote 26 of the memorandum opinion and order originally read as follows:

We note that LATV will have an opportunity to apply for this frequency when the license term for California TV stations expires, which will occur on December 1, 1988. 47 C.F.R. § 73.1020.

8. That footnote did not reflect the possible operation of the deferral provision in the settlement agreement, which provision became relevant once the Commission's action was delayed, as it was here, past March 31, 1988. The parties questioned the wording of the footnote, in light of the deferral provision in their contract, immediately after release of the memorandum opinion and order approving the settlement. Letter from Richard E. Wiley (counsel for The Walt Disney Company) to H. Walker Feaster, III, Acting Secretary FCC (Aug. 26, 1988).

9. Upon reviewing the matter, the Commission concluded that its intent was to give full effect to the parties' settlement (including the closing provisions, as expressed in footnote 30) and that the failure of footnote 26 to reflect this intent was an oversight. In other words, if the Commission had specifically focused, in the August 19, 1988 order, on the deferral provision, it would not have affected the Commission's decision to approve the settlement agreement. On September 6, 1988, the Commission issued an erratum correcting footnote 26 to read:

We note that LATV will have an opportunity to apply for this frequency when the license term for California TV stations next expires after termination of this hearing proceeding. 47 U.S.C. § 307(c); 47 C.F.R. §§ 73.1020, 73.3516(e), 73.3539(a).

*RKO General, Inc. (KHJ - TV)*, FCC 88-298 (Sept. 6, 1988).

10. LATV then petitioned the Commission to set aside the erratum, arguing that the Commission should not insulate KHJ-TV from comparative challenge for an additional five years. In denying LATV's petition, the Commission reaffirmed that it intended to preclude the filing of competing applications for channel 9 (under circumstances in which the deferral provision became operative) and that there were ample public interest reasons for not "opening the window" to comparative challengers at that time. We stated that approval of the settlement would further the strong public interest in resolving the comparative renewal proceeding --which threatened to con-

tinue for many years to come -- so that RKO could withdraw as a licensee and an unquestionably qualified licensee able to devote its full resources to broadcasting could take over without a cloud of uncertainty hanging over its head. We found that opening the window to new applicants would (by undermining the settlement and prolonging the proceeding) frustrate our ability to achieve these strong public interest benefits. We also found that the opportunity for LATV and others to file for channel 9 after an additional license term sufficiently protects the public against any possible detrimental impact of the settlement and gives adequate protection to LATV's procedural rights. We found that this approach was consistent with established Commission policy. (Indeed, if there had been no settlement, the pendency of the hearing proceeding would have continued to bar LATV from filing an application, as was held in *City of Angeles*.)

11. In view of all of these considerations, LATV's petition for acceptance of application is without merit and its application is unacceptable for filing and is dismissed.

12. ACCORDINGLY, IT IS ORDERED, That the Petition for Acceptance of Application filed October 28, 1988 by Los Angeles Television, A California Limited Partnership IS DENIED and that the attached application for a construction permit (File No. BPCT-881028KG) IS DISMISSED with prejudice.

#### FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary

#### DISSENTING STATEMENT OF COMMISSIONER PATRICIA DIAZ DENNIS

In Re: *RKO General, Inc. (KHJ-TV)*, Los Angeles, California For Renewal of Broadcast License, Docket No. 16679, File No. BRCT-58.

I respectfully dissent for the reasons stated in my dissent in *RKO General, Inc. (KHJ-TV)*, 3 FCC Rcd 6242, 6243 (1988). The FCC should have followed normal Commission practice by requiring The Walt Disney Company to complete its acquisition of KHJ-TV promptly and then file a renewal application. At that point, interested parties could have filed petitions to deny or competing applications, and the normal statutory process could have resumed.

Once again, however, the majority chooses to short-circuit the Commission's renewal process. In its zeal to approve the KHJ settlement and end the RKO hearing, the majority has built a house of cards that flouts the Commission's rules, policy and precedent. I am willing to reform our comparative renewal process; I am not willing to ignore it.