

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re the Matter of:)	
)	
Auction of Construction Permits for Low Power	)	AU Docket No. 19-61
Television and TV Translator Stations Scheduled	)	GN Docket No. 12-268
For September 10, 2019	)	MB Docket No. 16-306

COMMENTS OF TVC NY LICENSE LLC IN SUPPORT OF AUCTION INTEGRITY

TVC NY License LLC (“TVC”), by its attorneys, hereby submits its Comments in response to the Public Notice released in the above-captioned proceedings on March 29, 2019.¹ TVC offers these Comments in order to support the integrity of the Commission’s processes so that Auction 104 is not hijacked by improper, false applications which, under ordinary circumstances, would have been dismissed by the Commission as unacceptable for filing under its processing rules and procedures. TVC urgently requests that the Commission preserve the public interest in candid construction permit applications that comply with express FCC rules by promptly acting upon pending informal objections, and dismissing as appropriate, the following two applications of Venture Technologies Group, LLC (“VTG”) for New York, New York: LMS File No. 0000054813 (WNJJ-LD, Facility ID 167314) (the “VTG Channel 30 Application”) and LMS File No. 0000054804 (W34DI-D, Facility ID 127812) (the “VTG Channel 31 Application”). They are two of the five “applications” in MX Group 51.²

TVC, which is the licensee of WNYN-LD, New York, New York (Facility ID 74305), has been serving New York City with Spanish-language broadcast television services for more

¹ See *Auction of Construction Permits for Low Power Television and TV Translator Stations Scheduled for September 10, 2019; Comment Sought on Competitive Bidding Procedures for Auction 104*, Public Notice, DA 19-229, AU Docket No. 19-61, GN Docket No. 12-268, MB Docket No. 16-306 (Mar. 29, 2019) (“Public Notice”).

² See *id.*, Attachment A.

than 17 years. TVC is owned and controlled by a long-time Latino broadcaster. WNYN-LD historically broadcast on Channel 39. As a consequence of the broadcast incentive auction (Auction 1000), WNYN-LD was displaced.³ After extensive study by its consulting engineers, TVC determined that it could move WNYN-LD's broadcasting operations to Channel 29 on a temporary basis during the pendency of the post-incentive auction transition and while it awaited processing of its displacement application seeking authority to relocate to Channel 30 on a permanent basis. With considerable effort and expense, TVC successfully applied for, and obtained, special temporary authority ("STA") to broadcast on Channel 29.⁴ With no material disruption of its operations, WNYN-LD has been broadcasting on Channel 29, continuing to serve New York City with its valuable Spanish-language broadcast service. Its application for permanent post-incentive auction facilities for Channel 30, LMS File No. 0000048135, has been placed in MX Group 51. If WNYN-LD does not survive the Commission's reallocation of the 600 MHz band and repacking of the remaining TV bands, an established and important Spanish-language broadcast service – as well as an experienced minority-owned and -controlled broadcaster – will be lost.

MX Group 51 includes five applications, with four applicants. Three of the applications are for Channel 30, including TVC's application. The other two Channel 30 applicants are New York Spectrum Holding Company, LLC ("NYSHCO"), with which TVC entered into a settlement, and VTG, which refused to settle with TVC and NYSHCO for Channel 30. The other two applications in MX Group 51, filed by K Licensee, Inc. ("K Licensee") and VTG, are for Channel 31 construction permits.

³ See *id.* at ¶ 3.

⁴ See LMS File No. 0000068252.

As demonstrated in these Comments, substantial evidence has been submitted to the Commission establishing that the operations proposed in both the VTG Channel 30 Application and the VTG Channel 31 Application would violate the Commission's rules and policies, as well as conflict with recent Commission precedent relating to circumstances extremely similar to those presented here. Accordingly, these applications should not have been accepted for filing, and thus, currently should not be included in MX Group 51. Notably, dismissal of VTG's two applications, as has been requested already by NYSHCO and K Licensee, would resolve the purported mutual exclusivities in MX Group 51, and thereby allow the grant of every compliant application currently in MX Group 51. Such action, therefore, would advance the public interest by allowing multiple existing broadcast television services – including WNYN-LD's long-standing Spanish-language service – to remain on the air. Such action also would comply with the Congressional directive that the Commission, when in the public interest to do so, “use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.”⁵

The VTG Channel 30 Application

Attachment No. 1 to these Comments are copies of NYSHCO's Informal Objection to the VTG Channel 30 Application and NYSHCO's subsequent Reply to Response to Informal Objection, which establish that the VTG Channel 30 Application:

- Proposes a site move of more than 43 miles (70 kilometers) in violation of the limit of 10 miles (16.1 kilometers) imposed by §73.3572(a)(4)(i) of the Commission's rules for such minor change applications for analog stations (VTG's FCC records are unclear as to when it may have converted this station to digital operations);
- Violates the restriction in §74.787(a)(4) of the Commission's rules that a displacement application may not propose a transmitter site that is located more than 30 miles (48 kilometers) from the reference coordinates of the station's current community of license

⁵ 47 U.S.C. §309(j)(6)(E).

(the VTG Channel 30 Application proposes a transmitter site that is 46.5 miles, or 74.8 kilometers, away from the coordinates of Port Jervis, New York, WNJJ-LD's initial community of license);⁶

- Proposes the latest in a series of moves for WNJJ-LD which, when added to the previous moves, would result in the station's transmitter site being located approximately 48.2 miles (77.6 kilometers) away from the location of its initially-authorized transmitter site;⁷ and
- Proposes a location that would violate the explicit condition in WNJJ-LD's initial authorization that the "authorization is subject to the condition that any future modification will not result in a relocation within 121 km of the top 125 markets as described in Public Notice of Auction 81."⁸

The VTG Channel 31 Application

Attachment No. 2 to these Comments is a copy of the K Licensee Informal Objection to the VTG Channel 31 Application, which establishes that this application:

- Violates the restriction in §74.787(a)(4) of the Commission's rules that a displacement application may not propose a transmitter site that is located more than 30 miles (48 kilometers) from the reference coordinates of the station's current community of license (the VTG Channel 31 Application proposes a transmitter site that is approximately 57 miles, or 91.7 kilometers, away from the coordinates of Port Jervis, New York, W34DI-D's initial community of license);⁹
- Proposes the latest in a series of moves for W34DI-D which, when added to the previous moves, would result in the station's transmitter site being located 58.51 miles (94.16 kilometers) away from the location of its initially-authorized transmitter site;¹⁰ and
- Proposes a location that would violate the explicit condition in W34DI-D's initial authorization that the "authorization is subject to the condition that any future

⁶ See NYSHCO Informal Objection, p. 3.

⁷ See *id.*

⁸ See VTG Response to Informal Objections, p. 5 (Feb. 1, 2019) (admitting to the existence of this condition); see also *Notice and Filing Requirements Regarding July 31 through August 4, 2000 Limited Low Power Television/Television Translator/Class A Television Auction Filing Window*, Public Notice, Report No. AUC-00-81-A (Auction No. 81), DA 00-1383, p. 2 (June 23, 2000) (restricting the filing window to new low power television stations proposing transmitter sites located at least 121 kilometers (75 miles) outside of the 125 largest U.S. cities in part "to provide additional opportunities for low power TV and TV translator service in those rural areas of the country where there is relatively less free over-the-air television service").

⁹ See K Licensee Informal Objection, p. 3-4.

¹⁰ See *id.*

modification will not result in a relocation within 121 km of the top 125 markets as described in Public Notice of Auction 81.”¹¹

VTG filed its Response to Informal Objections, attempting to refute these Informal Objections (and a third objection which is not relevant to MX Group 51). TVC asks that the Commission make a decision on the merits of the positions taken by these parties. It is without dispute that VTG has played a high-stakes game of leapfrog in order to move its LPTV stations from their intended service to various small communities into New York City, one of the most valuable media markets in the world. TVC urges the Commission to view VTG’s activities in light of its recent order and consent decree in *DTV America*:

The Licensees’ pattern of repeated station moves occurred as follows: (1) filing of a construction permit to relocate the station within 30 miles of its current licensed site, which site often would be located in an empty field, parking lot, or base of an existing tower; (2) upon grant of the construction permit, the Licensees would construct the facilities using equipment that it did not intend to leave in place permanently; (3) the Licensees would file a license application; (4) following grant of the license application, the Licensees would apply for special temporary authority to be silent on the ground that the station could not continue to transmit a broadcast signal “due to reasons beyond the applicants control,” at which point the Licensees would remove the equipment from the site and file for a new construction permit at a location up to 30 miles from the location set forth in the recently granted license. **Licensees employed these practices repeatedly for many of the Stations, with the ultimate intent of moving each such station more than 30 miles from the station’s originally licensed site.** These practices had the ultimate effect of relocating stations, many of which were applied for during the 2009 Rural LPTV Filing Window, from rural unserved and underserved areas with low population densities, to more densely populated areas within 75 miles of the top 100 markets identified in the *2009 Rural LPTV Public Notice*.¹²

There can be no doubt that VTG pursued tactics substantially similar to those described in the *DTV America* consent decree, including numerous long-distance site moves and many periods when its stations were off the air under special temporary authority. The public interest

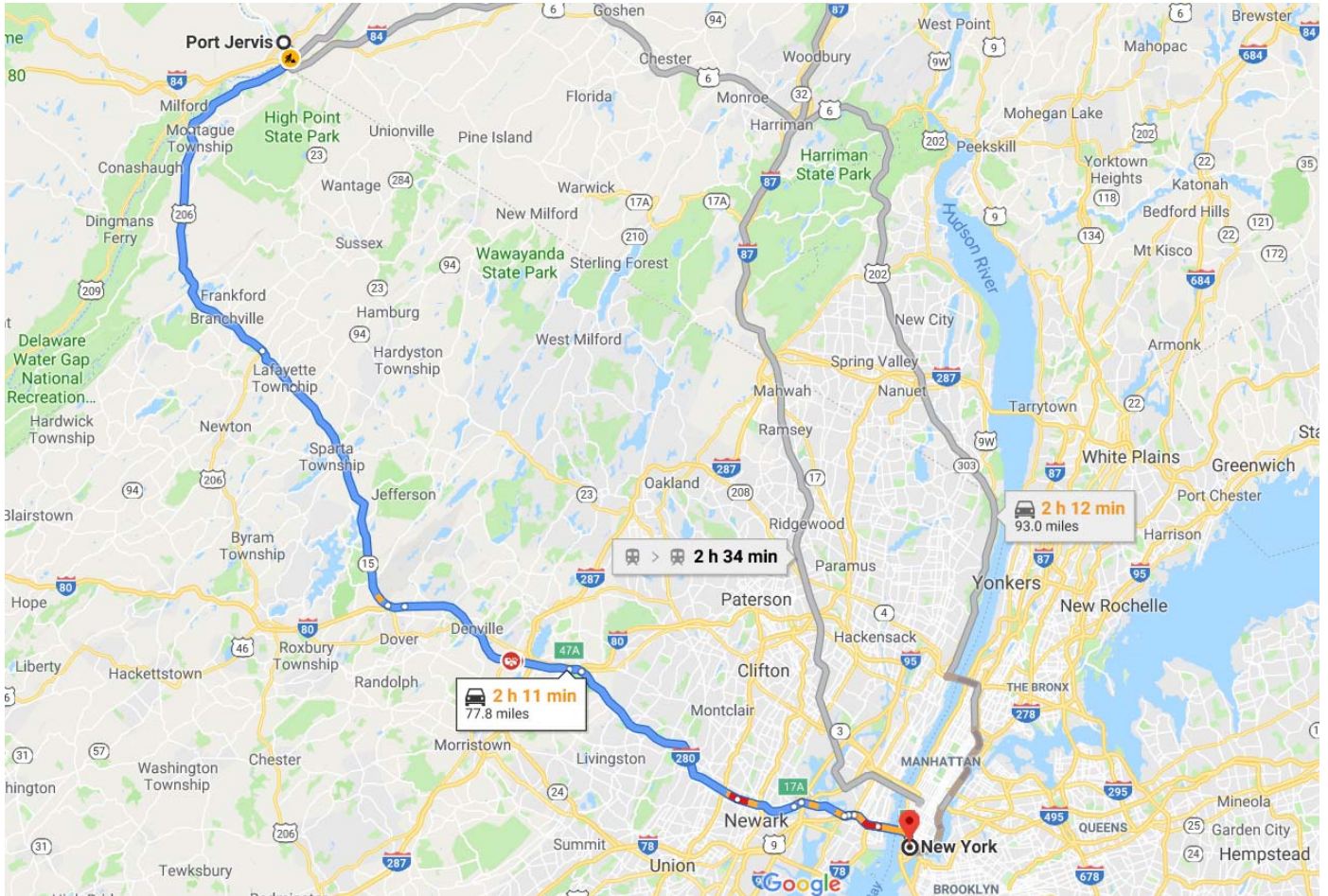
¹¹ See VTG Response to Informal Objections, p. 7 (Feb. 1, 2019) (admitting to the existence of this condition).

¹² *DTV America Corporation*, Consent Decree, 32 FCC Rcd 9129, 9134 (MB 2017) (emphasis added) (internal citations omitted).

demands that the Commission determine if VTG, or any similarly-situated applicant currently part of an Auction 104 MX group that likewise is facing well-founded claims, should be subject to the same considerations as described in *DTV America* prior to the Commission's adoption of the final procedures for Auction 104, and preferably, prior to any last chance for applicants currently assigned to an MX group to reach a settlement. That action would be justified on the grounds of fairness alone, as it would ensure that stations that are being displaced due to the incentive auction or the Commission's mandatory repacking policies will not be further disadvantaged by being deprived of the opportunity to enter into mutually beneficial settlements that would advance the public interest as a result of speculative applications filed in contravention of the Commission's rules and policies.

The below map, based on a print-out from *Google Maps*, shows the distance between Port Jervis, New York and New York, New York. As shown in that map, VTG has played regulatory hop-scotch in order to move its two Port Jervis authorizations more than 77 driving miles, in excess of two hours of driving, in order to abandon its proposed (but not materially provided) service to Port Jervis and cash in on the New York City market. That is exactly the kind of manipulation of the Commission's processes that the Commission refused to allow to pass without punishment in *DTV America*.

Magical Mystery Tour: VTG Removes Two LPTV Authorizations from Port Jervis to New York



Any failure to adjudicate the well-supported and material claims against the VTG (or other) applications prior to start of Auction 104, or any final settlement opportunity, would undermine the integrity of the auction process. Such a failure also would harm future auctions by allowing dubious applicants to benefit from possibly fraudulent applications that rob less-served areas of potential television services so that licensees can profit from quick sales of stations in high-value urban areas. That a failure here to resolve legitimate issues raised by multiple parties against VTG also may unnecessarily deprive the nation's largest media market of one of its few minority-owned television broadcasters, as well as TVC's Spanish-language programming, further weighs in favor of the Commission taking the sensible, precautionary step of determining which parties should remain within MX Group 51 before it takes any additional actions.

Respectfully submitted,

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/s/
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April 15, 2019

Attachment No. 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of:)	
)	
VENTURE TECHNOLOGIES GROUP, INC.	)	LMS File No. 0000054813
(WNJJ-LD)	)	Facility ID 167314
For Construction Permit for)	
Displacement Relief)	
To: Chief, Video Division		
Media Bureau		
(Electronically filed through LMS)		

INFORMAL OBJECTION

1. New York Spectrum Holding Company, LLC, ("NYSHCO") hereby submits this Informal Objection to the above-captioned application by Venture Technologies Group, Inc. ("Venture") for a construction permit for displacement relief to change the channel of Low Power Television ("LPTV") Station WNJJ-LD from Channel 46 at Port Jervis, New York, to Channel 30 at New York, New York ("WNJJ Displacement").¹

2. The WNJJ Displacement is defective and must be dismissed, because it violates established Commission rules and policies and eviscerates Venture's own commitment to the Commission to provide service to an unserved geographic area, made when WNJJ-LD was first authorized at Port Jervis, and reinforced in a condition placed on a subsequent construction permit.

3. NYSHCO is the licensee of LPTV Station WYXN-LD, Facility ID 38945, and is a mutually exclusive applicant with Venture for displacement relief. NYSCHO has an application

¹ This pleading is submitted as an Informal Objection pursuant to Section 73.3587 of the Commission's Rules, rather than as a Petition to Deny pursuant to Section 73.3584, only because the W25FA-D Application is framed (though improperly so) as a minor change, and petitions to deny do not lie against minor change applications.

pending to move WYXN-LD from Channel 26 to Channel 30, at New York, New York, LMS File No. 0000054668.² Both applications are in Group MX 51.³

4. The WNJJ Displacement was filed during the Special Displacement Window that opened on April 10, 2018, and closed on June 30, 2018. Applications filed during that window are treated as minor change applications.⁴ Section 73.3572(a)(4)(i) of the Rules limits site changes in minor change applications to 10 miles (16.1 km). Furthermore, Section 74.787(a)(4) of the Rules limits displacement relief applications to transmitter sites within 30 miles (48 km) of the station's community of license. The WNJJ Displacement does not comply with either rule.

5. WNJJ-LD was first authorized as an analog station under File No. BNPTTL-20000831ASW, call sign W32DC, Facility ID 128164. The distance between the coordinates specified in the granted construction permit and the coordinates proposed in the WNJJ Displacement is 43.5 miles (70.0 km).⁵ Even if the starting point of the calculation is the site authorized in the first digital companion construction permit for CDBS File No. BDCCDTL-20061030ARU, Call Sign W30CP-D, the result is the same, because the digital companion started

² While there are currently five applications in MX Group 51, NYSHCO believes that a more refined engineering analysis and acceptance of incoming interference can reduce the MX group to only two applicants, including NYSCHO, if the WNJJ Displacement is eliminated, thereby greatly enhancing the possibility of a universal settlement.

³ See *Incentive Auction Task Force and Media Bureau Announce Settlement Opportunity for Mutually Exclusive Displacement Applications File during the Special Displacement Window*, DA 18-1108, Appendix A, released Oct. 30, 2018.

⁴ *Incentive Auction Task Force and Media Bureau Announce Post-Incentive Auction Special Displacement Window*, 33 FCC Rcd. 1234 (IATF and MB, 2018) ("*Special Window Notice*") at fn. 19.

⁵ The geographic coordinates discussed in this Objection are all public information derived from the FCC's CDBS and LMS databases. Distance calculations are matters of fact that can be determined by anyone who can calculate the distance between two points based on coordinates. Since all the information and conclusions are publicly available, no declaration is needed, or is one provided, from a person with knowledge of the facts recited in this Objection.

at the same site as the original analog station. Thus no matter which site is taken as the starting point, the WNJJ Displacement proposes a site change of not only more than 10 miles but also more than 30 miles and so does not comply with either rule.

6. WNJJ-LD has made several moves over the past 18 years, two of which (including the WNJJ-D Displacement) have been substantial. The move from CDBS File No. BDCCDTL-20000831ASW to BMPTTL-20070131AIN was small; but the next move, under CDBS File No. BDISDTL-20080117ACU, was 24.8 miles (40.0 km), and the next move from the BDISDTL-20080117ACU site to the site proposed in the WNJJ Displacement is another 23.4 miles (37.8 km). The key point, however, is that as discussed at Paragraph 5, *supra*, W25FA-D has moved a total of well over 30 miles (48 km) from start to finish. Exhibit 1 attached hereto is a map showing the multi-step migration of WNJJ-LD from a start in rural Port Jervis to the ultimate destination on a tower with ASRN #1045804, which is in West Orange, New Jersey, from which the station can serve New York City.

7. The WNJJ Displacement is also defective in that it proposes a transmitter site that is 46.5 miles (74.8 km) away from the coordinates of Port Jervis, the station's present community of license.⁶ The *Special Window Notice*⁷ restricted proposals submitted during the Special Displacement Window to 30 miles (48 km) from the station's current community of license.⁸

⁶ The coordinates of Port Jervis (41° 22' 31.7" n. lat., 71° 41' 20.0" w. lon.) were obtained from: <https://www.fcc.gov/media/radio/find-community-coordinates>
Simply proposing a change of community of license has never been approved as a way to circumvent the 30-mile limit.

⁷ See Footnote 4, *supra*.

⁸ *Special Window Notice* at ¶ 6.

8. Finally, Venture's proposal in the WNJJ Displacement eviscerates a waiver granted when the station was first authorized. During the Year 2000 LPTV application window, the Commission restricted applications to locations more than 121 km (75 miles) from the reference coordinates of 168 cities listed in an attachment to a Public Notice released May 1, 2000. In an exhibit to its initial application, CDBS File No. BNPTTL-20000831ASW, Venture requested a "Geographic Restriction Waiver," arguing that Port Jervis is separated from three cities listed in the Public Notice Attachment -- New York, Scranton, and Wilkes-Barre -- "by high mountain ranges," and "does not directly receive a television signal from any full-power station in these applicable cities."⁹ The Commission granted the waiver and issued a construction permit. Subsequently, when Venture applied to modify its construction permit under CDBS File No. BMPTTL-20070131AIN, the Media Bureau wrote a letter on February 12, 2007,¹⁰ noting another violation of the 121 km limitation. Venture repeated the same waiver request it had filed earlier,¹¹ and the modification was granted. The modified construction permit included this explicit condition:

This authorization is subject to the condition that any future modification will not result in a relocation within 121 km of the top 125 markets as described in Public Notice of Auction 81.

The proposal in the WNJJ Displacement not only does not comply with the condition imposed by the Commission but also finishes the job of abandoning service by WNJJ-LD to Port Jervis -- service that was a critical basis for authorization of the station in the first place and for which permission to abandon has not been requested, let alone justified. The end result is a move of the

⁹ Exhibit 6, Attachment B, to BNPTTL-20000831ASW.

¹⁰ FCC Reference 1800E3-JCF.

¹¹ Exhibit 8, Attachment B, to BMPTTL-20070131AIN.

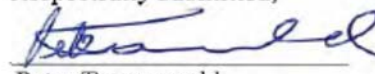
station to a location from which it can serve New York City, which is one of the markets which Venture claimed was isolated from Port Jervis by terrain obstacles.¹²

9. The Commission has previously indicated that its limitations on site changes cannot be circumvented by multiple small moves, and multiple small moves may also not be used to move from rural areas into large markets. *See DTV America Corporation*, 32 FCC Rcd 9129 (MB 2017). In this case, WNJJ-LD has made multiple moves, and the totality of the moves exceeds the limit of 30 miles for site moves as well as the limit of 30 miles from the community of license.¹³ Moreover, if the WNJJ Displacement is granted, the result will be loss of service to a previously unserved area that was the basis for authorizing the station in the first place, replacing it with a signal that will cover New York City, the nation's largest market.

10. Whatever may have transpired in the past, it is clear that the WNJJ Displacement cannot be approved without doing violence to multiple Commission rules and policies and removing promised service to an unserved area. Therefore, the WNJJ Displacement must be dismissed.

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Respectfully submitted,

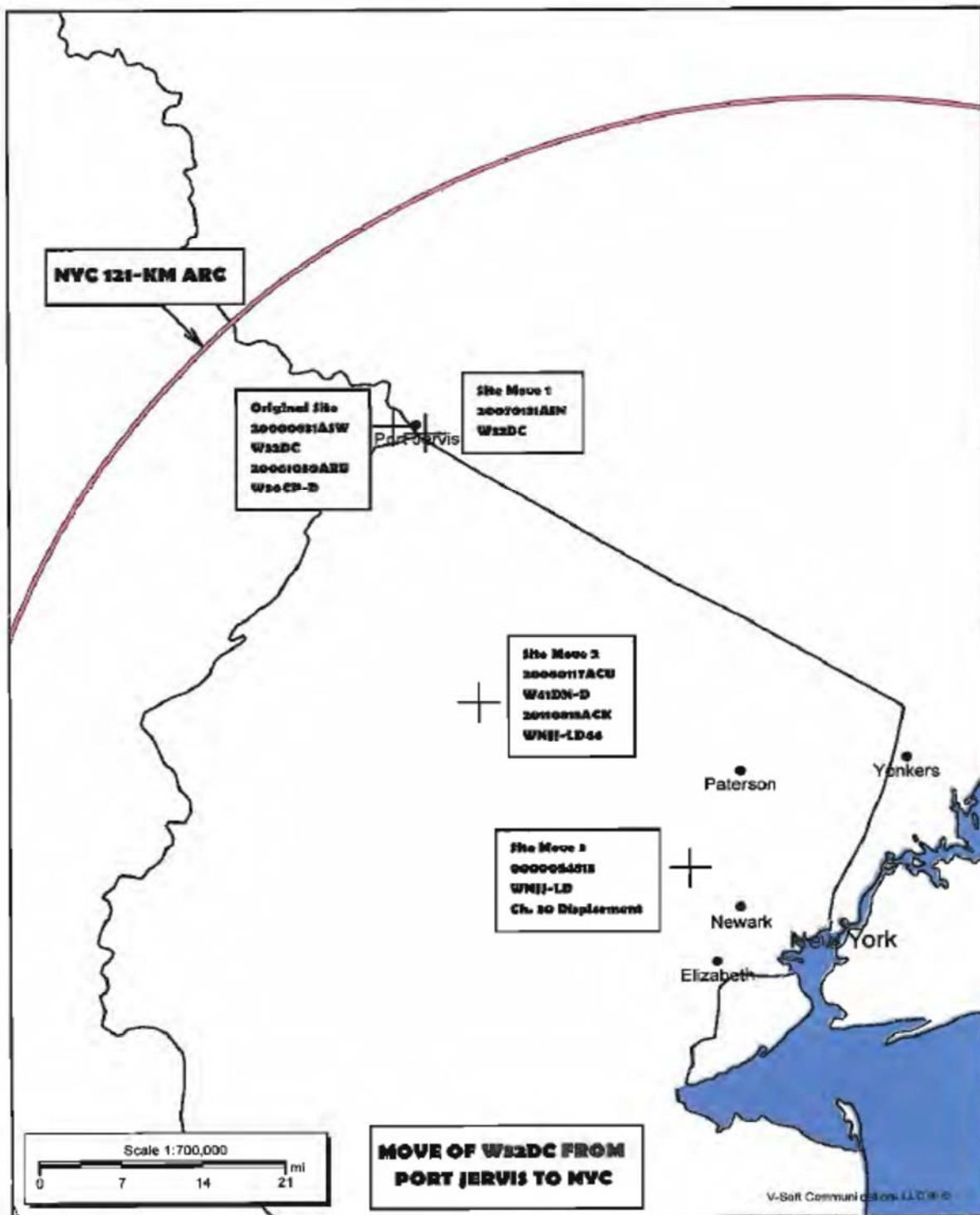

Peter Tannenwald
Kathleen Victory

November 5, 2018

¹² See the Antenna Structure Registration Number noted at ¶ 6, *supra*.

¹³ The *DTV America* Consent Decree also relied on moves by multiple stations. LMS shows that Venture has five authorized facilities currently authorized to West Orange, NJ, all of which were moved there from Port Jervis, NY, and two of which (W31EF-D and W32EI-D) have applications pending to change community of license to New York, NY. None of the four remaining facilities currently authorized to Port Jervis are currently providing service, and one is a companion construction permit on Channel 50, which is outside the repacked TV band and so cannot be constructed.

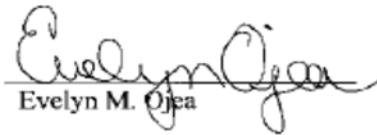
(01256929-1)



CERTIFICATE OF SERVICE

I, Evelyn M. Ojea, do hereby certify that I have, this 5th day of November 2018, caused a copy of the foregoing "Informal Objection" to be sent by first class United States mail, postage prepaid, to the following:

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Counsel for Venture Technologies Group, Inc.


Evelyn M. Ojea

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of:)	
)	
VENTURE TECHNOLOGIES GROUP, INC.	)	LMS File No. 0000054811
(W25FA-D)	)	Facility ID 130475
)	
and)	
)	
VENTURE TECHNOLOGIES GROUP, INC.	)	LMS File No. 0000054813
(WNJJ-LD)	)	Facility ID 167314
)	
For Construction Permits for)	
Displacement Relief)	
To: Chief, Video Division		
Media Bureau		
(Electronically filed through LMS)		

REPLY TO RESPONSE TO INFORMAL OBJECTION

1. This is the Reply of New York Spectrum Holding Company, LLC ("NYSHCO") to the Response to Informal Objection, LMS File No. 0000067630, filed by Venture Technologies Group, Inc. ("Venture") on February 1, 2019.¹

2. Venture's Opposition boils down to three points, none of which are valid: (a) that the condition on its construction permits restricting moves within 75 miles of specified large markets disappeared when its stations were granted their initial licenses to cover, (b) that those conditions rightfully disappeared because they became unnecessary after the full power/Class A DTV

¹ This proceeding concerns applications for construction permit for displacement relief to change the channel of Low Power Television ("LPTV") Station W25FA-D from Channel 25 at Port Jervis, New York, to Channel 23 at West Orange, New Jersey ("W25FA-D Displacement") and to change the channel of WNJJ-LD from Channel 36 at Port Jervis to Channel 30 at New York City, NY ("WNJJ-LD Displacement"). NYSHCO filed separate Objections to each application, LMS File Nos. 0000063340 and 0000063339.

transition was completed, and (c) that the *DTV America* case, 32 FCC Rcd. 9129 (DA 17-1058) (MB 2017) does not apply because it was really based only on construction with temporary facilities that were moved within days after being activated.

3. While it is true that the conditions on Venture's construction permits were not displayed on the license documents issued after completion of construction, there was no request by Venture to remove the conditions, the Media Bureau issued no Order deleting the conditions, and the underlying construction permits were explicitly conditioned on no further moves into large urban markets. It may be that the Media Bureau did not focus on the conditions when it issued the licenses for the stations, or some aspect of the automated CDBS and LMS software did not carry the conditions forward. Nevertheless, it is well known that a license to cover a construction permit is basically no more than a review of information to determine that a station was constructed in compliance with the terms of the underlying permit, and substantive review of a proposal occurs at the earlier construction permit stage. Compare 47 U.S.C. § 319(a) and § 319(c). While NYSHCO cannot reconstruct why the condition was omitted from the license, it does not agree that such ministerial action rendered the condition on the underlying construction permit permanently null and void, giving Venture *carte blanche* to move the stations into New York City.²

4. Venture's argument that the only purpose of the rural area conditions was to avoid increasing the number of LPTV stations that might soon be disrupted by the full power and Class A digital transition is also invalid. Those words in the Public Notice announcing the Year 2000 filing window were preceded by this statement: "By this window, the Commission seeks to provide

² There is also no evidence that the Media Bureau focused on the condition or its absence in granting subsequent applications to relocate the two stations; nor did Venture acknowledge the conditions and request their removal, so that grant of a subsequent application might be deemed a *sub silentio* grant of a removal request.

additional opportunities for low power TV and TV translator service in those rural areas of the country where there is relatively less free over-the-air television service.”³ The importance of bringing service to rural areas was underscored by the provision for exceptions to the 75-mile restriction where it would bring service to underserved areas. Venture relied explicitly on that exception, claiming that the Port Jervis area it sought to serve did not receive service from full power stations. The basis for authorizing Venture’s two stations in the first place will be completely undermined if Venture is now allowed to locate the stations on the Trump Tower in New York City.

6. Moreover, the objective in 2000 of avoiding undue impact on displaced LPTV stations already operating in urban areas remains valid today. The vast majority of the mutually exclusive groups from the 2018 Special Displacement Window involve stations in urban areas. The fact that many have not reached settlements is evidence that there are not enough channels available in those urban areas to accommodate all of the stations that need displacement relief. If it allows rural stations to move into urban areas as part of the displacement process, the Media Bureau will exacerbate the channel shortage and will likely leave some existing stations that propose not to move at all faced with the prospect of a costly auction and ultimately the possibility of extinction if they are unable to find a new home.

6. Turning to the *DTV America* case, while construction with temporary facilities was certainly an important element, it was by no means the only basis for Commission action. The Consent Decree stated:

Licensees employed these practices repeatedly for many of the Stations, with the ultimate intent of moving each such station more than 30 miles from the

³ *Notice and Filing Requirements Regarding July 31 through August 4, 2000 Limited Low Power Television/Television Translator/Class A Television Auction Filing Window*, 15 FCC Rcd 10584 (DA 00-1383), at p. 3 (MB and WTB, rel. June 23, 2000).

station's originally licensed site. These practices had the ultimate effect of relocating stations, many of which were applied for during the 2009 Rural LPTV Filing Window, from rural unserved and underserved areas with low population densities, to more densely populated areas within 75 miles of the top 100 markets identified in the 2009 Rural LPTV Public Notice.....The Bureau's review indicates that, given the temporary nature of many of the facilities, the Licensees' business plan may have been to re-locate such facilities within 75 miles of top 100 markets [footnotes omitted].

Venture's application pattern has produced the same "ultimate effect" as in *DTV America*. Moreover, Venture has offered no evidence of how "permanent" its intermediate facilities were, what programming services were provided, or what business plan it might have had other than moving the stations into New York City.

7. The Commission is bound to treat those it governs with an even hand and to interpret its rules and policies the same way when taking enforcement action.⁴ If it allows Venture to move W25FA-D and WNJJ-LD to the Trump Tower in New York City, that will constitute a substantial change in interpretation that was published less than two years ago, without explanation or an opportunity for public comment.⁵

8. Finally, while Venture accuses NYSCHO of living in the proverbial "glass house," the situation with KQHO-LD is distinct from that of W25FA-D and WNJJ-LD in two critical respects. First, the KQHO-LD displacement application filed in 2018 proposed no change in the station's licensed transmitter site, while Venture proposes to move to the center of the nation's largest

⁴ The *DTV America* case was decided in 2017, long after completion of the full power/Class A digital transition; so the Commission's concern was not based on avoiding disruption after the transition.

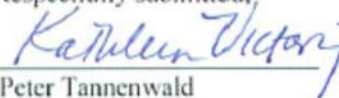
⁵ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position. An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books. And of course the agency must show that there are good reasons for the new policy.").

market. Second, NYSCHO has not moved KQHO-LD since acquiring it; any and all moves were made by the previous licensee.⁶

9. Although Venture tries to paint a picture of NYSHCO's trying to disrupt years of applications grants to dozens of stations, NYSCHO has asked for no such thing. Past grants that have become final orders do not have to be revoked to avoid the obviously objectionable result of complete defeat of the concept behind the Year 2000 application filing window. What the Commission must find here is that the "big picture" end result is wrong, no matter how many maneuvers Venture has made since its Port Jervis stations were first authorized. Therefore, Venture must not be permitted to pursue its two displacement applications.

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Respectfully submitted,


Peter Tannenwald
Kathleen Victory

February 8, 2019

⁶ Venture's further argument that NYSHCO's Objections were filed only to put pressure on Venture in MX settlement negotiations is tantamount to saying that the Commission should require applicants to settle with or to bid at auction against parties whose applications are defective. Such a principle would unwisely encourage parties to file questionable applications in the hope of ultimate gain, despite the fact that settling parties must attest that they did not file their applications for the purpose of entering into a settlement.

CERTIFICATE OF SERVICE

I, Joan P. George, do hereby certify that I have, this 8th day of February 2019, caused a copy of the foregoing "Consolidated Reply" to be served by email to the following:


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Joan P. George

Attachment No. 2

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

In re Application of)	
)	
VENTURE TECHNOLOGIES GROUP, LLC	)	LMS File No. 0000054804
	)	Facility ID No. 127812
For a Construction Permit)	
Displacement Relief for)	
LPTV Station W34DI-D, New York, NY)	
Attention: Chief, Video Division, Media Bureau		
Electronically filed through LMS		

Informal Objection

(Correction of January 10, 2019 Informal Objection)

K Licensee, Inc. ("K Licensee"), by its attorney, hereby submits this Informal Objection to the above-captioned application by Venture Technologies Group, LLC ("VTG") for a construction permit for displacement relief to modify Low Power Digital Television ("LPTV") Station W34DI-D, New York, New York (the "W34DI-D Displacement Application"). The W34DI-D Displacement Application is the culmination of a series of modifications that cumulatively violates the FCC's policy relating to moving into major markets and exceeds the Special Displacement Window Public Notice eligibility criteria which confines the displacement transmitter site to 48 kilometers of the reference coordinates of the community of license and therefore is not eligible to apply for displacement in New York City.

K Licensee is the licensee of W26DC-D, Facility ID 49882, Roslyn, New York. Its operation on Channel 26 is displaced by the repacking of the TV spectrum. K Licensee filed a displacement application to operate on Channel 31 in New York City, LMS 0000052801, which is mutually exclusive with the W34DI-D Displacement Application. Both applications are in MX Group 51 along with three other applications proposing operation on Channel 30. Thus, K

Licensee will suffer injury if it must compete at auction for the channel with VTG or suffer permanent displacement of its station.¹

W34DI-D initially proposed to serve Port Jervis, New York, in BNPTTL-20000831AKZ ("original CP site"). In its initial application for a construction permit, Attachment B, VTG requested a Geographic Restriction Waiver Request.² Without that waiver, the application at Port Jervis violated the *Notice and Filing of Requirements Regarding July 31 through August 4, 2000, Limited Low Power Television/Television Translator/Class A Television Auction Filing Window*, Public Notice, DA 00-1383 (June 23, 2000) which prohibits filing for new facilities within 121 kilometers (or 75 miles) from major markets such as New York City (the "75 Mile Rule"). The Commission granted the waiver request based on VTG's representation that "Port Jervis does not directly receive a television signal from any full-power station" from major market cities.

After its initial construction, W34DI-D underwent a series of modifications and silent stretches:

10/30/2008 - In BLSTA-20081031ABX, VTG reported that the station went off the air due to transmission system problems.

4/30/2009 - The STA was extended in BLESTA-20090428ABD again stating there was a transmitter problem and requesting a further extension to remain silent. A resumption notice was filed on October 21, 2009.

¹ K Licensee amended its application to agree to accept first adjacent channel interference from any remaining channel 30 applicant in MX Group 51.

² See FCC File No. BNPTTL-20000831AKZ, and the linked exhibit at https://licensing.fcc.gov/cdbs/CDBS_Attachment/getattachment.jsp?appn=100711135&qnum=5070©num=1&exhcnun=11

9/20/2016 - VTG filed a digital flash cut application in LMS 0000013915 (as amended). The site specified was 41.94 kilometers from the original CP site. No mention was made about the 75 Mile Rule.

10/31/2016 - A covering license was granted in LMS 0000016498.

11/22/2016 - VTG again suspended operations, citing a transmission modification at the site. *See* LMS 0000017932. That silent STA was extended again in LMS 0000019151. Another silent STA was filed in LMS 0000025133 to renew and extend the prior STA *nunc pro tunc*.

9/29/2017 - VTG filed another minor modification in LMS 0000030450. The move was 37.64 kilometers from the prior site, and the cumulative distance from the original CP site was 76.24 kilometers.

10/20/2017 – VTG resumed operations October 20, 2017. *See* LMS 0000034015.

11/13/2017 - Another minor modification was filed in LMS 0000035178 to change the ERP.

11/25/2017 – A silent STA was filed in LMS 0000035611.

3/9/2018 – A license to cover was filed in LMS 0000048491.

6/1/2018 – The above-captioned W34DI-D Displacement Application was filed. This change moved the site another 34.62 kilometers from the prior site and 94.16 kilometers from the original CP site.

To summarize, the following chart lists the distances between each site relocation and the cumulative change from the original CP site for which it obtained a 75 Mile Rule waiver.

<u>Site</u>	<u>File number</u>	<u>Distance from prior site</u>	<u>Cumulative distance from 1st site</u>
FIRST	BNPTTL-20000831AKZ	0 kilometers	0 kilometers
SECOND	BMPTTL-20070131AIG	4.49	4.49 LICENSE BLTTL-20070223AHK
THIRD	0000013915	39.93	41.94 LICENSE 0000016498
FOURTH	0000030450	37.64	76.24 LICENSE 0000048491
FIFTH	0000054804	24.62	94.16 Pending Displacement application

The W34DI-D Displacement Application abandoned the pretext of serving Port Jervis and now proposes to serve New York, New York.

In *DTV America*, 32 FCC Rcd 9129 (MB 2017), the Bureau entered a Consent Decree to resolve violations of the 75 Mile Rule. As explained in paragraph 8 of the Consent Decree:

The Licensees' pattern of repeated station moves occurred as follows: (1) filing of a construction permit to relocate the station within 30 miles of its current licensed site, which site often would be located in an empty field, parking lot, or base of an existing tower; (2) upon grant of the construction permit, the Licensees would construct the facilities using equipment that it did not intend to leave in place permanently; (3) the Licensees would file a license application; (4) following grant of the license application, the Licensees would apply for special temporary authority to be silent on the ground that the station could not continue to transmit a broadcast signal "due to reasons beyond the applicants control," at which point the Licensees would remove the equipment from the site and file for a new construction permit at a location up to 30 miles from the location set forth in the recently granted license. Licensees employed these practices repeatedly for many of the Stations, with the ultimate intent of moving each such station more than 30 miles from the station's originally licensed site. These practices had the ultimate effect of relocating stations, many of which were applied for during the 2009 Rural LPTV Filing Window, from rural unserved and underserved areas with low population densities, to more densely populated areas within 75 miles of the top 100 markets identified in the *2009 Rural LPTV Public Notice*. (footnotes omitted)

Similarly, through a series of hops, VTG moved W34DI-D from a rural area to New York City. Like the applicants in the *DTV America* Consent Decree, VTG followed this pattern of repeated station moves with multiple applications, without any apparent intent to provide service to the public permanently from the initial or interim sites.³ This practice has the effect of relocating W34DI-D from a location far in excess of the 30 miles allowed from its original CP site and should be treated as a major modification.

³ See, e.g., Informal Objections filed by New York Spectrum Holding Company, LLC against W25FA-D, West Orange, New Jersey, Facility ID 130475, LMS 0000054811, Pleading File No. 0000063340; and against WNJJ-LD, New York, New York, Facility ID 167314, LMS 0000054813, Pleading File No. 0000063339.

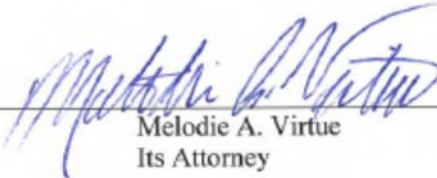
The W34DI-D Displacement Application was not eligible for the Special Displacement Window.⁴ To be eligible, it must have been operating on April 13, 2017 or had a license to cover on file by that date. An “eligible” digital station may not propose more than a 48 kilometer (30 mile) change from the reference coordinates of the station’s community of license.⁵ Port Jervis is more than 48 kilometers from the site proposed in the W34DI-D Displacement Application on Trump Tower in downtown New York City. K Licensee requests that the Commission prohibit VTG from benefiting from this pattern of abuse to the disadvantage of other LPTV stations in the congested New York market.

Based on the foregoing, K Licensee respectfully requests the dismissal of the W34DI-D Displacement Application.

Respectfully submitted,

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Melodie A. Virtue
Its Attorney

January 11, 2019

⁴ *Incentive Auction Task Force and Media Bureau Announce Post-Incentive Auction Special Displacement Window April 10, 2018- Through May 15, 2018, and Make Location and Channel Data Available, Public Notice, DA 18-124, 33 FCC Rcd. 1234 (released Feb. 9, 2018).*

⁵ *Id.*, para. 6.

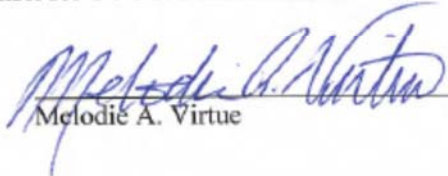
Certificate of Service

The undersigned hereby certifies that a copy of the foregoing "Informal Objection" was served this date, by electronic mail, upon the following:

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Melodie A. Virtue

January 11, 2019

GSB-9926526.3

CERTIFICATE OF SERVICE

I, Leighton T. Brown, hereby certify that, on April 15, 2019, a copy of the foregoing Comments of TVC NY License LLC in Support of Auction Integrity was served, via email, upon the following:

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