

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

In the Matter of)
)
Application of Affiliated Media, Inc.) File No. BALCDT-20130125ABD
FCC Trust, Assignor, and Denali Media) Facility ID No. 49632
Anchorage, Corp., Assignee, For Consent)
to Assign the License of Station)
KTVA (TV), Anchorage, Alaska)
)
Application of Dan Etulain, Assignor, and) File No. BALDTL-20130125AAL
Denali Media Southeast, Corp., Assignee,) Facility ID No. 188833
For Consent to Assign the License of)
Station KATH-LD, Juneau-Douglas,)
Alaska)

To: Chief, Video Division, Media Bureau

OPPOSITION TO INFORMAL OBJECTIONS

Denali Media Anchorage, Corp. (“Denali Media Anchorage”), and Denali Media Southeast, Corp. (“Denali Media Southeast”) (collectively, “Assignees”), pursuant to Section 1.45 of the Commission’s rules, hereby oppose the “Objection to KTVA license reassignment” and the “Objection to KATH-LD license reassignment” (collectively, “Informal Objections”)¹ by Mr. Walter Gregg concerning the above-referenced applications (“Applications”) to assign the license of KTVA (TV), Anchorage, Alaska (Facility ID No. 49632) (“KTVA”) from Affiliated Media, Inc. FCC Trust to Denali Media Anchorage, and the

¹ Walter Gregg, *Objection to KTVA License Reassignment*, <http://w-gregg.juneau.ak.us/2013/2013b22-ktva> (last visited May 13, 2013) [hereinafter *KTVA Informal Objection*]; Walter Gregg, *Objection to KATH-LD License Reassignment*, <http://w-gregg.juneau.ak.us/2013/2013b22-kath> (last visited May 13, 2013) [hereinafter *KATH-LD Informal Objection*]. The docket does not contain any record of Mr. Gregg’s informal objection to the KATH-LD assignment application and, like his informal objection to the KTVA assignment application, it was not served on the Assignees. Nevertheless, this Opposition responds to both Informal Objections to clarify any misconceptions and to facilitate the Commission’s review of the Applications.

license of KATH-LD, Juneau-Douglas, Alaska (Facility ID No. 188833) ("KATH-LD") from Dan Etulain to Denali Media Southeast.

The Informal Objections should be denied.

Mr. Gregg's core complaint rests on his unsupported speculation that the Assignees will "terminate[] existing on-air NBC and CBS programming."² Even if the Assignees intended to end the stations' network affiliations — and they do not — the Commission could not deny the Applications on that basis. "[I]t is well-settled policy that the Commission does not scrutinize or regulate programming, nor does it take potential changes in programming formats into consideration in reviewing assignment applications."³ This longstanding policy is directly at odds with Mr. Gregg's extreme and unreasonable demands that the Assignees provide "detailed programming plans" or "[a]ssurances that existing network programming will continue."⁴

The objections also fail because they are entirely unsupported. Assignees have no plans to end KTVA or KATH-LD's affiliations with CBS or NBC. Indeed, the Assignees consider these affiliations to be among the stations' major programming assets. Mr. Gregg's assertion is mere speculation that is entirely unsupported, and should be denied for that reason. "[E]ven an informal objection must meet certain minimal requirements,"⁵ such as providing

² *KTVA Informal Objection* ¶ 5; *KATH-LD Informal Objection* ¶ 5.

³ *Marnie K. Sarver, Esq., Dennis J. Kelly, Esq.*, Letter, 28 FCC Rcd 1009, 1010 (Audio Division 2013); see also *FCC v. WNCN Listeners' Guild*, 450 U.S. 582, 585 (1981); *In re Shareholders of Univision Comm'ns Inc.*, 22 FCC Rcd 5842, 5855 (2007) ("[L]icensees are afforded broad discretion in the scheduling, selection and presentation of programs aired on their stations, and the Commission will not substitute its judgment for that of the station regarding programming matters.").

⁴ *KTVA Informal Objection* ¶ 9; *KATH-LD Informal Objection* ¶ 9.

⁵ *License Renewal Applications of Certain Broadcast Stations Licensed For and Serving the Metropolitan Los Angeles, California, Area*, 68 FCC 2d 75, 76 (1978) (denying an informal (continued...))

“properly supported specific allegations of fact that, if true, would establish a substantial and material question of fact.”⁶ Mr. Gregg’s assertion relies solely on his idiosyncratic personal opinion that, if the Assignees were to re-brand the stations by “transforming them into a news and entertainment leader,” then “[t]his certainly implies the end” of the stations’ affiliation agreements.⁷ This is a non-sequitur. It is of course possible to improve or “re-brand” a station without ending its affiliation agreement, and equally possible to add additional news and entertainment programming to a network-affiliated station. That is precisely what the Assignees hope to do with KTVA and KATH-LD, and these improvements are fully consistent with the public interest.

Mr. Gregg also claims more vaguely that the Assignees will “snuff out the on-air programming” on the stations or otherwise provide low-quality service.⁸ He offers no support for this assertion, except to note his generalized belief that cable operators have conflicting interests with over-the-air broadcasting.⁹ The Commission effectively rejected this concern a decade ago when it repealed the cable/broadcast cross-ownership rule.¹⁰ To the extent that Mr. Gregg wishes to change the ownership rules, he should advocate for such a change in a rulemaking proceeding rather than a licensing proceeding; such “[i]ssues of broad

objection because “[i]t was not signed by an objector, and, more importantly, it lacks adequate specificity to warrant further Commission inquiry”).

⁶ *Applications of Visionary Related Entm’t, LLC*, 27 FCC Rcd 1392, 1395 & n.30 (MB 2012); see also *Area Christian Television, Inc.*, 60 RR 2d 862, 864 (1986) (“[I]nformal objections like petitions to deny must also contain adequate and specific factual allegations sufficient to warrant the relief requested.”).

⁷ *KTVA Informal Objection* ¶ 3; *KATH-LD Informal Objection* ¶ 3.

⁸ *KTVA Informal Objection* ¶¶ 4, 7; *KATH-LD Informal Objection* ¶¶ 4, 7.

⁹ See *KTVA Informal Objection* ¶ 7; *KATH-LD Informal Objection* ¶ 7.

¹⁰ See *Order, 1998 Biennial Regulatory Review*, 18 FCC Rcd 3002, 3002 (2003); see also *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1053 (D.C. Cir. 2002).

applicability . . . are more suited to rulemaking than to adjudication, and the Commission has long refused to develop broad new rules in an adjudicatory context.”¹¹

Finally, Mr. Gregg incorrectly asserts that public notice concerning these transactions has been inadequate. With respect to KATH-LD, Mr. Gregg acknowledges that public notice was published in a local newspaper as required, but complains that the notice “does not give the facility ID or application number, [] does not state that interested viewers have a right to comment, [] does not give a deadline for commenting, and [does not include] contact information [other than] the transmitter location.”¹² The Commission does not require publication of any of these items in a newspaper notice regarding a low power license assignment application,¹³ and Mr. Gregg does not cite any authority to the contrary. As noted previously, if Mr. Gregg wants the Commission to amend its rules, he should pursue a rulemaking rather than obstructing this routine assignment proceeding. Likewise, Mr. Gregg argues that the public notice issued by the Commission on January 30, 2013 concerning the Applications “contains no reference to a right to comment or procedures to do so,” and asserts that the Commission has not responded to his e-mails regarding commenting procedures.¹⁴

¹¹ *Application of Acme Television, Inc. and LIN of Wisconsin, LLC*, 26 FCC Rcd 5189, 5192 (Video Division 2011).

¹² *KATH-LD Informal Objection* ¶ 8(a).

¹³ See 47 C.F.R. § 73.3580; accord Worksheet 1 to FCC Form 314; cf. *Dennis J. Kelly, Esq. et al.*, Letter, 23 FCC Rcd 4000, 4003 (Audio Division 2008) (“[W]e reject Petitioner’s assertion that Trinity’s newspaper notice should have included the ownership interests of TIU and EFCA. Neither Section 73.3580 of the Rules nor Form 314 indicates that a public notice must contain this information.”).


¹⁴ *KTVA Informal Objection* ¶ 8; *KATH-LD Informal Objection* ¶ 8(b).

However, he does not indicate any law or policy that these Commission practices might violate, much less any reason to believe such a violation would warrant denial of the Applications.¹⁵

The Informal Objections raise no substantial and material questions of fact and fall far short of making the requisite *prima facie* showing that granting the Application would be inconsistent with the public interest, convenience, and necessity. For the foregoing reasons, the Assignees respectfully request that the Informal Objections be denied and that the Applications be granted.

Respectfully submitted,

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May 14, 2013

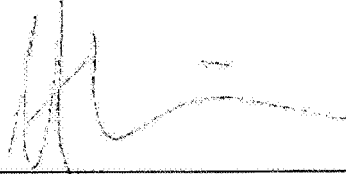
¹⁵ Assignees note that the Media Bureau has provided guidance on how to comment on matters identified in Public Notices. *See How to Comment*, Federal Communications Commission, <http://www.fcc.gov/guides/how-comment> (last visited May 13, 2013). In addition, the Commission's rules are readily accessible through <http://www.fcc.gov/encyclopedia/rules-regulations-title-47>.

DECLARATION OF CHRISTOPHER NIERMAN

I, Christopher Nierman, depose and state as follows:

1. I am Senior Counsel, Federal Affairs of General Communication, Inc., ultimate parent of Denali Media Anchorage, Corp., and Denali Media Southeast, Corp.

2. I have read the foregoing Opposition to Informal Objections, and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Christopher Nierman

Executed on May 13, 2013

Certificate of Service

I, Dustin Cho, hereby certify that on this 14th day of May 2013, I caused copies of the foregoing Opposition to Informal Objections to be delivered via first-class prepaid mail to the following:

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