

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

In the Matter of)	
)	
Lectro Communications, Inc.)	FCC File No. 9902D121837
)	
For Reconsideration of Grant of Station)	
WPNV328, Anderson, Indiana)	

ORDER ON RECONSIDERATION

Adopted: December 12, 2000

Released: December 14, 2000

By the Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us two petitions, filed by the Kroger Company (Kroger) and Jerry L. Sparks (Sparks), respectively, requesting reconsideration of the authorization of Land Mobile Station WPNB328, Anderson, Indiana to Lectro Communications, Inc. (Lectro).¹ For the reasons discussed herein, we dismiss both petitions.

2. *Background.* On July 1, 1999, Lectro was granted an authorization to operate Station WPNV328 in Anderson, Indiana. Sparks requested reconsideration of the authorization of Station WPNV328 in an April 11, 2000 letter to the Chief of the Public Safety and Private Wireless Division's Licensing and Technical Analysis Branch (Branch), which is located in Gettysburg, Pennsylvania.² Similarly, Kroger requested reconsideration of the authorization of Station WPNV328 in an April 27, 2000 letter to the Branch Chief in Gettysburg, Pennsylvania.³

3. *Discussion.* Section 405 of the Communications Act, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on reconsideration.⁴ Section 405, as implemented by Section 1.106(f) of the Commission's Rules, requires a petition for reconsideration to be filed within thirty days from the date of public notice the Commission's action.⁵ In addition, Section 1.106(i) of the Commission's Rules provides that a petition for

¹ See Letter from Jerry L. Sparks to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (dated April 11, 2000) (Sparks Letter); Letter from Teri Penelton, Kroger Company to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (dated April 27, 2000) (Kroger Letter).

² See Sparks Letter.

³ See Kroger Letter.

⁴ 47 U.S.C. § 405.

⁵ 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.⁶

4. In this case, the date of public notice of the grant of Lectro's license was July 1, 1999.⁷ The deadline for filing petitions for reconsideration of that action was Monday, August 2, 1999. The Petitions were dated April 11, 2000 and April 27, 2000, respectively, over eight months past the filing deadline.⁸ Therefore, we find that the Petition was untimely.⁹ The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹⁰ Consequently, we conclude that the Kroger and Sparks Petitions should be dismissed as untimely filed.¹¹

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, Jerry L. Sparks' petition for reconsideration dated April 11, 2000 IS DISMISSED.

6. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Kroger Company's petition for reconsideration dated April 27, 2000 IS DISMISSED.

⁶ 47 C.F.R. § 1.106(i).

⁷ See 47 C.F.R. § 1.4(b)(5).

⁸ The thirtieth day after July 1, 1999 was a Saturday. Since that day was a holiday, petitions for reconsideration were due on the next business day, Monday, August 2, 1999. See 47 C.F.R. § 1.4(h).

⁹ In addition, we note that the petition was filed in the wrong location. The Commission's Rules require that petitions for reconsideration be filed with the Office of the Secretary in Washington, D.C., 47 C.F.R. § 1.106(i), and warn persons filing documents with the Commission that filings submitted to the wrong location will not be processed. 47 C.F.R. § 0.401; see also 47 C.F.R. § 1.7 ("documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission"). Thus, even if the petition were timely, it would be subject to dismissal as improperly filed. See In the Matter of Memorandum of Agreement Between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080, 5081 ¶ 3 (WTB 1999) (*Elkins*); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782, 2784-85 ¶ 9 (WTB PSPWD 1999), *aff'd*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000). See also Petition for Reconsideration Filing Requirements, *Public Notice*, DA 00-2252 (WTB rel. Oct. 11, 2000).

¹⁰ See, e.g., Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975); *Elkins*, 14 FCC Rcd at 5081 ¶ 3.

¹¹ While we are dismissing the petitions for reconsideration, our action is without prejudice to the right of the Branch to independently investigate this matter and take any appropriate action.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Chief, Policy and Rules Branch
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