

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

In the Matter of)
)
ARIZONA LOTUS CORPORATION) FCC File Nos. 0000184756 and 0000184850
)
)
Private Operational Fixed Microwave Radio)
Stations WNTB881 and WNTB409,)
Tucson, Arizona)

ORDER ON RECONSIDERATION

Adopted: July 2, 2001 Released: July 5, 2001

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

1. Introduction. On May 11, 2001, Arizona Lotus Corporation (Arizona) filed a request for reconsideration of a March 30, 2001 action by the Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau denying its request for waiver and dismissing the above-captioned applications for renewal of Stations WNTB881 and WNTB409, Tucson, Arizona. For the reasons set forth below, we dismiss the petition for reconsideration as untimely.

2. Background. On March 14, 2000, Arizona's authorization for Stations WNTB881 and WNTB409 expired. On July 10, 2000, Arizona submitted the above-captioned applications to the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division (Branch) seeking modification and renewal of its license to operate Stations WNTB881 and WNTB409, Tucson, Arizona. Arizona included a waiver request in its filing for Station WNTB881 in connection with FCC File Number 0000184756, but failed to request a waiver request in its filing for Station WNTB409 in connection with FCC File Number 0000184850. In the reinstatement request, Arizona explained that (a) Call Sign WNTB881 is the primary studio transmitter link to Tucson Mountain, necessary to the operation of Station KLPX (FM), Tucson, Arizona, and (b) the untimely filing was a result of a misunderstanding, and mistaken belief that continuation of service had been authorized when the Mass Media Bureau (MMB) renewed the FM station's main transmitter license.

3. On March 31, 2001, the Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau issued the Waiver Denial Letter. The Waiver Denial Letter

1 See Petition for Reconsideration filed by Arizona Lotus Corporation (dated May 10, 2001, and received May 11, 2001) (Petition).

2 See Letter dated March 30, 2001 from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Jerome S. Boros (Waiver Denial Letter).

3 See Application FCC File number 0000184756 and 0000184850 filed on July 10, 2000; Arizona Request for Waiver (filed July 10, 2000) (Waiver Request).

4 Waiver Request at 1.

dismissed the renewal application for Station WNTB409 because Arizona Lotus did not request a waiver of the requirement that a renewal application be submitted prior to the date the license expires.⁵ With respect to Station WNTB881, the Waiver Denial Letter concluded that Arizona's claim that the station was necessary to the operation of Station KLPX (FM), Tucson, Arizona, and Arizona's mistaken belief that continuation of service had been authorized when the Mass Media Bureau renewed the FM station's main transmitter license did not constitute good cause for a waiver.⁶ Arizona filed the Petition on May 11, 2001.

4. *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.⁷ 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.⁸ In addition, Section 1.106(i) of the Commission's Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.⁹

5. In this case, the date of public notice of the denial of Arizona's waiver request was March 30, 2001, the date appearing on the Waiver Denial Letter.¹⁰ The deadline for filing petitions for reconsideration of that action was Monday, April 30, 2001.¹¹ The Office of the Secretary received Arizona's Petition on May 11, 2001, beyond the filing deadline. Therefore, we find that the Petition was untimely. The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹² Consequently, we conclude that the Petition for Reconsideration filed by Arizona must be dismissed as untimely.¹³

⁵ Waiver Denial Letter at 2.

⁶ *Id.*

⁷ 47 U.S.C. § 405.

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

⁹ 47 C.F.R. § 1.106(i).

¹⁰ *See* 47 C.F.R. § 1.4(b)(5).

¹¹ The thirtieth day after March 30, 2000 was a Sunday. Since that day was a holiday, petitions for reconsideration were due on the next business day, Monday, April 30, 2001. *See* 47 C.F.R. § 1.4(h).

¹² *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).

¹³ If we reached the merits of Arizona's Petition, we would affirm the Waiver Denial Letter. While Arizona alleges that its counsel was told by FCC staff that these licenses would be renewed automatically at the same time KLPX(FM)'s license was renewed, Arizona neither identifies the Commission staff member with whom its counsel spoke. Moreover, the individual with whom counsel spoke was with the Mass Media Bureau, which does not oversee the licensing of these stations. *See* Waiver Request at 1. In any event, it is well settled that parties doing business before the Commission may not claim reliance on informal staff advice to excuse failures to comply with the Commission's Rules. *See, e.g.,* Mary Ann Salvatoriello, *Memorandum Opinion and Order*, 6 FCC Rcd 4705, 4708 (1991) ("Erroneous advice received from a government employee is insufficient [to warrant estoppel against the government], particularly when the relief requested would be contrary to an applicable statute or rule."); Texas Media Group, Inc., *Memorandum Opinion and Order*, 5 FCC Rcd 2851, 2852 (1990), *aff'd sub nom. Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991) ("It is the obligation of interested parties to ascertain facts from official Commission records and files and not rely on statements or informal opinions by the staff."); Hinton

6. Accordingly, IT IS ORDERED 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, that the petition for reconsideration filed by Arizona Lotus Corporation, on May 11, 2001 IS DISMISSED.

7. Should Arizona wish to obtain a valid authorization for this station, it must file a new, properly coordinated application.¹⁴ Furthermore, if Arizona desires to continue operating this facility until it receives a new authorization, it must obtain authorization to do so.¹⁵

8. 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
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

Telephone Company, *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 11625, 11637 (1995) (“The Commission has specifically held that parties who rely on staff advice or interpretations do so at their own risk.”).

¹⁴ See 47 C.F.R. § 90.175.

¹⁵ See 47 C.F.R. § 1.931.