

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

In the Matter of)
)
SHO-ME POWER ELECTRIC) FCC File No. 0000123286
COOPERATIVE)
)
Private Operational Fixed Microwave Radio)
Station KAW88, Marshfield, Missouri)

ORDER ON RECONSIDERATION

Adopted: February 23, 2001

Released: February 27, 2001

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

1. *Introduction.* On September 22, 2000, Sho-Me Power Electric Cooperative (Sho-Me) filed a request for reconsideration¹ of an August 17, 2000 action by the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division (Branch). For the reasons set forth below, we dismiss the petition for reconsideration.

2. *Background.* On May 4, 2000, Sho-Me submitted the above-captioned application to the Branch seeking modification of its license to operate Station KAW88, Marshfield, Missouri. In the modification application, Sho-Me proposed to correct the coordinates of one the station’s receive sites (Station KAX22, Phillipsburg, Missouri), and to make several changes to the technical parameters of Station KAW88, including changes in the station’s frequency tolerance, beamwidth, and azimuth. On August 17, 2000, the Branch issued a modified license for Station KAW888 with secondary status. Prior to this time, the station operated with primary status. On September 22, 2000, Sho-Me requested reconsideration of the imposition of secondary status and reinstatement of primary status for Station KAW88 in a letter to the Chief of the Branch, which is located in Gettysburg, Pennsylvania.²

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.³ 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 of public notice of the Commission’s action.⁴ In addition, Section 1.106(i) of the Commission’s Rules provides that a petition for reconsideration must

¹ Letter from Raymond A. Kowalski, Esq., Keller and Heckman, LLP, on behalf of Sho-Me Power Electric Cooperative, to FCC, Gettysburg, Pennsylvania (dated Sept. 13, 2000 and received Sept. 22, 2000) (Reconsideration Request).

² *Id.* at 1.

³ 47 U.S.C. § 405.

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

be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.⁵

4. The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's Rules.⁶ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.⁷ A document is filed with the Commission upon its receipt at the location designated by the Commission.⁸ Accordingly, based on the plain language of the Commission's Rules, a petition for reconsideration submitted to the FCC's Gettysburg, Pennsylvania office is not properly filed.⁹

5. We conclude that Sho-Me did not satisfy the filing requirement in accordance with Section 1.106 of the Commission's Rules. In this case, the date of public notice is August 17, 2000, the date the Branch granted modification of Sho-Me's license, because notice of the action was not published in the Federal Register, released, or placed on public notice.¹⁰ Because the thirty-day window for filing a petition for reconsideration closed on September 18, 2000, the petition was untimely.¹¹ The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹² In addition, we note that the petition was filed at the wrong location, and no request for waiver of the requisite filing location was submitted. Thus, we conclude that that petition should be dismissed as untimely and improperly filed.¹³

⁵ 47 C.F.R. § 1.106(i).

⁶ 47 C.F.R. § 0.401.

⁷ *Id.*

⁸ 47 C.F.R. § 1.7; First Auction of Interactive Video and Data Service (IVDS) Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 (1996); Complaints Regarding Cable Programming Services Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14 (CSB 1995).

⁹ *See, e.g.*, Memorandum of Agreement between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080 (WTB 1999) (determining that a facsimile copy to a division office neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office) (*Elkins*); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782 (WTB PSPWD 1999) (finding that a petition for reconsideration sent to the Commission's lock box at Mellon Bank neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office), *aff'd*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000); *see also* Petition for Reconsideration Filing Requirements, *Public Notice*, 15 FCC Rcd 19473 (WTB 2000).

¹⁰ 47 C.F.R. § 1.4(b)(5).

¹¹ The thirtieth day after August 17, 2000 was a Saturday. Since that day was a holiday, petitions for reconsideration were due on the next business day, Monday, September 18, 2000. *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 (1975); *Elkins*, 14 FCC Rcd at 5081 ¶ 3.

¹³ We also note that the modified station was correctly authorized with secondary status, consistent with the provisions of the Commission's Part 101 rules. Section 101.81 of the Commission's Rules provides that all major modifications to existing 2 GHz fixed microwave system (FMS) systems will be authorized on a secondary basis to emerging technology (ET) systems, and, except for certain technical changes that may be made without losing secondary status, all minor modifications will render the modified FMS license secondary to ET operations unless

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 submitted by Sho-Me Power Electric Cooperative, on September 22, 2000 IS DISMISSED.

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

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the incumbent FMS licensee affirmatively justifies primary status and establishes that the modification would not add to the relocation costs of the ET licensees. 47 C.F.R. § 101.81. Sho-Me contends that the correction of the coordinates for the receive site was a technical change that should not have resulted in secondary status. Sho-Me fails to address the other changes it made. Most of these were not among the limited number of technical changes that can be granted with primary status. Therefore, primary status would have been appropriate only upon a special showing of need to justify primary status and a demonstration that the modification would not add to the relocation costs of ET licensees. The application did not include the requisite showing. Further, the Reconsideration Request offers no basis to support either required showing. Accordingly, the Branch correctly authorized the station's modifications with a secondary status condition.