

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

In the Matter of
Request for Extension of Time to
Construct Digital Facilities
KBSI-DT, Cape Girardeau, Missouri
File No. BEPCDT-20020301AHU
ID No. 19593

MEMORANDUM OPINION AND ORDER

Adopted: August 22, 2002

Released: August 26, 2002

By the Chief, Media Bureau:

1. The Media Bureau (the "Bureau") has before it a petition for reconsideration filed by KBSI Licensee, L.P. (KBSI) seeking reconsideration of the Bureau's letter of June 3, 2002, denying its request for an extension of time to construct the digital facilities for KBSI-DT and admonishing KBSI for failing to meet the May 1, 2002, construction deadline for DTV facilities. For the reasons stated below, we deny the petition.

2. In its petition, KBSI argues that the Bureau (1) misstated relevant facts and ignored the realities of DTV construction; (2) ignored KBSI's good faith efforts to meet the May 1, 2002, construction deadline; (3) failed to provide due process by not providing adequate notice of its intent to impose admonishments; and (4) failed to afford similarly situated parties similar treatment.

3. KBSI relies on essentially the same facts and arguments in support of its first two claimed grounds for reconsideration. On the first issue, KBSI claims that the Bureau misstated relevant facts when it concluded that KBSI had not justified its failure to determine a feasible tower site or antenna system within the four-year period between the filing of its DTV application and the build-out deadline. KBSI also claims that the Bureau erred in concluding that KBSI's representations that its facility would be operational before November 2002 had no reasonable basis. KBSI states that it was unreasonable for the Bureau to have expected completion of the station by the May 2002 deadline because the construction permit was not issued until May 9, 2001. KBSI goes on to state that its DTV construction was delayed because it could not obtain a tower study until June 2002 due to the heavy workload of its tower manufacturer. KBSI also provides a timeline setting out past and future construction steps in support of its position that it made extensive good faith efforts to meet the May 1, 2002, deadline. KBSI contends that its statements that it would have the tower study "in hand" for its antenna in June 2002, and that it would go forward with antenna placement should the tower owner support it, were adequate to support KBSI's claim that its facility would be operational before November 2002.

4. We find these arguments unpersuasive. To begin with, any delay in the approval of KBSI's DTV application arose from the proposals laid out in the application itself. DTV applications that were incomplete, that presented technical, legal, or financial questions, or that were mutually exclusive with other applications naturally took longer to resolve than applications that were grantable as filed. Furthermore, KBSI reasonably should have anticipated that its tower manufacturer could have a heavy workload due to the nationwide DTV conversion and should have allowed for possible delays based on that workload. Therefore, KBSI's delays either arose from its own actions or from a situation which it easily could have foreseen. In particular, KBSI first discovered that its existing tower could not support its DTV antenna in 1998 and then, four years later, determined that its current antenna system was not suitable for adjacent DTV operation and would have to be replaced. Furthermore, KBSI's statements regarding its ability to commence DTV operation by November 2002 were based upon a tower study that it hoped to receive by June and which would then need the approval of the tower owner, with neither the receipt nor the approval assured. In fact, KBSI's petition states that the tower study it was expecting in June still had not been received at the time the petition was filed in July. KBSI's new time line abandons the November 2002 date and states that the licensee now hopes to commence DTV operation in December, 2002. The Bureau's conclusion that KBSI had failed to justify its failure to meet the May 1, 2002, date and that KBSI's projection that its station would be operational by November 2002 had no reasonable basis were, therefore, well founded.

5. KBSI next argues that the Bureau failed to give sufficient notice that it would admonish parties who failed to meet the DTV construction deadline. Admonishment is not an unusual or excessively punitive remedy, but rather is a penalty regularly imposed in a variety of contexts for failure to abide by Commission requirements.¹ In this context, KBSI failed to comply with a Commission imposed build-out requirement. Its apparent expectation that it would be permitted to do so without ramifications was baseless and mistaken. As a result, KBSI's contention that it was denied "due process" when it received an admonishment for failure to comply with the build-out requirement is without merit. KBSI should note, however, that if it continues to miss deadlines imposed by the Commission on its DTV build out, it will be subject to additional sanctions.

6. Finally, KBSI argues that similarly situated parties were not given similar treatment. Apparently, KBSI contends that it was treated unfairly because its DTV application was approved later than the applications of other parties. As noted above, any delay in processing KBSI's application resulted from the terms of KBSI's proposal, not from any disparate treatment of KBSI. We, therefore, reject KBSI's contention that it was treated differently than similarly situated parties.

7. ACCORDINGLY, IT IS ORDERED, THAT the petition for reconsideration filed by KBSI Licensee, L.P. seeking reconsideration of the Bureau's letter of June 3, 2002, which denied KBSI's

¹ See, e.g., *Davidson County Broadcasting*, 12 FCC Rcd 3375 (1997)(failure to comply with EEO rules); *Rainbow Broadcasting*, 14 FCC Rcd 11099 (1999)(failure to obtain Commission consent prior to replacing authorized antenna); *Black Media Broadcasting*, 16 FCC Rcd 3374 (2001)(broadcast of commercials on noncommercial station).

request for an extension of time to construct the digital facilities for KBSI-DT and admonished KBSI for failure to meet the May 1, 2002, construction deadline for digital television facilities IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau