

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

In the Matter of
Request for Extension of Time to
Construct Digital Facilities
WCHS-DT, Charleston, West Virginia
File No. BEPCDT-20020301AKP
ID No. 71280

MEMORANDUM OPINION AND ORDER

Adopted: October 15, 2002

Released: October 16, 2002

By the Chief, Media Bureau:

1. The Media Bureau (the "Bureau") has before it a petition for reconsideration filed by WCHS Licensee, LLC (WCHS) seeking reconsideration of the Bureau's letter of June 14, 2002, denying its request for an extension of time to construct the digital facilities for WCHS-DT and admonishing WCHS 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, WCHS argues that the Bureau (1) misstated relevant facts and ignored the realities of DTV construction; (2) ignored WCHS'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. WCHS relies on essentially the same facts and arguments in support of its first two claimed grounds for reconsideration. WCHS claims that the Bureau misstated relevant facts when it concluded that WCHS had four years to make adequate arrangements to build its DTV facility. WCHS also claims that the Bureau erred in concluding that WCHS's representations that its facility would be operational by December 2002 had no reasonable basis. WCHS 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 2001 and the national DTV build out generated market constraints on the availability of engineers due to unusual demand. WCHS states that in July 2002 it received a structural study that indicated a nearby tower could be strengthened to support its DTV antenna with modifications. WCHS states that, as a result, it will need to file a minor modification application. WCHS 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. WCHS contends that its actions supported a reasonable expectation that its DTV facility would be operational by December 2002.

4. We find these arguments unpersuasive. To begin with, any delay in the approval of WCHS'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, WCHS reasonably should have anticipated that there would be heavy demand on engineers due to the nationwide DTV conversion and should have allowed for possible delays based on that workload. Therefore, WCHS's delays either arose from its own actions or from a situation which it easily could have foreseen. In addition, WCHS's statements regarding its ability to commence DTV operation by December 2002 were based, in part, on the anticipated completion of a tower study that it did not receive until July 8, 2002. According to WCHS, that tower study necessitated the filing of a minor modification application, but that application has still not been filed. WCHS's timeline indicates that it anticipates commencing DTV operations by December 1, 2002, but that is questionable in light of its failure to even file its minor modification application. The Bureau's conclusion that WCHS had failed to justify its failure to meet the May 1, 2002, date and that WCHS's projection that its station would be operational by December 2002 had no reasonable basis were, therefore, well founded.

5. WCHS 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, WCHS 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, WCHS'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. WCHS 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, WCHS argues that similarly situated parties were not given similar treatment. Apparently, WCHS 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 WCHS's application resulted from the terms of WCHS's proposal, not from any disparate treatment of WCHS. We, therefore, reject WCHS's contention that it was treated differently than similarly situated parties.

7. ACCORDINGLY, IT IS ORDERED, THAT the petition for reconsideration filed by WCHS Licensee, LLC seeking reconsideration of the Bureau's letter of June 14, 2002, which denied WCHS's request for an extension of time to construct the digital facilities for WCHS-DT and admonished WCHS 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

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).