

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

In the Matter of)	
)	
Request for Extension of Time to)	
Construct Digital Facilities)	File No. BEPCDT-20020301AKG
KOKH-DT, Oklahoma City, Oklahoma)	ID No. 35388
)	
)	
)	
)	

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 KOKH Licensee, LLC (KOKH) 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 KOKH-DT and admonishing KOKH 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, KOKH argues that the Bureau (1) misstated relevant facts and ignored the realities of DTV construction; (2) ignored KOKH'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. KOKH relies on essentially the same facts and arguments in support of its first two claimed grounds for reconsideration. KOKH claims that the Bureau misstated relevant facts when it concluded that KOKH had four years to make adequate arrangements to build its DTV facility. KOKH also claims that the Bureau erred in concluding that KOKH's representations that its facility would be operational by November 2002 had no reasonable basis. KOKH 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 January 2001 and because it did not take control of the station until January 2002. KOKH also contends that the national DTV build out generated market constraints on the availability of engineers due to unusual demand. KOKH 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. KOKH contends that its actions supported a reasonable expectation that its DTV facility would be operational by November 2002.

4. We find these arguments unpersuasive. To begin with, any delay in the approval of KOKH'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, KOKH 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, the delays either arose from the KOKH's own actions or from a situation which it easily could have foreseen. In addition, KOKH's statements regarding its ability to commence DTV operation by November 2002 were based, in part, on the anticipated completion of a tower study that it had not received either at the time it filed its extension request or at the time of its supplement. Based on the information in the original extension request and in the supplement, the Bureau's conclusion that KOKH had failed to justify its failure to meet the May 1, 2002, date and that KOKH's projection that its station would be operational by November 2002 had no reasonable basis were well founded.

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

7. ACCORDINGLY, IT IS ORDERED, THAT the petition for reconsideration filed by KOKH Licensee, LLC seeking reconsideration of the Bureau's letter of June 3, 2002, which denied KOKH's request for an extension of time to construct the digital facilities for KOKH-DT and admonished KOKH 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).