

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

In the Matter of
Request for Extension of Time to
Construct Digital Facilities
KQCA-DT, Stockton, California
File No. BEPCDT-20020304AKJ
ID No. 10242

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 KQCA Hearst-Argyle Television, Inc. ("KQCA") 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 KQCA-DT and admonishing KQCA 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, KQCA argues that (1) it has satisfied the DTV extension standard; (2) it is "ingeniously" delivering its DTV signal to viewers; and (3) the Bureau failed to afford similarly situated parties similar treatment.

3. KQCA states that its DTV construction was delayed due to negotiations with Richland Towers ("Richland"), a third-party tower company that will perform tower modifications; order and install an antenna and other DTV equipment; provide a "turnkey" DTV antenna system that would permit multiple DTV operations from the tower; and ultimately manage the operations of the tower. KQCA also states that it began negotiations with Richland in August 2001 and those negotiations were finalized in April 2002. As of the date of the petition, the parties were in a due diligence process and were awaiting approval from the County of Sacramento and the site owner. According the KQCA, its transmitter had been built at the time of the petition, but Richland had not ordered the necessary antenna. KQCA projects that its DTV facility will be completed on or around May 1, 2003.

4. We find these arguments unpersuasive. KQCA received its license in November 2000, but did not begin negotiations with Richland until August 2001. KQCA does not offer any explanation for this lengthy delay. Furthermore, at the time of the petition, KQCA had not received final approval of its tower proposal from the site owner and local authorities, had not commenced construction, and had not ordered its antenna. These facts make its projected May 1, 2003 operational date questionable. In itself, the choice of a projected operational date of May 1, 2003 casts doubts of the reliability of KQCA's projections because that date is several months beyond the extension that it originally requested. Based on these facts, the Bureau

was justified in denying KQCA's extension request.

5. KQCA states that it is currently delivering its station's DTV signal to viewers in the Sacramento market. According to the petition, this is being accomplished by transmitting a separate DTV programming stream from the facilities of its sister station, KCRA-TV, Sacramento. This approach, however, is no substitute for KQCA delivering its DTV signal from its own authorized facility.

6. Finally, KQCA argues that similarly situated parties were not given similar treatment. KQCA states that KMAX-TV, Sacramento, California, proposes to use KQCA's tower. KQCA goes on to state that KMAX-TV was granted a DTV extension because of delays associated with modification of that tower. KQCA contends that it should have been granted the same extension as KMAX-TV because the same tower is at issue. KQCA is, however, the tower owner. It was its own delay in beginning negotiations with a tower contractor, not delays occasioned by the actions of a third party, that resulted in KQCA's failure to construct.

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