

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-20020301AJL
KXXV-DT, Waco, Texas)	ID No. 9781
)	
)	
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)	

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 Centex Television Limited Partnership ("Centex") 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 KXXV-DT and admonishing Centex 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, Centex argues that the Bureau (1) failed to provide adequate notice of its proposed sanctions and failed to follow the requirements for rulemaking; (2) failed to afford similarly situated parties similar treatment; and (3) ignored Centex's good faith efforts to meet the May 1, 2002, construction deadline. Centex also argues that grant of its requested extension is in the public interest.

3. On the first issue, Centex argues that it did not receive adequate notice that it would be subject to admonishment and further progressive discipline. 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, Centex 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, Centex's contention that it failed to receive adequate notice of possible penalties before it was admonished for failure to comply with the build-out requirement is without merit. Centex 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.

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).

4. Next, Centex argues that similarly situated parties were not given similar treatment. Centex contends that commonly-owned station KFDA-TV, Amarillo, Texas was granted an extension even though it relied on similar facts in comparable markets. Centex's argument does not take into account that KFDA's construction delay was not solely caused by equipment and antenna issues, but was also caused by a conflict with a rulemaking. Centex next contends that its treatment was not consistent with that afforded to KWKT(TV), Waco, Texas. Centex argues that KWKT(TV) also experienced equipment delays. The extension granted to KWKT(TV), however, relied on its financial hardship showing. Centex made no such showing. We, therefore, reject Centex's contention that it was treated differently than similarly situated parties.

5. Centex next claims that the Bureau ignored its good-faith efforts to construct KXXV's DTV facilities and did not consider the technical difficulties complicating the station's transition. Centex also claims that its estimation that it would complete construction by November 1, 2002 was "entirely reasonable." At the time Centex filed its extension request and at the time of its supplement to that request, it had yet to determine what type of bolt configuration it would use for its antenna. Until that was determined, it was not possible for Centex to order its equipment. Centex did not anticipate even ordering its equipment until May 2002, with delivery anticipated in October. The fact that this schedule has already proved to be based on overly-optimistic assumptions is demonstrated by Centex's admission in its pleading that its construction schedule had already slipped by approximately one month as of July 2002. The Bureau's conclusion that Centex had failed to justify its failure to meet the May 1, 2002, date and that Centex's projection that its station would be operational by November 1, 2002 had no reasonable basis were, therefore, well founded.

6. Centex claims that grant of its extension request would serve the public interest, but it fails to make an adequate case to support its extension. Under the circumstances, the public interest is better served by enforcement of the Commission's Rules and deadlines.

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