

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-20020301AKO
WSYT-DT, Syracuse, New York) ID No. 40758

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 WSYT Licensee, L.P. (WSYT) 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 WSYT-DT and admonishing WSYT 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, WSYT argues that the Bureau (1) misstated relevant facts and ignored the realities of DTV construction; (2) ignored WSYT'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. WSYT relies on essentially the same facts and arguments in support of its first two claimed grounds for reconsideration. On the first issue, WSYT claims that the Bureau misstated relevant facts when it concluded that WSYT had four years to make adequate arrangements to build its DTV facility. WSYT also claims that the Bureau erred in concluding that WSYT's representations that its facility would be operational by December 2002 had no reasonable basis. WSYT asserts 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 September 25, 2001 and the national DTV build out generated market constraints on the availability of engineers due to unusual demand. WSYT states that as of April 2002, it had signed a letter of intent to relocate to a site owned by Raycom Media where a new community tower was to be built, that tower construction had begun and that building plans had been finalized and sent out for bid. WSYT further states that its engineer was in the process of preparing a modification application at that time. According to WSYT, that modification application, which Commission records indicate has still not been filed, was delayed due to "LPTV problems that were not anticipated." WSYT argues that these representations support its claim that the Bureau's denial of its extension request was unjustified.

4. We find these arguments unpersuasive. To begin with, any delay in the approval of WSYT'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, WSYT 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, WSYT's delays either arose from its own actions or from a situation which it easily could have foreseen. In addition, WSYT still cannot give a projected date by which the Raycom tower on which it proposes to locate will be completed and still has not filed a modification application to propose relocating to that tower. The Bureau's conclusion that WSYT had failed to justify its failure to meet the May 1, 2002, date and that WSYT's projection that its station would be operational by December 2002 had no reasonable basis were, therefore, well founded.

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

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