

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

In the Matter of)
MWTV, INC.) File Nos. BPMD-8310238 and BMPMD-
Request for Reinstatement of Conditional License) 9253159
for Multichannel Multipoint Distribution Service)
Station WLW938, F-Group Channels, Asheville,)
North Carolina)

ORDER ON FURTHER RECONSIDERATION

Adopted: June 9, 2003

Released: June 11, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. Introduction. We have before us a request by MWTV, Inc. (MWTV) for further reconsideration of the August 16, 2001 decision of the Video Services Division (Division) of the former Mass Media Bureau. The Division denied MWTV's petition to reinstate its conditional license to operate Multichannel Multipoint Distribution Service (MMDS) Station WLW938 on the F Group channels in Asheville, North Carolina. For the reasons set forth below, we grant the Petition.

2. Background. On October 7, 1991, MWTV was granted a conditional license for Station WLW938, an MMDS Station on the F Group channels in Asheville, North Carolina. The license for Station WLW938 was conditioned on, among other things, a submission of an interference analysis demonstrating a lack of harmful interference to each co-channel or adjacent channel Instructional Television Fixed Service (ITFS0) station licensed with a transmitter site within fifty miles of Station WLW938 by January 15, 1992. On January 15, 1992, MWTV submitted an application to modify its conditional license for Station WLW938, including among other things, a request to change the due date for submission of the interference analysis from January 15, 1992 to July 15, 1992.

3. On January 7, 1993, the Domestic Facilities Division of the former Common Carrier Bureau returned MWTV's modification application for MMDS Station WLW938 "because the conditional license ostensibly was forfeited." On January 21, 1993, MWTV filed a petition to reinstate its

1 MWTV, Inc., Petition for Further Reconsideration (filed Sep. 17, 2001) (Petition).
2 MWTV, Inc., Petition for Reinstatement (filed Jan. 21, 1993) (Petition for Reinstatement).
3 Letter dated Aug. 16, 2001 from Charles E. Dziedzic, Assistant Chief, Video Services Division, Mass Media Bureau, Federal Communications Commission to MWTV, Inc. (Division Letter).
4 File No. BPMD-8310238.
5 File No. BMPMD-9253169, Exhibit 4 at 1 (filed Jan. 15, 1992) (Exhibit 4) at 1. See also 47 C.F.R. § 21.902 (1991).
6 Exhibit 4 at 1.
7 Application Return Notification dated Jan. 7, 1993.

modification application for MMDS Station WLW938, indicating that the forfeiture of its conditional license was “a clerical error.”⁸ On August 16, 2001, the Division denied MWTV’s petition for reinstatement.⁹ On September 17, 2001, MWTV filed the instant Petition seeking further reconsideration of the Division Letter.¹⁰

4. In its Petition, MWTV contends that the Division did not adequately review its request for reinstatement.¹¹ In support, MWTV contends that the Division declared MWTV’s conditional license for Station WLW938 forfeited without acting on its modification application in which it sought an extension of the deadline to file the interference analysis.¹² In this connection, MWTV argues that the filing of a modification application was the proper procedure to seek an extension of time to submit an interference analysis.¹³ In this connection, MWTV refers to *MMDS, Inc.*,¹⁴ where

the Domestic Facilities Division explained that one of two events would, in the context of the 90-day conditions, preclude the staff from forfeiting a conditional license: (1) that the licensee in fact timely submitted documents complying with express conditions; or (2) that the licensee ‘file[d] a modification application requesting change of the due date for filing this documentation.’¹⁵

MWTV argues that because the modification application was filed prior to the due date for the interference analysis, the conditional license should not have been forfeited and thus, the modification application should not have been dismissed.¹⁶ Finally, MWTV contends that the cases cited in the Division Letter are not relevant to the issues presented in this matter.¹⁷

5. *Discussion.* Based upon our review of the record in this proceeding, we agree with MWTV. As MWTV notes in its Petition, this case is similar to *MMDS, Inc.*, which also involved a conditional MMDS license. In *MMDS Inc.*, the former Common Carrier Bureau stated that an applicant could avoid automatic forfeiture of a conditional license by filing a modification application seeking an extension of time to submit an interference analysis.¹⁸ Accordingly, we agree with MWTV that its license should not have been deemed automatically forfeited prior to a ruling on its request for additional time to submit an interference analysis.

6. We therefore reinstate MWTV’s modification application and direct the Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to review the application and make a determination whether MWTV has sufficiently demonstrated circumstances warranting grant of its request for an extension of time to conduct the necessary interference analysis. In evaluating MWTV’s request, the Branch shall consider

⁸ *Id.*

⁹ Division Letter at 1.

¹⁰ *See* Petition.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ *MMDS, Incorporated, Order on Reconsideration*, 8 FCC Rcd 5440 (CCB DFD 1993) (*MMDS, Inc.*).

¹⁵ Petition at 4.

¹⁶ *See id.*

¹⁷ *Id.* at 6.

¹⁸ *See MMDS, Inc.*, 8 FCC Rcd 5440 at ¶ 5.

that Section 1.46(a) of the Commission's Rules states, "It is the policy of the Commission that extensions of time shall not be routinely granted."¹⁹ In light of the passage of time since MWTV filed its original modification application, we direct the Branch to return MWTV's application and provide it with sixty days from the date of the return notice to supplement the record before we decide whether the extension request should be granted. If MWTV fails to respond to the return notice, the application will be dismissed for failure to prosecute.²⁰ If MWTV responds to the return notice, we shall decide whether to grant its modification application based upon its original filing and any additional information provided in response to the return notice.

7. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Further Reconsideration filed on September 17, 2001 by MWTV, Inc. IS GRANTED, and the license for Station WLW938 IS REINSTATED, pending final resolution of the subject application, and application File No. BMPMD-9253159 IS REINSTATED to pending status.

8. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, that the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, SHALL PROCESS File No. BMPMD-9253159 consistent with the Commission's Rules and this *Order on Further Reconsideration*.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁹See 47 C.F.R. § 1.46(a).

²⁰47 C.F.R. § 21.28(d).