

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

In the Matter of )
)
COMM SPEED HUNTINGTON, LLC )
)
Licensee of Multipoint Distribution Service )
Station WMX706, Huntington, West Virginia )
)
Request for Reinstatement Pursuant to Section )
21.44 of the Commission's Rules )
)

MEMORANDUM OPINION AND ORDER

Adopted: April 9, 2004

Released: April 12, 2004

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

1. Introduction. On February 10, 2003, Comm Speed Huntington, LLC (Comm Speed) filed a request for reinstatement pursuant to Section 21.44 of the Commission's Rules seeking acceptance of a late-filed application for extension of time to construct Multichannel Multipoint Distribution Service (MMDS) Station WMX706, Huntington, West Virginia. For the reasons discussed below, we grant the Reinstatement Request.

2. Background. A license for Station WMX706 was originally issued on December 13, 1994. Subsequently, the former Mass Media Bureau extended the time to construct Station WMX706 to January 10, 2003. Comm Speed failed to either construct the stations or request an extension of time to construct the station before January 10, 2003. The station has not been constructed because Comm Speed has been awaiting action on a pending application to modify the facilities for Station WMX706. Stephen Merrill, Vice-President the controlling member of Comm Speed, explains that he intended to file a request for extension of time to construct before the January 10, 2003 deadline. Mr. Merrill believes he forgot the January 10, 2003 deadline because he was focused on reviewing documents and preparing documents required to correct the Commission's licensing records.

1 47 C.F.R. § 21.44.

2 Petition for Reinstatement Pursuant to 47 C.F.R. § 21.44(b) (filed Feb. 10, 2003) (Reinstatement Request).

3 File No. BPMDC-9202226 (granted Dec. 13, 1994).

4 File Nos. BEMDC-9650227 and BEMDC-9750094 (granted Apr. 30, 1996 and Jan. 10, 2002).

5 Reinstatement Request at 3.

6 Reinstatement Request, Declaration of Stephen Merrill (Merrill Declaration) at 1.

7 Id. See Wireless Telecommunications Bureau Seeks to Verify ITFS, MDS, and MMDS License Status and Pending Applications on October 18, 2002, Public Notice, 17 FCC Rcd 20538 (WTB 2002).

3. Comm Speed previously had a formal calendaring system to ensure that it met all Commission deadlines.<sup>8</sup> To ensure that Comm Speed does not miss another deadline, Comm Speed has retained counsel to assist with monitoring deadlines.<sup>9</sup> Comm Speed represents that Mr. Merrill and counsel will confer at 30-day intervals beginning 120 days before any Commission deadline to ensure that all filing deadlines are met.<sup>10</sup>

4. *Discussion.* Under Section 21.44(a)(1) of the Commission's Rules, a license shall be automatically cancelled if the construction deadline, unless the licensee files a certification of completion of construction within five days after the construction deadline.<sup>11</sup> In this case, as Comm Speed admits, it should have filed a request for further extension of time to construct prior to the January 10, 2003 deadline. Section 21.44(b) of the Commission's Rules, however, allows Comm Speed to request reinstatement of its license. That rule provides:

(b) A license forfeited in whole or in part under the provisions of paragraph (a)(1) or (a)(2) may be reinstated if the Commission, in its discretion, determines that reinstatement would best serve the public interest, convenience and necessity. Petitions for reinstatement filed pursuant to this subsection will be considered only if:

(1) The petition is filed within 30 days of the expiration date set forth in paragraph (a)(1) or (a)(2) of this section, whichever is applicable;

(2) The petition explains the failure to timely file such notification or application as would have prevented automatic forfeiture; and

(3) The petition sets forth with specificity the procedures which have been established to insure timely filings in the future.<sup>12</sup>

In this case, we conclude that the license for Station WMX706 should be reinstated because Comm Speed has met each of the requirements for reinstatement.

5. With respect to the first requirement, the Reinstatement Request is timely. The thirtieth day after January 10, 2003 was Sunday, February 9, 2003. When a filing deadline falls on a Sunday, the filing is due the next business day.<sup>13</sup> Since the Reinstatement Request was filed on Monday, February 10, 2003, it was timely.

6. Comm Speed has also explained its failure to file a timely extension application. We do not condone Comm Speed's neglect of the deadline and remind Comm Speed of its obligation to comply with all Commission filing deadlines. The rule, however, does not preclude reinstatement in cases where a deadline is inadvertently missed, and reinstatement has been granted in cases where a licensee missed a deadline because of inadvertence.<sup>14</sup> We therefore conclude that Comm Speed has met the second prong of the rule.

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<sup>8</sup> Reinstatement Request at 4.

<sup>9</sup> *Id.* at 4-5.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> 47 C.F.R. § 21.44(a)(1).

<sup>12</sup> 47 C.F.R. § 21.44(b).

<sup>13</sup> 47 C.F.R. § 1.4(j).

<sup>14</sup> See *Line of Site, Inc., Order on Reconsideration*, 8 FCC Rcd 3145 (CCB DFD 1993).

7. Finally, we conclude that Comm Speed has set forth specific procedures designed to ensure that it makes timely filings in the future. We believe that its decision to use outside communications counsel to track deadlines and the promise to hold regular conferences with counsel are reasonable steps to ensure timely filings in the future.

8. We also believe that it is in the public interest to reinstate Comm Speed's license. Comm Speed intends to use Station WMX706 to provide broadband service to rural areas of West Virginia that, as of February 2003, were not served by any high-speed access provider.<sup>15</sup> The Commission has recently emphasized that MDS and ITFS can play an important role in promoting the availability of broadband to all Americans, including broadband technologies for educators.<sup>16</sup> The Commission also noted that wireless broadband service in the 2500-2690 MHz band may offer consumers another broadband alternative, which may lead to reduced prices and more competition in the delivery of high-speed internet access.<sup>17</sup> We believe that Comm Speed's effort to deploy an advanced broadband wireless system in rural West Virginia has the potential to provide another means of providing broadband to consumers in that area.<sup>18</sup>

9. For the reasons stated above, we conclude that Comm Speed has justified reinstatement of its license for Station WMX706. We therefore reinstate the license and direct processing of the pending applications for that station.

10. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 21.44(b) of the Commission's Rules, 47 C.F.R. § 21.44(b), that the "Petition for Reinstatement Pursuant to 47 C.F.R. § 21.44(b)" filed by Comm Speed Huntington, LLC on February 10, 2003 IS GRANTED, and the license for MDS Stations WMX706, Huntington, West Virginia IS REINSTATED.

11. IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), that the licensing staff SHALL PROCESS File Nos. BMPMDC-9551701 and 20030210AAH in accordance with the Commission's Rules.

12. 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

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

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<sup>15</sup> Reinstatement Request at 5-6.

<sup>16</sup>*Id.* at 6740 ¶ 33.

<sup>17</sup>*Id.* at 6741 ¶ 35.

<sup>18</sup> We do not determine at this time whether grant of Comm Speed's applications to modify and for extension of time to construct Station WMX706 would be in the public interest. Reinstatement of the license for Station WMX706 will allow consideration of those applications. Those applications will be addressed separately.