



Federal Communications Commission
Washington, D.C. 20554

November 3, 2005

DA 05-2899

In Reply Refer to:

1800B3-LAS

NAL/Acct No: MB20051810106

FRN: 0006153837

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Gulf Coast Community College
c/o Frank Sundram
5230 W. Highway 98
Panama City, FL 32401

Re: AM Broadcast Auction No. 84
WKGC(AM), Panama City Beach, FL
Facility ID No. 25564
File No. BMJP-20040130BBO
Application for Major Modification

Dear Licensee:

We have before us Gulf Coast Community College's ("GCCC") May 2, 2005, Petition for Reconsideration ("Reconsideration Petition") of the March 31, 2005, decision denying the Petition for Nunc Pro Tunc Acceptance ("Waiver Petition") of its Form 301 application for a major modification to the facilities of broadcast station WKGC(AM), Panama City Beach, Florida.¹ For the reasons discussed below, we grant the Petition for Reconsideration. We also issue a NOTICE OF APPARENT LIABILITY FOR FORFEITURE to GCCC for its apparent willful violation of Sections 73.3571(h)(3) and 73.5005(d) of the Commission's Rules,² due to GCCC's failure to timely submit a complete FCC Form 301 application.

Background. On November 6, 2003, the Media Bureau ("MB" or "Bureau") and the Wireless Telecommunications Bureau ("WTB") jointly released a Public Notice announcing a January 26-30, 2004, AM auction filing window for applications for new AM stations and major modifications to authorized AM facilities.³ GCCC timely filed a FCC Form 175 "short form" application and associated Form 301 tech box in the filing window for AM Auction No. 84, proposing a relocation of the WKGC(AM) transmitter site, an increase in daytime power, and identifying Southport, Florida as the station's new community of license. By a November 17, 2004, Public Notice, the Bureau announced that

¹ *Letter to Ernest T. Sanchez, Esq.*, Ref. No. 1800B3-TSN (MB Mar. 31, 2005) ("Staff Decision"). GCCC supplemented its Reconsideration Petition on June 16 and September 9, 2005.

² 47 C.F.R. §§ 73.3571(h)(3), 73.5005(d).

³ "AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze," *Public Notice*, 18 FCC Rcd 23016 (MB/WTB 2003).

GCCC's application was not mutually exclusive with any other applications submitted in the auction filing window.⁴ Non-mutually exclusive, or "singleton" applicants such as GCCC, were to file a complete FCC Form 301 "long form" application between November 18, 2004, and January 18, 2005. The Bureau cautioned that "[t]he staff will dismiss, without further processing, a previously filed Form 301 tech box submission of any applicant listed [in the *Singleton Filing Public Notice*] that fails to submit the complete FCC Form 301 by January 18, 2005."⁵ GCCC did not timely file a complete Form 301, and its auction filing window tech box submission was accordingly dismissed.⁶

In its Waiver Petition, GCCC claimed that its counsel attempted to timely file the complete Form 301, but that the Bureau's Consolidated Data Base System ("CDBS"), through which applications are electronically filed, would not allow filing of the application. The combination of Commission-based error and lack of adverse effect on any other party, argued GCCC, warranted waiver of the Form 301 application filing deadline. The Staff Decision denied the Waiver Petition, finding that GCCC had adequate notice of the 60-day filing window in which it was to file its complete Form 301 application, as well as of the January 18, 2005, deadline. The staff further found that GCCC's failure to have timely filed its application resulted from neither a CDBS malfunction nor Commission error, but rather from GCCC's own dilatory conduct in choosing to initiate the electronic filing process fifteen minutes before the filing window closed at midnight on January 18, 2005. Absent compelling circumstances not presented by GCCC, the staff determined that the public interest would best be served by consistent application of the Commission's rules, and not by waiver of an application filing deadline requirement.

In its Reconsideration Petition, GCCC seeks reconsideration on three grounds. First, GCCC argues that the Commission has previously granted waivers of the long-form application filing deadline to similarly situated parties under far less compelling circumstances. Second, GCCC contends that the public interest favors reinstatement of its application. In all likelihood, argues GCCC, unless its proposal is implemented, the existing service provided by WKG(AM) will be lost, either due to degradation of the physical facilities or legal factors. According to GCCC, the current transmitter site is located at the edge of a private golf course in Panama City Beach. It asserts that the transmitter site and ground system have become compromised due to fairway encroachment, rainwater run-off, and erosion. Maintenance has become problematic and access to the transmitting facilities to make capital improvements has been severely restricted by the site owners.⁷ Moreover, "requests by the site owners for WKG(AM) to relocate have been received by the licensee,"⁸ as the golf course owners attempt "to sell the land to real estate developers for residential use."⁹ The only viable alternative which will allow continued station operation is to move the transmitter site inland, states GCCC, but relocation sites are significantly limited,

⁴ "AM Auction No. 84 Singleton Applications – Media Bureau Announces Form 301 Application Deadline and Ten-Day Petition to Deny Period," *Public Notice*, 19 FCC Rcd 22569 (MB 2004) ("*Singleton Filing Public Notice*").

⁵ *Id.* at 22571.

⁶ "AM Auction No. 84 Singleton Applications Dismissed for Failure to File," *Public Notice*, 20 FCC Rcd 5109 (MB 2005).

⁷ Technical Exhibit of R. Stuart Graham, Jr. at 1. Statement of Frank Sundram, Acting Manager of WKG(AM) at 3.

⁸ Technical Exhibit of R. Stuart Graham, Jr. at 1.

⁹ Reconsideration Petition at 2.

given the scarcity of suitable tower locations, together with allocation and interference considerations of this AM station. Therefore, contends GCCC, not only would the facility modification provide Southport with its first local aural transmission service, but the upgrade is critical to the survival of this noncommercial educational station.

GCCC further states that, upon discovering it had missed the filing deadline, it took immediate corrective action, which included contacting the staff within minutes after the problem arose and submitting a paper Form 301 application with a request for waiver and *nunc pro tunc* acceptance the very next day. GCCC concludes that the dismissal of its tech box application is an extreme consequence under the circumstances, as it gains no advantage by missing the filing deadline. Since the application has already been found to be a singleton, there are no other parties prejudiced by the delay, nor would acceptance of the application be disruptive to any auction procedures.

Discussion. The Commission's rules require that a petition for reconsideration shall "state with particularity the respects in which a petitioner believes the action taken . . . should be changed"¹⁰ and must specifically state the relief sought. A petition for reconsideration that relies on facts not previously presented to the Commission may be granted where it is determined that consideration of the facts relied on "is required in the public interest."¹¹ We believe that the public interest will be served by consideration of the new facts presented in GCCC's Reconsideration Petition.

When an applicant seeks a waiver, it must plead with particularity the facts and circumstances which warrant such action.¹² "A waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."¹³ We find that GCCC has presented sufficient facts that, when considered in their totality, demonstrate unique circumstances that meet the standard for waiver of the subject rules to permit the filing of its complete Form 301 application.

GCCC pleads special circumstances based on the unavailability of any existing tower or other tower site which would allow the station to provide the necessary city-grade signal coverage to maintain Panama City Beach as its community of license. Additionally, the environmental concerns associated with the construction of such a tower in a beach community, together with "the skyrocketing property values in the area, . . . would put the purchase or lease of such a site beyond the financial resources of GCCC."¹⁴ The record indicates that GCCC will move away from its existing site and the Gulf Coast by relocating to an inland site already owned by GCCC on its satellite North Bay campus in Southport. The move will permit a substantial increase in power, provide Southport with its first local aural transmission service, while still providing reception service to Panama City Beach and its environs. Moreover, as indicated in GCCC's latest September 9, 2005, post-Hurricane Katrina supplemental filing, the recent

¹⁰ 47 C.F.R. § 1.106(d)(1).

¹¹ *Id.* at § 1.106(c).

¹² *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968). In addition, Section 73.3566(a) of the Commission's rules provides that requests for waiver "shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof." 47 C.F.R. § 73.3566(a).

¹³ *Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969)). In addition, a petitioner has the burden to show that the public interest would be served better by waiver than by strict application of the requirement.

¹⁴ Reconsideration Petition at 3.

tragic events underscore the prevailing public interest concerns in a Gulf Coast area particularly susceptible to flooding.

Under the circumstances presented by GCCC, we conclude that the public interest would not be served by rigid enforcement here of the long-form application filing deadline, which would result in the dismissal of the proposal to modify the WKGC(AM) facilities. In reaching this conclusion, we give considerable weight to GCCC's prompt action to remedy its error. Additionally, this decision comports with WTB precedent wherein applicants were granted partial relief for minor, inadvertent, post-auction delinquencies that did not disrupt the auction process, nor undermine the Commission's policy of facilitating rapid implementation of service to the public. In *City Page & Cellular Services, Inc. et al.*,¹⁵ for example, waiver of the Auction No. 40 long form application filing deadline was found to serve the public interest based upon findings that the seven requesting applicants had complied with previous auction requirements, denial of the waiver would delay the institution of new service, and the licensee's relatively prompt submission of the long form application after discovery of the missed deadline would not adversely impact the auction process.

We also recognize that the AM licensing process was not significantly delayed nor materially adversely affected by GCCC's late filing of its application here. Granting GCCC's waiver would not prejudice other applicants, as the GCCC major modification application was determined to be non-mutually exclusive with other auction window-filed applications.¹⁶ Accepting the GCCC complete Form 301 application would not undermine the Commission's broadcast auction policies. Thus, flexibility is appropriate in this instance. We therefore conclude that our grant of GCCC's request for waiver is in the public interest. Accordingly, for the above-stated reasons, (1) the May 2, 2005 Petition for Reconsideration is granted; (2) the auction filing window Form 301 tech box application for major modification of license of WKGC(AM) is reinstated; and (3) the request for waiver of the complete Form 301 application filing deadline is granted. These actions are taken under authority delegated pursuant to Section 0.283 of the Commission's rules.¹⁷

Sections 73.3571(h)(3) and 73.5005(d) violation. Although we grant GCCC's Reconsideration Petition, reinstate its Form 301 short form tech box application for major modification of license, and waive the Form 301 application filing deadline, we nonetheless find that GCCC apparently failed to comply with the rules requiring timely submission of a complete Form 301 application. While GCCC acknowledges the omission was the result of its own inaction, it was on notice that it was responsible for complying with the Commission's processing rules. Consequently, under the circumstances, we conclude that GCCC's failure to timely file warrants an administrative sanction and we issue a Notice of Apparent

¹⁵ *City Page & Cellular Services, Inc. et al.*, 17 FCC Rcd 26109 (WTB 2002). See also *Silver Palm Communications, Inc.*, 17 FCC Rcd 6606 (WTB 2002); *Pinpoint Communications, Inc.*, 14 FCC Rcd 6421 (WTB 1999).

¹⁶ *Compare Mr. Ameer Flippin*, 20 FCC Rcd 8750 (WTB 2005) (denial of request to submit late short form application based on public benefit of affording other auction applicants reasonable certainty as to the fair and predictable application of auction rules and procedures. Grant of waiver would frustrate Commission goal that auctions proceed in timely, organized, predictable and fair fashion).

¹⁷ 47 C.F.R. § 0.283.

Liability for a Forfeiture (“NAL”) to GCCC for its apparent willful¹⁸ violation of Sections 73.3571(h)(3) and 73.5005(d) of the Commission’s rules.¹⁹ The apparent violation involves GGCB’s failure to timely file a complete Form 301 application by the January 18, 2005 deadline. We are proposing a forfeiture amount in this case in accordance with Section 503(b) of the Act,²⁰ Section 1.80 of the Commission’s rules,²¹ and the Commission’s *Forfeiture Policy Statement*.²² Under Section 1.80 of the Commission’s rules, the base forfeiture amount for failure to file required information is \$3,000, and we propose a forfeiture for this amount.

For the reasons set forth above, and pursuant to 47 U.S.C. Section 503(b) and 47 C.F.R. Sections 0.283 and 1.80, GCCC is hereby advised of its apparent liability for a forfeiture of \$3,000 for willfully violating 47 C.F.R. Sections 73.3571(h)(3) and 73.5005(d). Accordingly, IT IS ORDERED, that pursuant to 47 C.F.R. Section 1.80, within thirty (30) days of the release of this Notice, GCCC SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. The payment MUST INCLUDE the NAL/Acct. No. MB20051810106 and the FCC Registration Number 0006153837 referenced in the caption of this document. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²³

The response, if any, must be mailed to Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A360, Washington, D.C. 20554

¹⁸ The Commission has held that an act or omission is “willful” if it is a conscious and deliberate act or omission, whether or not there is any intent to violate the rule. *Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991).

¹⁹ 47 C.F.R. §§ 73.3571(h)(3), 73.5005(d) (all non-mutually exclusive applicants are required to submit an appropriate long form application within 30 days of the Public Notice that identifies those applications received during the auction filing window that are found to be non-mutually exclusive). For AM Auction No. 84 applicants, the *Singleton Filing Public Notice* extended the 30-day period to January 18, 2005. See, e.g., *City Page & Cellular Services, Inc.*, 17 FCC Rcd 26214 (EB 2002) (proposing a \$3000 forfeiture against winning auction bidder that failed to timely file its long-form application on time); *Golden Arrow Paging, Inc.*, 17 FCC Rcd 26231 (EB 2002); *Wharton Telecom Holdings, Inc.*, 17 FCC Rcd 26263 (EB 2002).

²⁰ 47 U.S.C. § 503(b).

²¹ 47 C.F.R. § 1.80.

²² *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

²³ See 47 C.F.R. § 1.1914.

and MUST INCLUDE the NAL/Acct. No. MB20051810106 and the FCC Registration Number 0006153837 referenced in the caption of this document.

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns from the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture on an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁴

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

CC: Howard M. Weiss, Esq. (Certified Mail, Return Receipt Requested)

²⁴ See 47 C.F.R. § 1.914.