



Federal Communications Commission  
Washington, D.C. 20554

October 1, 2007

**DA 07-4108**

*In Reply Refer to:*

1800B3-JP

Released: October 1, 2007

Jeffrey W. Smith  
CSN International  
4002 N. 3000 East  
Twin Falls, ID 83301

In re: CSN International  
DWWTS(FM), Logansport, Indiana  
Facility ID: 91950  
File No. BPED-19981023MM

**Petition for Reconsideration**

Dear Mr. Smith:

We have before us CSN International's ("CSN") December 27, 2005, Petition for Reconsideration of the staff action denying CSN's request for a waiver of the construction period for WWTS(FM). For the reasons set forth below we deny the petition for reconsideration.

**Background.** CSN was granted a construction permit for WWTS(FM) on October 3, 2002, as the result of a settlement agreement between parties in a mutually exclusive group of noncommercial educational ("NCE") applicants. By its terms, the permit expired on October 3, 2005.<sup>1</sup> CSN admits the permit was not encumbered by any matter cognizable under the tolling provided in Section 73.3598(b) of the Commission's Rules (the "Rules"). On September 9, 2005, less than one month before the set expiration of the WWTS(FM) construction permit, CSN filed a request for a waiver of the construction period time limit stating that it was unable to construct WWTS(FM) at the authorized site. CSN stated that the owner of the tower where CSN proposed to locate its antenna had rescinded his agreement with CSN based on the findings of an engineer that the tower would not pass the current "TIA/EIA" standards with the addition of CSN's antenna.<sup>2</sup> CSN states that the tower with the addition of CSN's antenna would be in compliance with the standards in place when the tower was originally built, in 1989. As a result, CSN stated that even though it was exploring other options, it was likely that WWTS(FM) would not be constructed prior to the expiration of the construction permit. CSN believed it had established good cause for a waiver of the construction deadline based on CSN's reasonable assurance of site availability before applying for the construction permit and the fact that CSN had incurred equipment and construction expenses. CSN also stated that one of its alternative construction options would require it to file a major change application, which it is unable to do until the Commission opens a filing window.

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<sup>1</sup> See also 47 C.F.R. § 73.3598(a), (e).

<sup>2</sup> CSN's engineer concluded that the tower could not support the weight of the new antenna, and in fact, could not support its current load under icy conditions.

On November 28, 2005, the staff denied CSN's waiver request.<sup>3</sup> The staff found that although the construction permit was granted in October 2002, CSN did not investigate the tower's ability to accommodate its antenna until July 2005. Additionally, the staff noted that neither a change in tower building codes nor the unavailability of an application filing window for major change applications justified a waiver of the construction deadline. The staff held that, as a result of the above facts, that the WTTS(FM) construction permit had expired, and it deleted the call sign WTTS(FM).<sup>4</sup> CSN filed a timely petition for reconsideration of this action on December 27, 2005.

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of petitioner's last opportunity to present such matters.<sup>5</sup> CSN claims that the Staff Decision misapplied the waiver standard, and that its inability to construct within the three-year time limit was due to circumstances "entirely beyond CSN's control."<sup>6</sup> CSN reiterates the facts outlined in its waiver request and states that "CSN had *every reason* to believe that it would be able to construct WWTS at the site specified in the Permit."<sup>7</sup>

We find CSN's arguments unpersuasive. CSN waited over two and a half years to begin investigating its proposed site's viability. Had CSN attempted to finalize site and construction issues earlier in the construction period, CSN would have become aware of the code problems and had ample time to resolve the issue. As previously noted in the Staff Decision, a change in tower building codes does not justify an extension of the construction deadline.<sup>8</sup> An extension is only permitted where construction is delayed by a natural disaster or where grant of the permit is subject to administrative or judicial review.<sup>9</sup> We also find unpersuasive CSN's argument that a waiver of the construction deadline is warranted because its inability to construct the station is due to circumstances wholly outside its control. Rather it is clear that CSN's inability to construct the station is due to its failure to take timely steps to ensure the continuing availability of its specified tower during the first thirty-three months of the construction period. Because CSN's petition for reconsideration fails to show a material error or omission in the original decision and did not raise additional facts unknown or not existing until after CSN's last opportunity to present such matters, it will be denied.<sup>10</sup>

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<sup>3</sup> *Letter to Gregory L. Masters, Esq.*, Ref. 1800B-IB (MB Nov. 28, 2005) (the "Staff Decision").

<sup>4</sup> *See* 47 C.F.R. § 73.3598(e).

<sup>5</sup> 47 C.F.R. § 1.106, and *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

<sup>6</sup> Petition for Reconsideration at 1.

<sup>7</sup> Petition for Reconsideration at 5, emphasis in the original.

<sup>8</sup> *See* Staff Decision at 2, citing *Letter to Stephanie Michael-Pickett*, (MB Feb. 8, 2005).

<sup>9</sup> *See* 47 C.F.R. § 3598(b)(i)-(iii).

<sup>10</sup> *See Infinity Broadcasting Operations, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4216 (2004).

With respect to the availability of a filing window for NCE applications, the Media Bureau has announced such a window from October 12 – 19, 2007.<sup>11</sup> CSN may reapply for the desired facilities at that time.

**Conclusion/Actions.** For the above stated reasons, CSN's Petition for Reconsideration is DENIED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Gregory L. Masters, Esq.

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<sup>11</sup> *Media Bureau Announces NCE FM New Station and Major Modification Application Filing Window for New and Certain Pending Proposals; Window to Open on October 12, 2007*, Public Notice, 22 FCC Rcd 6726 (MB Apr. 4, 2007)