

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

In the matter of )
)
GAP BROADCASTING POCATELLO )
LICENSE, LLC ) File No. 0003063649
)
Petition for Reconsideration of Placement into )
Termination Pending Status of License for Station )
WQHG289, Pocatello, Idaho )
)

ORDER ON RECONSIDERATION

Adopted: August 26, 2009

Released: August 27, 2009

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

I. INTRODUCTION

1. We have before us a petition for reconsideration<sup>1</sup> filed by GAP Broadcasting Pocatello License, LLC (GAP), requesting reconsideration of the placement of GAP’s license for Aural Studio Transmitter Link WQHG289, Pocatello, Idaho, into termination pending status.<sup>2</sup> For the reasons stated below, we dismiss the Petition as untimely.

II. BACKGROUND

2. On July 20, 2007, Intermart Broadcasting Pocatello Inc. (Intermart) was granted a license to operate Station WQHG289.<sup>3</sup> The license imposed a construction deadline of January 20, 2009.<sup>4</sup> Assignment of the Station from Intermart to GAP was completed on September 3, 2008.<sup>5</sup> The Bureau did not receive notification that Station WQHG289 had been timely constructed.

3. On February 25, 2009, letters and a public notice were issued announcing that Station WQHG289 had been placed in termination pending status for failure to meet construction deadlines.<sup>6</sup>

<sup>1</sup> See Petition for Reconsideration (filed Apr. 3, 2009) (Petition).

<sup>2</sup> When a licensee fails to file a notification that it has completed construction by an applicable buildout deadline, the license, location, or frequency is placed in “termination pending” status. For a license, location, or frequency in that status, the Bureau presumes that the licensee did not meet buildout requirement. If the licensee does not file a petition for reconsideration within 30 days after public notice of the termination pending status demonstrating that it met that buildout requirement, the status of the license, location, or frequency is changed to “terminated” as of the buildout deadline. See Wireless Telecommunications Bureau Announces Deployment Of “Auto-Term,” the Automated Feature in its Universal Licensing System That Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, Public Notice, 21 FCC Rcd 163 (WTB 2006).

<sup>3</sup> See File No. 0003063649 (granted Jul. 20, 2007).

<sup>4</sup> Id.

<sup>5</sup> See Petition at 1.

<sup>6</sup> See Letter to GAP Broadcasting Pocatello License, LLC, Ref. No. 4838307 (Feb. 25, 2009); Wireless Telecommunications Bureau Site Based Licenses Termination Pending Public Notice, Public Notice, Report No.

GAP had thirty days from the date of the *Termination Public Notice* to file a petition for reconsideration demonstrating that the stations had been timely constructed.<sup>7</sup> GAP filed the Petition on April 3, 2009.

### III. DISCUSSION

4. Section 405(a) of the Act, as implemented by Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days from the date of public notice of Commission action.<sup>8</sup> Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.<sup>9</sup> Since public notice that the licenses had been placed in termination pending status was given on February 25, 2009, pursuant to Section 1.4(b)(4) of the Commission's Rules the first day to be counted in computing the thirty-day period was February 26, 2009, the date the public notice was released.<sup>10</sup> Therefore, the last day for filing a petition for reconsideration was March 27, 2009.

5. GAP's petition for reconsideration was received on April 3, 2009. Therefore, we find the Petition was filed late. Moreover, the Commission has consistently held that it is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act.<sup>11</sup> Consequently, we conclude the petition for reconsideration filed by GAP must be dismissed as untimely filed.

6. If GAP wishes to continue operating the terminated facility, it must file a completed FCC Form 601, in accordance with all applicable Commission Rules, to reauthorize the facility. If the application meets the criteria specified in Section 74.25 of the Commission's Rules, GAP may operate the facility conditionally as soon as the application has been properly filed. In the interim, GAP should file a request for Special Temporary Authority, in accordance with Section 1.931 of the Commission's Rules, if it wishes to continue operating the facility.

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4761 (Feb. 25, 2009) at 1. A letter was also sent to GAP's designated contact representative, Pamela Woods at Internart Broadcasting.

<sup>7</sup> See Wireless Telecommunications Bureau Announces Deployment Of "Auto-Term," the Automated Feature in its Universal Licensing System That Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, *Public Notice*, 21 FCC Rcd 163, 168 (WTB 2006); 47 C.F.R. § 1.106(f).

<sup>8</sup> 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

<sup>9</sup> 47 C.F.R. § 1.4.

<sup>10</sup> 47 C.F.R. § 1.4(b)(4).

<sup>11</sup> See *Reuters Ltd. V. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). See also *Petition for Amendment of the Commission's Rules to Establish First and Second Class Radiotelephone Operator Licenses*, *Order*, 10 FCC Rcd 3196 (1995). We note the filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late. See, e.g., *Panola Broadcasting Co., Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); *Metromedia, Inc., Memorandum Opinion and Order*, 56 FCC 2d 909, 909-01 (1975).

**IV. ORDERING CLAUSES**

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 reconsideration filed by GAP Broadcasting Pocatello License, LLC, on April 3, 2009 IS DISMISSED.

8. 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