



Federal Communications Commission
Washington, D.C. 20554

October 9, 2009

DA 09-2195

In Reply Refer To:

1800B3-RBG

Released: October 9, 2009

Mr. George Robbins
P.O. Box 1079
La Conner, Washington 98257

In re: WCIX(FM), Versailles, Indiana
Facility ID No. 175316
File No. BNPED-20071019ANS

**Petition for Reconsideration of Grant
of Construction permit**

Dear Mr. Robbins:

This refers to the complaint you filed on March 19, 2008, concerning the construction permit (File No. BNPED-20071019ANS) of Spryex Communications, Inc. ("Spryex") granted on January 11, 2008, for a new noncommercial educational (NCE) station, which has the call sign WCIX(FM) ("WCIX"), at Versailles, Indiana. Although the complaint was filed with the Enforcement Bureau, that bureau has referred the complaint to us for consideration. In your complaint, you assert that you received a notice that Spryex was offering to sell its NCE construction permit at a profit,¹ which you stated appeared to be contrary to the Commission's intent in reserving channels for "community radio." Because you request that the Commission reverse its award of a construction permit to Spryex, due to Spryex's allegedly "faulty qualifications" and the possibility that it filed the referenced application simply to make a financial gain, we shall treat it as a Petition for Reconsideration of the Commission's grant of that construction permit.

Section 405(a) of the Communications Act of 1934,² as amended, states that any party aggrieved by an order, decision, report, or action of the Commission, or of any designated authority within the Commission, may file a petition for reconsideration of that order, decision, report or action within thirty days from the date upon which public notice of the order, decision, report, or action is given. This thirty day period is statutory and cannot be waived or extended by the Commission, except in "extraordinary circumstances," such as where the late-filing is due to the Commission's failure to give a party timely notice of the action for which reconsideration is sought.³

¹ We note that the application (File No. BAPED-20090811AAJ) to assign Station WCIX to Sacred Heart Radio was granted on September 29, 2009.

² 47 U.S.C. § 405(a).

³ See *Gardner v. FCC*, 530 F. 2d 1086 (D.C. Cir. 1976).

The public notice granting Station WCIX's construction permit was released on January 16, 2008. Accordingly, the day after the release date, namely, January 17, 2008, marked the beginning of the thirty day period for filing a petition for reconsideration.⁴ Any such petition was due no later than February 18, 2008.⁵ Your Petition for Reconsideration was received by the Commission on March 19, 2008, one month after the end of the thirty day statutory period for filing a petition for reconsideration. Further, you have not presented "extraordinary circumstances" that would justify a waiver or extension of the thirty day statutory filing period.⁶ Therefore, your Petition for Reconsideration must be dismissed as untimely.

Moreover, we note that Spryex's authorization is for a full power FM educational station, not a low power FM (LPFM) station. While the Commission's Rules prohibit the sale of an LPFM license for a profit, require licensees of LPFM stations to retain those licenses for three years, and prohibit the assignment or transfer of an LPFM construction permit,⁷ there are no such restrictions for full power FM stations like WCIX.

Accordingly, your complaint submitted on March 19, 2008, IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Station WCIX

⁴ See Section 1.4(b) of the Commission's Rules. 47 C.F.R. § 1.4(b).

⁵ See Sections 1.4(e) and (j) of the Commission's Rules. 47 C.F.R. § 1.4(e) and (j). February 18 was the first business day after the thirty day period ended on Saturday, February 16, 2008.

⁶ See footnote 3, *supra*.

⁷ 47 C.F.R. § 73.865.