



**Federal Communications Commission
Washington, D.C. 20554**

February 13, 2009

DA-09-237

In reply refer to:

1800B3-MJW

Released February 13, 2009

Wauchula Educational Broadcasting Corp.
% Donald E. Martin, Esq.
PO Box 8433
Falls Church, VA 22041

Re: **Wauchula Educational Broadcasting Corp.**
WWWP-LP, Wauchula, Florida
Facility No. 135670
File No. BLL-20031215ACB
Application for License
Request for Special Temporary
Authorization
Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration (the "Petition") filed March 8, 2007, by Wauchula Educational Broadcasting Corp. ("WEBC"), former permittee of WWWP-LP, Wauchula, Florida, seeking reconsideration of the dismissal of its referenced license application (the "Application").¹ For the reasons set forth below, we deny the Petition.

Background. WEBC's construction permit, as modified, contained the following condition: "Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance as defined by Section 73.154 of the Commission's Rules, shall be conducted to establish that the AM array [of Station WAUC(AM)] has not been adversely affected and . . . the results submitted to the Commission."²

WEBC filed the Application on December 12, 2003, without satisfying the condition requiring a partial proof of performance. On June 28, 2004, the Commission sent WEBC a letter requiring WEBC to amend the Application to demonstrate compliance with the condition.

In the second week of August, 2004, the tower being used by WEBC was destroyed by a hurricane.³ A new tower was constructed at the same site in January, 2006. In November, 2006,

¹ See Public Notice, Broadcast Actions, Report No. 46417 (Feb. 6, 2007).

² Low Power FM Broadcast Station Construction Permit, Permit No. BMPL-20031215ACC (March 1, 2004) at 2.

³ See Petition at 2. On October 20, 2004, WEBC filed for special temporary authorization (STA) to operate with reduced facilities. We dismiss the STA request as moot based on WEBC's failure to timely satisfy the

a new 300-foot microwave tower was erected 1.1 miles from the WAUC(AM) antenna array. On January 31, 2007, the staff dismissed the Application because of WEBC's "failure to submit documentation addressing condition #1 on the CP [the requirement for a partial proof of performance]." ⁴

On reconsideration, WEBC claims that the new microwave tower distorts the WAUC(AM) antenna pattern to the extent that a meaningful partial proof of performance cannot be conducted to comply with the condition in WEBC's construction permit. ⁵ WEBC also claims that it was unable to timely satisfy the condition in the construction permit because the WAUC(AM) licensee, Marvin Enterprises, Inc ("Marvin"), prefers that its contract engineer, Mr. Phil Scott, conduct the partial proof of performance. ⁶ WEBC asserts that Mr. Scott has been unable to make the measurements for a variety of reasons. ⁷

WEBC requests the Commission to permanently waive the construction permit condition because the installation of WEBC's small antenna on its existing tower has a "negligible" effect on the WAUC(AM) antenna pattern. ⁸ In the alternative, WEBC requests the Commission to exercise "continued forbearance" such that the partial proof of performance need not be made until the pattern distortion issue associated with the 300-foot microwave tower is resolved. ⁹

Discussion. Two years, 6 months and 6 days elapsed between the date the staff informed WEBC that it had to submit a partial proof of performance, and the date on which the Commission released the Public Notice stating that the Application had been dismissed because of WEBC's failure to submit the partial proof of performance information. ¹⁰

Even taking into account the hurricane and the delay incurred in erecting WEBC's replacement tower, WEBC could have completed the proof between the January, 2006, construction of its new tower and the November construction of the microwave tower. We are not persuaded by WEBC's excuses concerning why Mr. Scott could not make the requisite measurements during that 9 month period. In any event, WEBC could have retained another engineer to do so, notwithstanding Marvin's preference for Mr. Scott. ¹¹

Decision/Action. The staff correctly dismissed the Application. We have been shown no good reason to reconsider that decision, much less to honor WEBC's request to waive the

proof of performance condition on the WWVP-LP construction permit, our upholding of the dismissal of its Application, and the resulting expiration of that construction permit by operation of law.

⁴ Public Notice, Broadcast Actions, Report No. 46417 (Feb. 6, 2007).

⁵ *Id.* 3-4.

⁶ *Id.* at 3.

⁷ WEBC claims that Mr. Scott, initially, was too busy to make the measurements and that his field strength meter was defective. After the field strength meter was repaired it was lost in shipment. Then, "[i]n the summer and fall of 2006, Scott was beset with various personal health and family problems that prevented him from being able to conduct [the partial proof of performance]." *See* Petition at 3.

⁸ *See id.* at 5. WEBC offers no support for its assertion that its small antenna has negligible effect on the WAUC(AM) pattern. It has not met the Commission's criteria for grant of a waiver. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁹ *Id.*

¹⁰ The 2 year, 6 month and 6 day period assumes - as WEBC claims - that it did not receive the staff's letter until July 31, 2004, notwithstanding the fact it was postmarked July 1, 2004. *See* Petition at 2.

¹¹ The Commission's Rules do not permit an AM broadcast station licensee whose station potentially is affected by the installation of a new tower to dictate the engineer to be used to complete the required proof.

construction permit condition or allow WEBC additional time within which to have the partial proof of performance conducted.

Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Wauchula Educational Broadcasting Corp. IS DENIED. The WWWP-LP construction permit (File No. BMPL-20031215ACC) HAS EXPIRED as a matter of law. IT IS FURTHER ORDERED that the request for Special Temporary Authorization filed by Wauchula Educational Broadcasting Corp. is DISMISSED AS MOOT.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau