

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

In the matter of )
COLOR BROAD BAND, INC. )
Petitions for Reconsideration of Placement into )
Termination Pending Status of Licenses for )
Station WQCQ875, Compton, California, and )
Station WQCQ877, Signal Hill, California )
File Nos. 0002038738, 0002038759

ORDER ON RECONSIDERATION

Adopted: March 13, 2009

Released: March 16, 2009

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

I. INTRODUCTION

1. We have before us two petitions for reconsideration<sup>1</sup> filed by Color Broad Band, Inc. (CBB), requesting reconsideration of the placement of CBB’s license for Common Carrier Fixed Point-to-Point Microwave Station WQCQ875, Compton, California, as well as certain paths and locations associated with Station WQCQ877, Signal Hill, California into termination pending status.<sup>2</sup> For the reasons stated below, we dismiss the Petitions as untimely.

II. BACKGROUND

2. On May 4, 2005, CBB was granted licenses to operate stations WQCQ875 and WQCQ877.<sup>3</sup> The licenses imposed a construction deadline of November 4, 2006.<sup>4</sup> On August 7, 2006, the Universal Licensing System (ULS) automatically issued a construction reminder to CBB.<sup>5</sup> The Commission did not receive notification from CBB that Station WQCQ875 had been timely constructed.

<sup>1</sup> See Petition for Reconsideration of Pending Termination of Call Sign WQCQ875 (filed Feb. 14, 2007); Petition for Reconsideration of Pending Termination of Call Sign WQCQ877 (filed Feb. 14, 2007) (collectively, Petitions).

<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 Nos. 0002038738, 0002038759 (granted May 4, 2005).

<sup>4</sup> Id.

<sup>5</sup> See Letter to Sean Howard Lemons, Color Broad Band, Inc., Ref. No. 4186048 (dated Aug. 7, 2006).

CBB also failed to file a notification that Path 1 associated with Location 1 and Location 2 associated with Station WQCQ877 had been timely constructed.<sup>6</sup>

3. On December 13, 2006, letters and a public notice were issued announcing that Station WQCQ875 and the paths and locations noted above for Station WQCQ877 had been placed in termination pending status for failure to meet construction deadlines.<sup>7</sup> CBB 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>8</sup> CBB filed the Petitions on February 14, 2007.

### 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>9</sup> Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.<sup>10</sup> Since public notice that the licenses had been placed in termination pending status was given on December 13, 2006, 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 December 13, 2006, the date the public notice was released.<sup>11</sup> Therefore, the last day for filing a petition for reconsideration was January 12, 2007.

5. CBB's petitions for reconsideration were received on February 14, 2007. Therefore, we find the Petitions were 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>12</sup> Consequently, we conclude the petitions for reconsideration filed by CBB must be dismissed as untimely filed.

6. If CBB wishes to continue operating the terminated facilities, it must file a completed FCC Form 601, in accordance with all applicable Commission Rules, to reauthorize the facilities. If the application meets the criteria specified in Section 101.31 of the Commission's Rules, CBB may operate the facilities conditionally as soon as the application has been properly filed. In the interim, CBB should

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<sup>6</sup> The license for Station WQCQ877 was subsequently modified to add Path 2. CBB filed a timely notification that Path 2 associated with Station WQCQ877 was timely constructed. *See* File No. 0002909941 (filed Feb. 12, 2007, accepted Mar. 26, 2007).

<sup>7</sup> *See* Letters to Sean Howard Lemons, Color Broad Band, Inc., Ref. Nos. 4346630 and 4346631 (Dec. 13, 2006); Wireless Telecommunications Bureau Site Based Licenses Termination Pending Public Notice, *Public Notice*, Report No. 2753, (Dec. 13, 2006) at 2, 4 (*Termination Public Notice*). Letters were also sent to CBB's designated contact representative, Tha Nguyen at Radio Dynamics Corporation.

<sup>8</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>9</sup> 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

<sup>10</sup> 47 C.F.R. § 1.4.

<sup>11</sup> 47 C.F.R. § 1.4(b)(4).

<sup>12</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); *Elkins*, 14 FCC Rcd at 5081 ¶ 3.

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 facilities.

**IV. ORDERING CLAUSE**

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 petitions for reconsideration filed by Color Broad Band, Inc., on February 14, 2007 ARE 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  
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