

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

In the matter of)	
)	
METROFI, INC.)	File Nos. 0002735511, 0002735480,
)	0002735507, 0002735527
Petition for Reconsideration of Pending)	
Termination of Licenses for Stations WQEK893)	
(Path 5), WQFV744, WQFV745, and WQFV746,)	
Santa Clara, CA, Los Altos Hills, CA, Foster City,)	
CA, and Mountain View, CA)	
)	

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 a Petition for Reconsideration¹ filed by MetroFi, Inc. (MetroFi), requesting reconsideration of our placing in termination pending status² licenses for four common carrier fixed point to point microwave stations operating as WQEK893 (Path 5 only), WQFV744, WQFV745, and WQFV746 (collectively, the Path and Stations) in Santa Clara, CA, Los Altos Hills, CA, Foster City, CA, and Mountain View, CA. For the reasons stated below, we dismiss the Petition as untimely.

II. BACKGROUND

2. On October 17, 2006, the Wireless Telecommunications Bureau (Bureau) granted MetroFi's request to modify its license for WQEK893 by adding Path 5.³ That same day, the Bureau issued three common carrier fixed point to point microwave station licenses to MetroFi.⁴ On January 15, 2008, the Bureau sent construction/coverage reminder letters to MetroFi regarding the Path and Stations.⁵ On May 21, 2008, the Bureau sent auto-termination letters to MetroFi and the licenses for the Path and

¹ See Petition for Reconsideration, MetroFi, Inc. (filed Jul. 6, 2008) (Petition).

² 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).

³ See File No. 0002735511 (granted Oct. 17, 2006).

⁴ See File Nos. 0002735480, 0002735507, 0002735527 (granted Oct. 17, 2006).

⁵ Construct/Coverage Reminders, Ref. Nos. 4698891, 4698892 (Jan. 15, 2008).

Stations entered the auto-termination process.⁶ On the same day, the Bureau provided public notice of the pending terminations.⁷ On July 6, 2008, the Bureau received MetroFi's Petition.⁸

III. DISCUSSION

3. Section 405(a) of the Communications 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.⁹ Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.¹⁰ Since public notice of the impending license and path terminations was given on May 21, 2008, 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 May 22, 2008. The last day for filing a petition for reconsideration was June 20, 2008.

4. We received MetroFi's Petition on July 6, 2008. Therefore, we find that the Petition was late-filed. 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.¹¹ Consequently, we must dismiss MetroFi's Petition as untimely filed.

IV. ORDERING CLAUSES

5. 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 MetroFi, Inc., on July 6, 2008, IS DISMISSED.

6. 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

⁶ Auto Termination letters, Ref. Nos. 4747677, 4747678, 4747679, 4747680 (May 21, 2008).

⁷ Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 4087, *Public Notice* (May 21, 2008) at 1-2.

⁸ Petition.

⁹ 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

¹⁰ 47 C.F.R. § 1.4.

¹¹ *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).