

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

In the matter of
NEXSTAR BROADCASTING, INC.
Request for Reinstatement of License for Station
WQFD827, Kirkland, NY
File No. 0002565091

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 Request for Reinstatement filed by Nexstar Broadcasting, Inc. (Nexstar), requesting reconsideration of our termination of Nexstar's broadcast auxiliary remote pickup operating under license WQFD827 in Kirkland, NY. For the reasons stated below, we dismiss the Petition as untimely.

II. BACKGROUND

2. On June 22, 2006, the Wireless Telecommunications Bureau (Bureau) issued a broadcast auxiliary remote pickup license to Nexstar. On March 26, 2007, the Bureau sent a construction/coverage reminder letter to Nexstar. On August 1, 2007, the Bureau sent an auto-termination letter to both Nexstar and its counsel and the license for station WQFD827 entered termination pending status. On the same

1 See Request for Reinstatement, Nexstar Broadcasting, Inc. (filed June 12, 2008) (Petition). We note that for Wireless Radio Service licenses, reinstatement was eliminated in 1998. See Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, Report and Order, WT Docket No. 98-20, 13 FCC Rcd 21027, 21071 ¶ 96 (1998), affirmed Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11485 ¶ 22 (1999). We therefore interpret Nexstar's pleading as a petition for reconsideration of the auto-termination letter.

2 See File No. 0002565091 (granted Jun. 22, 2006).

3 Construct/Coverage Reminder, Ref. No. 4486044 (Mar. 26, 2007).

4 Auto Termination letter, Ref. No. 4629829 (Aug. 1, 2007). The letter was sent to the address of record for Nexstar: Nexstar Broadcasting, Inc., 909 Lake Carolyn Parkway, Suite 1450, Irving, TX 75039. It was also sent to counsel of record at the following address: Drinker, Biddle & Reath LLP, 1500 K Street, N.W., Suite 1100, Washington, DC 20005. 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

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day, the Bureau provided public notice of the pending license termination.⁵ Because the Bureau did not receive the required notification of construction or request for extension of time, the license was terminated through the auto-termination process on October 7, 2007.⁶ On June 12, 2008, the Bureau received Nexstar's Request.⁷ Nexstar claims that neither it nor its counsel received the auto-termination letter.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 termination was given on August 1, 2007, 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 August 2, 2007. The last day for filing a petition for reconsideration was August 31, 2007.

4. We received Nexstar's Petition on June 12, 2008. Therefore, we find that it 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.¹¹ Furthermore, Nexstar's claim that it and its counsel never received the termination letter does not provide a basis for considering its untimely Request. When there is an allegation that Commission correspondence was not received, "the question of receipt should be resolved on the basis of all the record evidence, including the regularity of mailing and delivery procedures and the inferences naturally drawn from those facts."¹² In this case, ULS shows that letters were generated and sent to both Nexstar and its counsel at the addresses contained in the system at that time in due course. Furthermore, a public notice announcing the termination was generated.¹³ Accordingly, we conclude that Nexstar has failed to overcome the presumption that items mailed in due course are received. Consequently, we conclude that the Request filed by Nexstar must be dismissed as untimely filed.

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Unconstructed Stations Resulting in Automatic Termination of Licenses, *Public Notice*, 21 FCC Rcd 163 (WTB 2006).

⁵ Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 3350, *Public Notice* (Aug. 1, 2007) at 2.

⁶ See File No. 0002565091.

⁷ Petition.

⁸ *Id.* at 1.

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).

¹² See *Juan Galiano et al., Memorandum Opinion and Order*, 5 FCC Rcd 6442 ¶ 7 (1990).

¹³ Compare *JCL El Dorado, AR F Grand Alliance, Order on Reconsideration*, 18 FCC Rcd 10563 (WTB PSPWD 2003) (reconsideration granted where there was no evidence of a letter taking action and no public notice of the action was ever given).

IV. ORDERING CLAUSE

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 Request for Reinstatement filed by Nexstar Broadcasting, Inc., on June 12, 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