

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

In the matter of)
NORTHWEST MICROWAVE) File No. 0002298529
Petition for Reconsideration of Termination of)
License for Station WQDX898, Toppenish, WA)

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 Noel Communications, Inc. (Noel)2 requesting reconsideration of our termination of Noel’s point-to-point microwave station operating under license WQDX898 near Toppenish, Washington. For the reasons stated below, we dismiss the Petition as untimely.

II. BACKGROUND

2. On November 28, 2005, we issued a common carrier fixed point-to-point microwave license to Northwest Microwave.3 On February 26, 2007, a construction/coverage reminder letter was sent to Northwest Microwave.4 On July 5, 2007, an auto-termination letter was sent and the license for station WQDX898 entered termination pending status.5 Accordingly, on the same day, the Wireless Telecommunications Bureau (the Bureau) provided public notice of the pending license termination.6

1 Noel filed an uncaptioned request asking us to reinstate its license (File No. 0002298529, filed Sep. 18, 2007) (Petition). We interpret the request as a petition for reconsideration.

2 While Northwest Microwave is the licensee of record, the Petition was filed in the name of Noel Communications, Inc. Both entities have the same address and contact information. In light of our dismissal of the Petition on timeliness grounds, we need not address that discrepancy.

3 See File No. 0002298529.

4 Construct/Coverage Reminder, Ref No. 4436180 (Feb. 26, 2007).

5 Auto Termination letter, Ref. No. 4608500 (Jul. 5, 2007). 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).

6 Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 3282, Public Notice (Jul. 5, 2007) at 1.

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 September 9, 2007.⁷ On September 18, 2007, the Bureau received Noel'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 termination was given on July 5, 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 July 5, 2007. Therefore, the last day for filing a petition for reconsideration was August 6, 2007.

4. We received Noel's petition on September 18, 2007. Therefore, we find that the Petition 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 Consequently, we conclude that the Petition filed by Noel must be dismissed 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 Noel Communications, Inc., on September 18, 2007 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

⁷ See Universal Licensing System record for Station WQDX898.

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, 909-910 (1975).