

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

In the matter of)	
)	
SAM HOUSTON ELECTRIC COOPERATIVE)	File No. 0002488243
)	
Petition for Reconsideration of Pending)	
Termination of License for Station WPWN232,)	
Path 2, Dayton, TX)	
)	

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 Sam Houston Electric Cooperative (SHECO), requesting reconsideration of our placement into termination pending status² of Path 2 of an industrial/business pool microwave station operating under license WPWN232 (the Station) in Dayton, Texas. For the reasons stated below, we dismiss the Petition as untimely.³

II. BACKGROUND

2. On May 9, 2006, the Bureau granted SHECO's application to modify the Station to add Path 2, from Tarkington, Texas to Coldspring, Texas.⁴ The path in question was required to have been constructed by November 9, 2007.⁵ On August 14, 2007, a construction/coverage reminder letter was sent to SHECO.⁶ On December 19, 2007, a license auto-termination letter was sent and the Station's Path

¹ See Notification of Construction and Request for Rule Waiver (filed Feb. 28, 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 The Petition also seeks reconsideration for Station WNEV487, Path 3. The Petition lists an incorrect construction deadline; we have accepted a construction notification for that call sign and path. The petition is therefore moot with respect to that call sign and path. See File No. 0003267373.

⁴ File No. 0002488243 (filed Feb. 16, 2006, granted May 9, 2006).

⁵ See File Nos. 0002488243; Wireless Telecommunications Bureau Site-By-Site Action, *Public Notice*, Report No. 2505 (rel. May 17, 2006) at 8. See also 47 CFR § 101.63(a) ("Each Station ... authorized under this part must be in operation within 18 months from the initial date of grant.").

⁶ Construct/Coverage Reminder, Ref No. 4638143 (Aug. 14, 2007).

2 entered termination pending status.⁷ Accordingly, on the same day, the Wireless Telecommunications Bureau (the Bureau) provided public notice of the pending license termination.⁸ On February 28, 2008, the Bureau received SHECO's Petition.⁹

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.¹⁰ Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.¹¹ Since public notice of the impending license terminations was given on December 19, 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 December 20, 2007. The last day for filing a petition for reconsideration was January 18, 2008.

4. We received SHECO's Petition on February 28, 2008. 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.¹² Consequently, we must dismiss SHECO'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 Sam Houston Electric Cooperative, on February 28, 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

⁷ Auto Termination letter, Ref No. 4690243 (Dec. 19, 2007).

⁸ Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 3684, *Public Notice* (Dec. 19, 2007) at 3.

⁹ Petition.

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

¹¹ 47 C.F.R. § 1.4.

¹² *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).