

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

In the Matter of)	
)	
AIRCANOPIY INTERNET SERVICES)	File Nos. 0004599317, 000599286,
)	0004599313, 0004599277
Petition for Reconsideration of Pending)	
Termination of Licenses for Stations WQKD295,)	
WQKF468, WQKF470, and WQKF471)	
)	

ORDER ON RECONSIDERATION

Adopted: March 17, 2011

Released: March 18, 2011

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

I. INTRODUCTION

1. In this *Order on Reconsideration*, we dismiss as untimely four petitions for reconsideration of our placement into termination pending status of four industrial/business pool microwave stations in Texas.

II. BACKGROUND

2. On May 13, 2009, the Wireless Telecommunications Bureau (the Bureau) modified the license held by AirCanopy Internet Services (AirCanopy) for industrial/business pool microwave Station WQKD295 to add a path at Cedar Hill, Texas on frequency 21875 MHz.¹ The deadline for constructing the modification to Station WQKD295 was November 13, 2010.² On August 17, 2010, the Bureau sent a construction/coverage reminder letter to AirCanopy.³ On December 22, 2010, a license auto-termination letter was sent⁴ and Path 2 of Station WQKD295 entered termination pending status.⁵ Accordingly, on

¹ See File No. 0003806069 (granted May 13, 2009).

² *Id.*

³ Construct/Coverage Reminders, Ref. No. 5013890 (Aug. 17, 2010).

⁴ Auto Termination letters, Ref. No. 5074041 (Dec. 22, 2010).

⁵ 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).

the same day, the Bureau provided public notice of the pending license termination.⁶ On February 2, 2011, AirCanopy filed a petition for reconsideration of the license termination.⁷

3. On April 28, 2009, the Bureau issued AirCanopy new licenses for industrial/business pool microwave Stations WQKF468, WQKF470, and WQKF471 (the Stations).⁸ The deadline for constructing the Stations was October 28, 2010.⁹ On July 27, 2010, the Bureau sent construction/coverage reminder letters to AirCanopy.¹⁰ On December 1, 2010, license auto-termination letters were sent¹¹ and the Stations entered termination pending status. Accordingly, on the same day, the Bureau provided public notice of the pending license terminations.¹² On January 31, 2011, AirCanopy filed three separate petitions for reconsideration of the license terminations.¹³

III. DISCUSSION

4. 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.¹⁴ Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.¹⁵ Since public notice of the impending license terminations were given on December 1, 2010 and December 22, 2010, 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 2, 2010 and December 23, 2010, respectively. The last day for filing petitions for reconsideration were December 31, 2010 and January 21, 2011, respectively.

5. We received AirCanopy's Petitions on January 31, 2011 and February 2, 2011. Therefore, we find that the Petitions were filed late. The United States Court of Appeals for the District of Columbia Circuit has consistently held that the Commission 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,¹⁶ except where "extraordinary circumstances indicate that justice would thus be served."¹⁷ 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.¹⁸ We do not believe that AirCanopy has shown such

⁶ Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 6481, *Public Notice* (Dec. 22, 2010) at 3.

⁷ Petition for Reconsideration, AirCanopy Internet Services. (filed Feb. 2, 2011).

⁸ See File Nos. 0003792504, 0003792508, and 0003792519 (granted Apr. 28, 2009).

⁹ *Id.*

¹⁰ Construct/Coverage Reminders, Ref. Nos. 5005290, 5005291 (Jul. 27, 2010).

¹¹ Auto Termination letters, Ref. Nos. 5064095, 5064096, and 5064097 (Dec. 1, 2010).

¹² Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 6420, *Public Notice* (Dec. 1, 2010) at 3.

¹³ Petitions for Reconsideration, AirCanopy Internet Services. (filed Jan. 31, 2011). These petitions, along with the petitions filed on February 2, shall be collectively referred to as "Petitions."

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

¹⁵ 47 C.F.R. § 1.4.

¹⁶ See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976).

¹⁷ *Gardner v. FCC*, 530 F.2d at 1091.

¹⁸ 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 (1975).

extraordinary circumstances to be present here. Indeed, AirCanopy has failed to acknowledge that it did not file in a timely manner. Accordingly, we dismiss the Petitions as late-filed.

6. If AirCanopy 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. In the interim, AirCanopy should 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.¹⁹

IV. ORDERING CLAUSES

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 AirCanopy Internet Services on January 31, 2011 and February 2, 2011, respectively 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
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

¹⁹ We note that there are additional paths on each of these licenses that remain active. Accordingly, the terminations only apply to the specific paths referred to in the auto-termination letters. We also note that on February 3, 2011, we granted other timely-filed petitions for reconsideration filed by AirCanopy.