

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

In the Matter of )
HIGH PLAINS BROADCASTING LICENSE ) File Nos. 0004215145
COMPANY, LLC )
Petition for Reconsideration of Pending )
Termination of License for Station WLI234 )

ORDER ON RECONSIDERATION

Adopted: June 4, 2012

Released: June 5, 2012

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

I. INTRODUCTION

1. In this Order on Reconsideration, we dismiss a petition for reconsideration of our placement into termination pending status of a modification of license for a broadcast auxiliary TV Intercity Relay Station in the Bakersfield, California area.

II. BACKGROUND

2. On August 3, 2010, the Wireless Telecommunications Bureau issued High Plains Broadcasting License Company, LLC (High Plains) a modified license for broadcast auxiliary TV Intercity Relay Station WLI234. The deadline for constructing the Station was February 3, 2012. On November 8, 2011, the Bureau sent High Plains a construction/coverage reminder letter. On March 14, 2012, a license auto-termination letter was sent and Station WLI234 entered termination pending status. Accordingly, on the same day, the Bureau provided public notice of the pending license termination. On

1 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).

2 See File No. 0004215145 (granted Aug. 3, 2010).

3 See File No. 0004215145 (granted Aug. 3, 2010).

4 Construct/Coverage Reminder, Ref. No. 5248036 (Nov. 8, 2011).

5 Auto Termination letters, Ref. No. 5332737 (Mar. 14, 2012).

6 Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 7611, Public Notice (Mar. 14, 2012) at 5.

May 19, 2012, High Plains filed a petition for reconsideration of the placement of Station WLI234 into termination pending status.<sup>7</sup>

### 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.<sup>8</sup> Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.<sup>9</sup> Since public notice of the impending license terminations was given on March 14, 2012, 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 March 15, 2012. The last day for filing petitions for reconsideration was April 13, 2012.

4. We received High Plains' Petition on May 19, 2012. Therefore, we find that High Plains filed the Petition 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,<sup>10</sup> except where "extraordinary circumstances indicate that justice would thus be served."<sup>11</sup> 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.<sup>12</sup> We do not believe that High Plains has shown such extraordinary circumstances to be present here. Indeed, High Plains has failed to acknowledge that it did not file in a timely manner. Accordingly, we dismiss the Petition as late-filed.

5. If High Plains wishes to continue operating the terminated facilities, it must file a completed Form 601, in accordance with all applicable Commission rules, to reauthorize the facilities. In the interim, High Plains 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.

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<sup>7</sup> Petitions for Reconsideration, High Plains Broadcasting License Company, LLC (filed May 19, 2012) (Petition).

<sup>8</sup> 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

<sup>9</sup> 47 C.F.R. § 1.4.

<sup>10</sup> 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).

<sup>11</sup> *Gardner v. FCC*, 530 F.2d at 1091.

<sup>12</sup> 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).

**IV. ORDERING CLAUSES**

6. 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 High Plains Broadcasting License Company, LLC on May 19, 2012 IS DISMISSED.

7. 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