

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

In the Matter of)
)
Range Fuels) Call Sign WQNA272
Petition for Reconsideration of)
Termination Pending Status)

Order

Adopted: January 16, 2013

Released: January 16, 2013

By the Assistant Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On December 28, 2011, the Commission’s Universal Licensing System (ULS) placed the above-captioned license for Station WQNA272 in termination pending status because Range Fuels, the licensee, had not filed a required notification of construction for the station. On January 17, 2012, LanzaTech Freedom Pines Biorefinery LLC (Freedom Pines) filed a petition seeking reconsideration of the presumption under the Commission’s Automated Termination (Auto-Term) procedures that the station had not been constructed in a timely manner.¹ Freedom Pines, however, fails to demonstrate that it is the licensee-of-record for Station WQNA272 and has not provided any information on whether the station was actually constructed. For the following reasons, we dismiss the petition for lack of standing and find that the license for Station WQNA272 automatically terminated as of November 22, 2011, the license construction deadline.

II. BACKGROUND

2. Range Fuels acquired the license for Station WQNA272 on November 22, 2010, authorizing site-based conventional industrial/business pool (IG) service on frequency 464.6875 MHz at a manufacturing site located in Soperton, Treutlen County, Georgia.² Section 90.155(a) of the Commission’s rules provides that all stations authorized under Part 90 of its rules, with certain exceptions inapplicable to this case, must be placed in operation within 12 months of the grant date or the authorization cancels automatically and must be returned to the Commission.³ The construction deadline for Station WQNA272 was therefore November 22, 2011. In addition, Section 1.946(d) requires a

¹ ULS Call Sign WQNA272, Att. “Letter from Laurel Harmon, Vice President, Government Relations – LanzaTech, On Behalf of LanzaTech Freedom Pines Biorefinery LLC to FCC, Wireless Telecommunications Bureau dated January 11, 2012 (filed Jan. 17, 2012) (Petition).

² FCC File No. 0004424785, filed by Range Fuels (Oct. 18, 2010). In its application for the license, Range Fuels stated that it manufactures bio-fuels, and that it would use the station to “coordinate operations and personnel.” *Id.*

³ 47 C.F.R. § 90.155(a); *see id.* § 1.946(c) (providing that “[i]f a licensee fails to commence service or operations by the expiration of its construction period . . . , its authorization terminates automatically (in whole or in part as set forth in the service rules), without specific Commission action, on the date the construction . . . period expires”); § 1.955(a)(2) (providing that “[a]uthorizations automatically terminate (in whole or in part as set forth in the service rules), without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements”).

licensee that has met its construction deadline in a timely manner to notify the Commission within 15 days of the expiration of the construction period that it has constructed the license.⁴ The deadline for filing the required notification of construction for Station WQNA272 was December 7, 2011.

3. On August 23, 2011, nearly 90 days prior to the license construction deadline, ULS issued Range Fuels letters reminding the licensee that it must file either a request for extension of the construction deadline or a notification that it had constructed the station in a timely manner.⁵ The letters further explained that an extension request must be filed prior to the construction deadline or a notification must be filed no later than 15 days after the construction deadline.⁶ Range Fuels, however, did not file an extension request or a construction notification.

4. Failure to meet a construction requirement results in automatic cancellation of a license.⁷ When a construction notification deadline passes without notification from a licensee, rather than immediately allowing the license to automatically terminate, the Commission's Auto-Term procedures afford a licensee a final opportunity to notify the Commission that it has constructed the station at issue in a timely manner. Under those procedures, ULS first places the license in "termination pending" status under a presumption that the licensee did not meet the construction requirements for the station. Once a license is placed in "termination pending status," the Auto-Term procedures allow those licensees that have met the construction deadline, but failed to submit a notification in a timely manner, to file a petition for reconsideration within 30 days of public notice of termination pending status with information sufficient to show that it in fact met its construction requirement in a timely manner. Failure to submit a petition in a timely manner with the appropriate information also results in the automatic termination of the license effective the date of the construction deadline.⁸

5. Because Range Fuels did not submit either a request for extension of time to construct or a notification that it had constructed the station in a timely manner, ULS placed the license for Station WQNA272 in "termination pending" status in accordance with the Commission's Auto-Term procedures.

⁴ *See id.* § 1.946(d) (providing that "[a] licensee who commences service or operation within the construction period ... must notify the Commission by filing FCC Form 601 [and] [t]he notification must be filed within 15 days of the expiration of the applicable construction or coverage period").

⁵ *Construction/Coverage Deadline Reminder Notice*, ULS Reference No. 5206878 (Aug. 23, 2011). Two letters were issued. One was addressed to Range Fuels, 535 Commerce Drive, Soperton, Georgia 30457, and the other to B.J. Manley, C.S.S.I. Sales, 606 Kellam Road, Dublin, Georgia 31040.

⁶ *Id.*

⁷ *See supra* note 3 and accompanying text.

⁸ More specifically, Auto-Term identifies licenses, license locations, and frequencies subject to construction or coverage requirements for which a construction notification or a request for an extension of time to meet the requirements has not been filed by the applicable deadline. Absent a timely filed notification or extension request, an authorization is presumed to have not been constructed, or the coverage requirement to have not been met. In these instances, ULS places the license, location, or frequency in termination pending status, generates a weekly public notice listing the authorizations that entered termination pending status for that week, and generates an automated letter to notify the licensee that its authorization is in termination pending status. If within 30 days after the public notice is released the licensee files a petition for reconsideration with information sufficient to show that it in fact met its construction or coverage requirement in a timely manner, the petition will be granted and the status of the authorization will be changed in ULS to "active," as long as the authorization is otherwise in compliance with Commission rules. If, however, by the end of that 30-day period the licensee does not rebut the presumption that it did not timely meet its construction or coverage requirement, ULS will change the status of the license, location, or frequency to "terminated," effective the date of the construction or coverage deadline. 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 Red 163, 163-64 (WTB Jan. 23, 2006).

On December 28, 2011, ULS issued letters warning Range Fuels that ULS had placed the license in “termination pending” status.⁹ In addition, the license for Station WQNA272 was listed on a public notice released that same day, December 28, 2011, also stating that the license had been placed in “termination pending” status.¹⁰ In accordance with Auto-Term procedures, both the letters and public notice explained that Range Fuels had 30 days within which to file a petition for reconsideration that included the actual construction date. The deadline for filing the petition for Station WQNA272 was January 27, 2012.

6. Range Fuels, however, did not submit a petition for reconsideration. Rather, Freedom Pines filed its petition on January 17, 2012, explaining that it had acquired the manufacturing site and associated assets from Range Fuels on January 4, 2012, in a foreclosure sale of the property.¹¹ The petition further states that “[i]t has come to our attention that the license . . . was terminated during the foreclosure interval [and] Freedom Pines would like to petition for reconsideration of the termination and transfer of the license to LanzaTech Freedom Pines Biorefinery LLC.”¹²

III. DISCUSSION

7. We initially find that the licensee-of-record for Station WQNA272 is Range Fuels, not Freedom Pines. Section 310(d) of the Communications Act, as amended, (Act) provides that no station license, or any rights associated with a license, shall be transferred or assigned until the Commission, upon application, determines that the public interest, convenience, and necessity will be served.¹³ Section 1.948(a) of the Commission’s rules requires licensees to apply for, and obtain, Commission approval before transferring or assigning a wireless radio service license.¹⁴

8. As already explained, Freedom Pines states in its petition that it “acquired the [manufacturing] site and assets previously owned by Range Fuels Soperton Plant LLC on January 4, 2012

⁹ *Construction/Coverage Deadline Notice of License Termination Pending Status*, ULS Reference No. 5282785 (Dec. 28, 2011). Again, two letters were issued. One was addressed to Range Fuels, 535 Commerce Drive, Soperton, Georgia 30457, and the other to B.J. Manley, C.S.S.I. Sales, 606 Kellam Road, Dublin, Georgia 31040.

¹⁰ *Wireless Telecommunications Bureau Site Based Licenses Termination Pending Public Notice*, *Public Notice*, Report No. 7414 at 2 (Dec. 28, 2011).

¹¹ Petition at 1.

¹² *Id.*

¹³ 47 U.S.C. § 310(d). Section 310(d) provides that “[n]o construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.” *Id.*

¹⁴ 47 C.F.R. § 1.948. Section 1.948(a) provides that “authorizations in the Wireless Radio Services may be assigned by the licensee to another party, . . . , or the control of a licensee holding such authorizations may be transferred, only upon application to and approval by the Commission.” *Id.* § 1.948(a). One exception to the requirement that parties seek prior Commission approval for assignments or transfers of control is in the case of a “non-substantial (*pro forma*)” transfer or assignment of a license. Where a transaction is non-substantial, filing of FCC Form 603 and Commission approval in advance of the proposed transaction is not required, provided, in relevant part, the transferee or assignee provides notice of the transaction by filing FCC Form 603 within 30 days of the transaction’s completion. *Id.* § 1.948(c)(1)(iii). The rule also provides an exception to the prior approval requirement where the assignment or transfer is involuntary. *Id.* § 1.948(c)(2). We have no evidence that any transaction between Range Fuels and Freedom Pines regarding the license for Station WQNA272 involves either a non-substantial or an involuntary assignment or involuntary transfer of control.

as a consequence of a foreclosure sale of the property.”¹⁵ Upon review of records stored in the ULS database, however, we find no evidence that any application seeking Commission approval to assign or transfer control of the license for Station WQNA272 from Range Fuels to Freedom Pines has ever been filed. Moreover, Freedom Pines does not provide any information in its petition supporting a finding that the license for Station WQNA272 was legally transferred or assigned from Range Fuels to Freedom Pines. Rather, Freedom Pines’ petition suggests an unauthorized assignment or unauthorized substantial transfer of control in violation of Commission rules.¹⁶ Without evidence of a valid transfer of control or assignment of authorization, Range Fuels remains the licensee-of-record for Station WQNA272.

9. We further find that because Range Fuels is the licensee for Station WQNA272, it was the entity responsible for ensuring a construction notification for the license was properly filed. As already explained, Commission rules required Range Fuels to place Station WQNA272 in operation by November 22, 2011. If Range Fuels did not construct the license by November 22, 2011, the authorization for Station WQNA272 canceled automatically on that date. If Range Fuels did construct the station in a timely manner, Section 1.946(d) of the Commission’s rules required the licensee to notify the Commission of that fact within 15 days of the construction deadline, or by December 7, 2011. Range Fuels, however, did not file a construction notification for Station WQNA272.

10. In its proceeding adopting Section 1.946 of its rules, the Commission explained that the purpose of its construction notification requirement was to verify whether licensees have in fact met their construction and coverage obligations, not to terminate licenses for legitimately operating facilities based on a failure to notify by the licensee.¹⁷ The Commission also stated, however, that it would initiate a license termination process if a licensee failed to confirm timely construction.¹⁸ The Auto-Term procedures were adopted to implement that mandate for a license termination process. Because Range Fuels did not file a construction notification for Station WQNA272, the license was placed in termination pending status, providing Range Fuels with a final opportunity to submit the required notification. The deadline for filing a petition demonstrating the license was constructed in a timely manner was January 27, 2012, but Range Fuels has never submitted any filing demonstrating construction either before or after the license was placed in termination pending status. Because the construction period and termination pending reconsideration period have both expired without any notification from Range Fuels, we conclude the license for Station WQNA272 automatically canceled on its construction deadline, November 22, 2011.

11. Finally, while it submitted its petition within the reconsideration period, we conclude that Freedom Pines lacks standing to file a petition seeking reconsideration of the action taken that placed the license for Station WQNA272 in termination pending status. Section 405 of the Act,¹⁹ implemented by Section 1.106(b)(1) of the Commission’s rules,²⁰ requires that a person seeking reconsideration have participated as a “party” during the previous stages of the proceeding. In this case, we find that Freedom

¹⁵ Petition at 1.

¹⁶ See In the Matter of Spectracom, LLC, Applicant for Assignment of Private Land Mobile Stations WNFD452, WNHG245, and WNHU507, *Forfeiture Order*, 22 FCC Rcd 19991 (EB 2007) (issuing a forfeiture of \$12,000 after finding Spectracom, LLC was operating stations, but was not the licensee, and had failed to notify and receive approval from the Commission before assuming control of the licenses at issue).

¹⁷ In the Matter of 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 the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21027, 21076, ¶ 106 (1998).

¹⁸ *Id.*

¹⁹ 47 U.S.C. § 405.

²⁰ 47 C.F.R. § 1.106(b)(1).

Pines is not a party to this proceeding. In particular, Freedom Pines is not the licensee of Station WQNA272, does not claim to represent Range Fuels, and in fact filed the petition on its own behalf.²¹

12. If a petition for reconsideration is not filed by a party to the proceeding, the petitioner must state with particularity the manner in which it is “aggrieved” or “adversely affected” by the action taken.²² Here, Freedom Pines alleges no specific injury in fact to itself. While Freedom Pines broadly asserts in its petition that it acquired the assets associated with the Soperton manufacturing site from Range Fuels, the license for Station WQNA272 has not been properly transferred or assigned to Freedom Pines. The petitioner therefore holds no interest in the license for Station WQNA272 and alleges no personal injury in fact to itself that is fairly traceable to the placement of the license into termination pending status. Range Fuels, on the other hand, would have had standing to file a petition because any resulting injury would have been to Range Fuels as the station licensee.

13. Moreover, even if Freedom Pines held an interest in the license for Station WQNA272, we would dismiss the petition because it does not provide any construction information. As already discussed, the Commission’s Auto-Term process requires the licensee to provide in its petition information sufficient to determine the license was constructed in a timely manner, including the actual construction date of the station. Freedom Pines states in its petition only that “[n]o new construction or change of use is associated with transfer of the license to Freedom Pines.”²³ Because Freedom Pines holds no interest in the license for Station WQNA272 and has not demonstrated any direct injury, we dismiss the petition for petitioner’s lack of standing. In doing so, we adhere to procedural rules that conserve Commission resources by limiting reconsideration petitions to parties, and matters, that are properly before the Commission. If Freedom Pines wishes to obtain a valid authorization to replace the license for Station WQNA272, it must file a new, properly coordinated application. If Freedom Pines wishes to operate on existing facilities until it receives a new authorization, it must immediately obtain special temporary authority to do so.²⁴

IV. ORDERING CLAUSES

Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.131, 0.331, and 1.106 of the Commission’s rules, 47 C.F.R. §§ 0.131, 0.331, 1.106, the petition for reconsideration filed on January 17, 2012, by LanzaTech Freedom Pines Biorefinery LLC in association with the license for Station WQNA272 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

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²¹ See In the Matter of Improving Public Safety Communications in the 800 MHz Band, *Order*, 26 FCC Rcd 9187, 9188, ¶ 5 (PSHSB 2011) (dismissing a petition for reconsideration, in part, because petitioners were not licensees in their own right, did not claim to be representing specific Commission licensees, and were filing on their own behalf).

²² See 47 C.F.R. § 1.106(b)(1) (providing that if a petition is filed “by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person’s interests are adversely affected by the action taken”).

²³ Petition at 1.

²⁴ See 47 C.F.R. § 1.931.