

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

In the Matter of
WESTEX TOWERS
Petition for Reconsideration of Pending
Termination of License for Station WQRX972
File No. 0005790070

ORDER ON RECONSIDERATION

Adopted: June 22, 2015

Released: June 23, 2015

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

I. INTRODUCTION

1. In this Order on Reconsideration, we dismiss as untimely a petition for reconsideration of our placement into termination pending status of a path for Microwave Industrial/Business Pool station in Texas.

II. BACKGROUND

2. On August 13, 2013, the Wireless Telecommunications Bureau (Bureau) issued WesTex Towers (WesTex) a license for Microwave Industrial/Business Pool Station WQRX972 (the License). The deadline for constructing the License was February 13, 2015. On November 18, 2014, the Bureau sent WesTex construction/coverage a reminder letter for the License. On March 25, 2015, a license auto-termination letter was sent and the License entered termination pending status. Accordingly, on the same day, the Bureau provided public notice of the pending license termination. On May 31, 2015,

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. 0005790070 (filed May 22, 2013, granted Aug. 13, 2013).

3 See File No. 0005790070 (granted Aug. 13, 2013).

4 Construct/Coverage Reminder, Ref. No. 5900457 (Nov. 18, 2014).

5 Auto Termination letter, Ref. No. 5969223 (Mar. 25, 2015).

6 Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 10375, Public Notice (Mar. 25, 2015) at 2.

WesTex filed a petition for reconsideration of the placement of the License into termination pending status.⁷

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.⁸ Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.⁹ Since public notice of the impending license termination was given on March 25, 2015, 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 26, 2015. The last day for filing a petition for reconsideration was April 25, 2015.

4. We received WesTex's Petition on May 31, 2015. Therefore, we find that the Petition was 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,¹⁰ except where "extraordinary circumstances indicate that justice would thus be served."¹¹ 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.¹² We do not believe that WesTex has shown such extraordinary circumstances to be present here. Indeed, WesTex has failed to acknowledge that it did not file in a timely manner. Accordingly, we dismiss the Petition as late-filed.

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

⁷ Petition for Reconsideration filed by Elizabeth Creekmore, Frequency Coordinator, Intelpath on behalf of WesTex Towers (filed May 31, 2015) (Petition).

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

⁹ 47 C.F.R. § 1.4.

¹⁰ 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).

¹¹ *Gardner v. FCC*, 530 F.2d at 1091.

¹² 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 WesTex Towers on May 31, 2015 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