

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

In the Matter of
BROWARD COUNTY, FLORIDA, BOARD OF
COUNTY COMMISSIONERS
Petition for Reconsideration
Call Sign WQXH402

ORDER

Adopted: December 19, 2018

Released: December 19, 2018

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION AND BACKGROUND

1. The Broward County, Florida, Board of County Commissioners (Broward County or County) filed a Petition for Reconsideration (Petition) of the Commission's notice terminating Broward County's license to operate on two of the six UHF frequencies authorized at two locations, all under call sign WQXH402. In its Petition, Broward County also requested an extension of time until December 31, 2018 to construct all six UHF locations. We deny the Petition but partially grant the extension request.

2. Broward County states that it overlooked the need to timely file a request to modify its license to seek a construction extension. The County explains that the stations associated with call sign WQXH402 will be used for a fire station alerting system, and that it had received two previous extensions of time to construct. Those extensions were premised on the fire station alerting system being procured concurrently with a new Countywide P25 radio system, microwave system, and paging system, which resulted in delays in the procurement process. Broward County also attributes construction delays to nine months of negotiation with the fire station alerting system vendor and the difficulty of securing backhaul connectivity for the system's sites. The County states that it has since executed a contract with the fire alerting system vendor and is currently implementing the system.

1 See Broward County Board of County Commissioners, Petition for Reconsideration, re Call Sign WQXH402, at 1 (Aug. 9, 2018) (Petition). The construction deadline for Broward County's station was June 30, 2018. See 47 CFR §§ 1.955, 90.155. The Commission's Universal Licensing System (ULS) sent a construction reminder to Broward County advising it of the pending construction deadline on April 3, 2018 and on August 8, 2018, ULS issued Broward County a letter advising it that the construction deadline had passed and that its license was in termination pending status. See Construction/Coverage Deadline Reminder Notice, Reference No. 6353463 (dated April 3, 2018); Construction/Coverage Deadline, Notice of Termination Pending Status, Reference No. 6393126 (dated Aug. 8, 2018).

2 Petition at 1.

3 Id.

4 Id.

5 Id.

6 Id.

7 Id.

II. DISCUSSION

3. Section 1.106(c)(2) of the Commission's rules provides that a petition for reconsideration may rely on facts not previously presented if we find that "consideration of the facts relied on is required in the public interest."⁸ An inadvertent failure to request an extension of time to construct is insufficient justification to grant Broward County's Petition.⁹ Such claims of "administrative oversight" have most frequently arisen in the context of late-filed renewal applications and the cases uniformly hold that inadvertent failure to file documentation required by the rules does not justify waiver of the filing requirement.¹⁰ Additionally, under the Commission's automatic termination process, if a licensee, by the end of the 30-day period for seeking reconsideration, 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 on the date of the construction deadline.¹¹ Here, Broward County concedes that it did not timely construct and that it was aware of ongoing construction delays.¹² Thus, the County could have and should have filed an extension request before the construction deadline.

4. If the County desires to continue using its UHF frequencies at the referenced two locations associated with call sign WQXH402, it must file a new, properly coordinated modification application. In addition, if the County needs to operate at these two locations while the modification application is pending with the Commission, it must file a request for special temporary authority in accordance with Section 1.931 of the Commission's rules.¹³

5. We note that this termination affects only the two locations, *supra*, for which the County did not construct and did not timely file an extension request. The other four locations in the County's system had not reached termination pending status at the time the County filed the instant Petition. Therefore, the County's request in its Petition for a construction extension for these other four locations is timely. Accordingly, we extend the construction deadline for facilities at these other four locations until December 31, 2018, the date requested by the County.

III. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), and Section 1.106 of the Commission's rules, 47 CFR § 1.106, that the Petition for Reconsideration filed August 9, 2018, by the Broward County Board of County Commissioners, IS DENIED.

7. IT IS FURTHER ORDERED that the licensing staff of the Policy and Licensing Division SHALL MODIFY the authorization for call sign WQXH402 in accordance with this Order and the Commission's rules.

⁸ See 47 CFR § 1.106(c)(2).

⁹ See *Instapage Network, Ltd.*, Order on Reconsideration, 17 FCC Rcd 19083, 19091-92 (WTB 2002) paras. 16-19 ("[o]versight," "[c]onfusion," and "[b]ad judgment" inadequate to excuse failure to file construction notification).

¹⁰ See, e.g., *Anderson Communications*, Memorandum Opinion and Order, 16 FCC Rcd 15020, 15021 ¶ 5 (2001); *Peacock's Radio and Wild's Computer Service, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 15016, 15017 ¶ 5 (2001); *Fresno City and County Housing Authorities*, Order on Reconsideration, 15 FCC Rcd 10998 ¶ 11 (2000) *Plumas-Sierra Rural Electric Cooperative*, Order, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB 2000).

¹¹ *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).

¹² Petition at 1.

¹³ See 47 CFR § 1.931.

8. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
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