

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

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| In the Matter of |) | |
| |) | |
| WASHINGTON COUNTY NETWORK |) | |
| (WCCCA-C800-NEWBERG), BEAVERTON, |) | Call Sign WRBK826 |
| OREGON |) | |
| |) | |
| Petition for Reconsideration | | |

ORDER

Adopted: October 13, 2020

Released: October 14, 2020

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

I. INTRODUCTION

1. On May 24, 2019, the Washington County Network (WCCCA-C800-NEWBERG) (WCN) filed a Petition for Reconsideration (Petition) of the Commission's notice terminating WCN's license to operate under call sign WRBK826.¹ For the reasons stated below, we deny the Petition but reinstate WCN's license with respect to its constructed locations.

II. BACKGROUND

2. On February 16, 2019, the Commission's Universal Licensing System (ULS) sent a construction reminder to WCN alerting it of the pending construction deadline for the license and establishing May 16, 2019 as the deadline for WCN to file a Notice of Construction for call sign WRBK826.² WCN did not file a notification, and on May 22, 2019, ULS issued WCN a letter advising it that the deadline had passed and that the license was in termination pending status.³ On May 24, 2019, WCN timely filed the instant Petition.⁴

¹ See Washington County Network (WCCCA-C800-NEWBERG), Petition for Reconsideration, *re* Call Sign WRBK826 (May 24, 2019) (Petition).

² See Construction/Coverage Deadline Reminder Notice, Reference No. 6457111 (dated Feb. 16, 2019). Although WCN originally had a construction deadline of April 16, 2019, the reminder notice informed the licensee that it had until May 16, 2019 to construct. Since ULS created this ambiguity, we construe the reminder in the light most favorable to the licensee and use May 16, 2019 as the construction deadline.

³ See Construction/Coverage Deadline, Notice of Termination Pending Status, Reference No. 6495608 (dated May 22, 2019).

⁴ See Petition at 1. Under the Commission's auto-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. 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). Given that ULS issued the Notices of Termination Pending Status on May 22, 2019 and WCN filed its Petition on May 24, 2019, its petition is timely.

3. WCN concedes that it did not submit the required Notice of Construction to the Commission by the deadline.⁵ It contends, however, that it failed to file the notice on time because its systems architect, a critical member of the communications team who handles FCC licensing for WCN, was not available due to a medical emergency.⁶ Specifically, WCN asserts that the systems architect underwent heart surgery on February 8, 2019, was unable to work until April 1, 2019, and worked limited hours throughout April and May.⁷

4. WCN contends that, while it failed to file a timely construction notification, it did meet the construction deadline for most of the licensed locations.⁸ Specifically, WCN states that it completed construction of Location 1 on May 3, 2019; Location 2 on April 30, 2019; Location 4 on April 11, 2019; Location 5 on April 2, 2019; Location 6 on May 3, 2019, and Location 7 on April 30, 2019.⁹ However, WCN acknowledges that it did not complete construction of Locations 3 and 8 by the construction deadline.¹⁰

III. DISCUSSION

5. WCN seeks reconsideration of the termination of WRBK826 for failure to timely comply with section 1.946(d) of the Commission's rules and requests waiver of sections 1.955(a)(2) and 90.155 of the Commission's rules.¹¹ We address each request separately.

6. 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."¹² We find that WCN has met this threshold, i.e., we find that WCN—by furnishing information that most of its authorized locations were constructed—provided sufficient justification for us to reinstate the terminated authorizations for those locations. We do, however, admonish WCN for not filing the construction notifications for those already-constructed locations. Notwithstanding the unfortunate circumstances of its systems architect, WCN could have assigned other members of its communications team to file the required notifications.

7. We now turn to WCN's request for a waiver of sections 1.955 and 90.155 relative to Locations 3 and 8. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹³ An

⁵ Petition at 1.

⁶ *Id.*

⁷ E-mail from Joe Kuran, Strategic Systems Architect, Representing Washington County Network, to Alison Venable, Policy and Licensing Division, FCC Public Safety and Homeland Security Bureau (June 18, 2019, 13:58 EDT) (Kuran E-mail).

⁸ *See* Petition at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See* 47 CFR § 1.955(a)(2) ("Authorizations 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.") and § 90.155 ("All stations authorized under this part . . . must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.").

¹² 47 CFR § 1.106(c)(2).

¹³ 47 CFR § 1.925 (a)(3).

applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁴

8. WCN has not met either prong of the Commission's waiver standards. It has not suggested that the underlying purposes of sections 1.955 and 90.155 of the Commission's rules would not be served or would be frustrated by application to its case, nor has it shown how our refusing to allow WCN to disregard the construction deadline would be inequitable, unduly burdensome, or contrary to the public interest. Thus, WCN has not established a relationship between its system architect's illness and WCN's failure timely to construct. If WCN had good cause for grant of an extension of time, sections 1.955 and 90.155 of the Commission's rules required WCN to request such an extension before the construction deadline; not, as here, make that request in the context of a petition for reconsideration after its authorization for Locations 3 and 8 had automatically terminated. Therefore, we deny the Petition.

9. However, although we deny WCN's Petition, we are reinstating its license relative to Locations 1, 2, 4, 5, 6 and 7 which WCN represents were constructed before the deadline. We do so—not because WCN has met the Commission's waiver standards—but because the Commission has explained that “the purpose of our construction notification procedure should be 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”¹⁵

10. As to Locations 3 and 8, WCN may file a new, properly coordinated application if it desires to use the frequencies previously licensed for those locations. In addition, if WCN needs to operate while an application is pending with the Commission, it may file a request for special temporary authority in accordance with Section 1.931 of the Commission's rules.¹⁶

IV. ORDERING CLAUSES

11. 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 sections 1.106 of the Commission's rules, 47 CFR § 1.106, that the Petition for Reconsideration filed May 24, 2019, by the Washington County Network (WCCCA – C800 – NEWBERG), **IS DENIED**.

12. **IT IS FURTHER ORDERED** that the licensing staff of the Policy and Licensing Division **SHALL MODIFY** the authorization for call sign WRBK829 in accordance with this Order and the Commission's Rules.

¹⁴ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003); 47 CFR § 1.925(a)(3).

¹⁵ See *Spartanburg, South Carolina*, Order, 29 FCC Rcd 1708, 1710 para. 7 (PSHSB 2014) citing *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 Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Report and Order, 13 FCC Rcd 21027, 21076 para. 106 (1998).

¹⁶ See 47 CFR § 1.931.

13. 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
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau