

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

In the Matter of)
Steuben County, New York) Call Signs WRCB926, WRCB715
Petition for Reconsideration)

MEMORANDUM OPINION AND 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 September 26, 2019, Steuben County, New York (Steuben) filed a Petition for Reconsideration (Petition) concerning the termination of its license for call signs WRCB926 and WRCB715, for failure to timely construct. For the reasons stated below, we grant the Petition in part, deny it in part, and dismiss a request for extension of time to construct.

II. BACKGROUND

2. On May 21, 2019, the Public Safety and Homeland Security Bureau (Bureau) sent Steuben a Construction/Coverage Deadline Reminder Notice to remind Steuben that it was required to file a Notification of Construction within 15 days of the applicable construction/coverage deadline, or file a timely request to extend the construction/coverage period. The construction deadlines for call signs WRCB926 and WRCB715 were August 21, 2019 and August 20, 2019, respectively. The Bureau subsequently notified Steuben that it had placed call signs WRCB926 and WRCB715 in Termination Pending status because Steuben had failed to meet the construction and construction notification requirements of the Commission's rules. The Bureau advised Steuben that when a licensee does not file the Required Notification or Extension of Time request, it is presumed that the license has not been constructed or the coverage requirement has not been met. Steuben neither filed a timely Notification of Construction nor requested an extension of time to construct prior to that deadline.

3. On September 26, 2019, Steuben filed the instant Petition, which it subsequently amended. In its Petition, Steuben stated that it timely constructed nine of ten locations for the two call

1 Petition for Reconsideration filed September 26, 2019 by the Steuben County, New York, as amended October 8, 2019 and February 12, 2020 (Respectively Petition, Supplement, and Second Supplement).

2 See 47 CFR § 1.946(d).

3 See 47 CFR § 1.946(e).

4 See Auto Termination Letter for WRCB926 (dated Sep. 25, 2019) (WRCB926 Auto Termination Letter) and Auto Termination Letter for WRCB715 (dated Sep. 25, 2019) (WRCB715 Auto Termination Letter). As a condition of its authorization, the Commission's rules require Steuben County to construct certain frequencies on call signs WRCB926 and WRCB715 within one year. See 47 CFR §§ 1.946, 90.155(a).

5 WRCB926 Auto Termination Letter at 1, WRCB715 Auto Termination Letter at 1.

signs but did not identify the specific locations.⁶ In its Supplement, Steuben stated that it had constructed Locations 3, 4, and 5 under WRCB715 and Locations 1, 2, 4, 9 and 10 under WRCB926 but that it failed to file the requisite Notice of Construction for these locations.⁷ Steuben also stated that it had not constructed Location 3 under call sign WRCB926 by the construction deadline because of negotiations with the tower owner for equipment shelter space, and Steuben therefore requested an extension of time until December 31, 2019 to construct Location 3.⁸ Steuben also indicated that it intended to withdraw Locations 1 and 2 from the WRCB715 license.⁹ Steuben later advised the Bureau that it anticipated WRCB926 Location 3 would be operational by the end of February 2020.¹⁰

III. DISCUSSION

4. For the following reasons, we deny Steuben's request for an extension of time to construct WRCB926 Location 3 but grant Steuben's waiver request with respect to the remaining locations that were timely constructed.

5. *WRCB926 Location 3.* Requests for construction extension must be filed before the construction deadline.¹¹ Steuben's construction deadline for WRCB926 Location 3 was August 21, 2019, but Steuben did not file its extension request until September 26, 2019. Because the extension request was untimely and Steuben has presented no justification for its untimeliness, we find that the license for WRCB926 Location 3 was properly placed in terminated status and we need not consider the reasons Steuben advances for its failure to timely construct.¹² Therefore, we deny Steuben's Petition and extension request with respect to WRCB926 Location 3. If Steuben desires to continue to operate on the frequencies previously authorized for WRCB926 Location 3, it must file a properly coordinated application for a new license. If Steuben desires to operate while the application is pending before the Commission, it must file a request for special temporary authority pursuant to section 1.931 of the Commission's rules.¹³

6. *WRCB715 and WRCB926 Locations 1, 2, 4, 9 and 10.* Steuben admits that it did not file a timely Notice of Construction for these locations but contends that the sites were constructed and activated before the construction deadline. The Commission has stated that the objective of the construction notification procedure is to verify whether licensees have in fact met their construction and coverage obligations, not to terminate licensed facilities that have been placed in operation before the construction deadline.¹⁴ Although Steuben provides no reason for failing to timely file its Notice of

⁶ Petition at 1. The County stated that it did not receive the FCC's correspondence regarding the notification deadline possibly due to the transition of the County's email systems.

⁷ Supplement at 1.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ Second Supplement at 2.

¹¹ 47 CFR § 1.946 requires, in pertinent part, that "[t]he request [for extension of time to construct] must be filed before the expiration of the construction or coverage period."

¹² 47 CFR § 1.946; *See, e.g., Orange County, New York*, Order, 33 FCC Rcd 11200 (PSHSB 2018) (Petition for reconsideration denied when, as here, licensee failed to construct by the deadline and requested an extension of time to construct after the deadline had passed.).

¹³ 47 CFR § 1.931.

¹⁴ *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) (*Biennial Regulatory Review*) (explaining that the rule providing for automatic license termination is not based on a licensee's failure to

Construction for these locations, we credit Steuben's representation that the facilities were in operation prior to the construction deadline.¹⁵ We perceive no overriding policy rationale, *e.g.*, avoidance of spectrum warehousing,¹⁶ that prevents us from granting Steuben's Petition as it relates to those locations and note that their operations are in the furtherance of the protection of life and property. That said, however, we reaffirm the importance of timely filing a Notice of Construction and admonish Steuben for its failure to do so.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, that, pursuant to the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and section 1.106 of the Commission's Rules, 47 CFR § 1.106, the Petition for Reconsideration filed by Steuben County, New York on September 26, 2019 IS GRANTED IN PART as described herein, and DENIED in all other respects.

8. IT IS FURTHER ORDERED that, pursuant to the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and section 1.106 of the Commission's Rules, 47 CFR § 1.106, the request for extension of time to construct Location 3 in License WRCB926, included as part of the Supplement filed by Steuben County, New York on October 8, 2019, IS DENIED.

9. IT IS FURTHER ORDERED, that the Licensing Branch of the Policy and Licensing Division of the Public Safety and Homeland Security Bureau SHALL DESIGNATE Location 3 in license, call sign WRCB926, AS TERMINATED in the Commission's Universal Licensing System database.

10. 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
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file a construction notification, "but based on actual failure by the licensee to meet its construction or coverage deadline.").

¹⁵ See Supplement at 1.

¹⁶ See *State of New York*, Order, 27 FCC Rcd. 14912, 14913 para. 4 (PSHSB 2012), citing *Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations*, Notice of Proposed Rule Making, 5 FCC Rcd 6401 (1990).