

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

In the Matter of)	
)	
City of Melbourne, Florida, Airport Authority)	Call Sign WRBV543
)	
Petition for Reconsideration)	

ORDER

Adopted: Month **, 2020**Released: Month **, 2020**

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

I. INTRODUCTION

1. On August 14, 2019 the City of Melbourne Airport Authority (MAA) filed a Petition for Reconsideration (Petition) of the Commission's notice terminating MAA's license to operate under call sign WRBV543.¹ For the reasons stated below, we deny the Petition.

II. BACKGROUND

2. On March 30, 2019, the Commission's Universal Licensing System (ULS) sent a construction reminder to MAA alerting it of the pending construction deadline for call sign WRBV543.² This required MAA to file a Notice of Construction for WRBV543 by June 30, 2019.³ MAA did not file a notice, and on August 7, 2019, ULS issued MAA a letter advising it that the notification deadline had passed and that the license was in termination pending status.⁴ On August 14, 2019, MAA timely filed the instant Petition.⁵

3. MAA asserts that it did not submit the Required Notice of Construction to the Commission by the deadline due to personnel turnover.⁶ MAA also contends that as of February 16, 2018

¹ See City of Melbourne Airport Authority, Petition for Reconsideration, *re* Call Sign WRBV543 (August 14, 2019) (Petition).

² See Construction/Coverage Deadline Reminder Notice, Reference No. 6480845 (dated Mar. 30, 2019).

³ See 47 CFR § 1.946 (d) ("A licensee who commences service or operations within the construction period or meets its coverage or substantial services obligations within the coverage period must notify the Commission by filing FCC Form 601. The notification must be filed within 15 days of the expiration of the applicable construction or coverage period.").

⁴ See Construction/Coverage Deadline, Notice of Termination Pending Status, Reference No. 6537889 (dated Aug. 7, 2019).

⁵ See Petition at 1. Under the Commission's auto-term 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 August 7, 2019 and MAA filed its Petition on August 14, 2019, its petition is timely.

⁶ Petition at 1.

it had completed the first phase of construction, which included the physical construction of the Air Traffic Control Tower (ATCT) associated with the subject call sign.⁷ However, at the time it filed its Petition, MAA had not initiated operation of the station.⁸

III. DISCUSSION

4. 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."⁹ We find that MAA has not provided sufficient justification for us to grant its Petition. Personnel turnover is not a unique factual circumstance justifying a waiver and excusing failure to comply with the Commission's construction notification requirements.¹⁰ In addition, while MAA completed construction of facilities prior to the construction deadline, it had not placed its station in operation as required by sections 1.955 and 90.155 of the Commission's rules.¹¹ Thus, under the plain language of the rules, call sign WRBV543, terminated automatically. MAA's Petition provides no justification for a rule waiver given MAA's failure timely to place its station into operation. We therefore deny the Petition.

5. MAA may file a new, properly coordinated application if it desires to use its previously licensed frequency. In addition, if MAA 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.¹²

IV. ORDERING CLAUSE

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 Sections 1.106 of the Commission's rules, 47 CFR § 1.106, that the Petition for Reconsideration filed August 14, 2019, by the City of Melbourne Airport Authority, IS DENIED.

7. 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

⁷ *Id.*

⁸ *Id.*

⁹ 47 CFR § 1.106(c)(2).

¹⁰ See the Commission's waiver criteria in 47 CFR 1.925. See also *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).

¹¹ 47 CFR §§ 1.955, 90.155

¹² See 47 CFR § 1.931.