

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

In the Matter of)	
)	
Prescott Valley, Arizona)	Call Sign WNBX408
)	
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 July 31, 2019, the Town of Prescott Valley (Prescott) filed a Petition for Reconsideration (Petition) concerning the partial termination of its license, call sign WNBX408, for failure to timely construct.¹ For the reasons stated below, we grant the Petition.

II. BACKGROUND

2. On March 2, 2019, the Public Safety and Homeland Security Bureau (Bureau) sent Prescott a Construction/Coverage Deadline Reminder Notice to alert Prescott that it was required to file a Notification of Construction within 15 days of the applicable construction/coverage deadline,² or file a timely request to extend the construction/coverage period.³ The construction deadline for call sign WNBX408 was June 4, 2019. The Bureau subsequently notified Prescott that it had placed call sign WNBX408 in Termination Pending status because it failed to meet the construction and construction notification requirements of the Commission's rules.⁴ The Bureau advised Prescott 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.⁵ The District neither filed a timely Notification of Construction nor requested an extension of time to construct prior to that deadline.

3. On July 31, 2019, Prescott filed the instant Petition.⁶ In its Petition, Prescott stated that it had timely constructed the locations in question but that it failed to file the requisite Notice of Construction.

III. DISCUSSION

4. Prescott admits that it did not file a timely Notice of Construction for the locations in question but contends that the locations were constructed and activated before the construction deadline.

¹ Petition for Reconsideration filed July 31, 2019 by Central Arizona Fire and Medical on behalf of Town of Prescott Valley, Arizona.

² See 47 CFR § 1.946(d).

³ See 47 CFR § 1.946(e).

⁴ See Auto Termination Letter for WNBX408 (dated Jul. 10, 2019) (Auto Termination Letter). As a condition of its authorization, the Commission's rules require Prescott to construct certain frequencies on call sign WNBX408 within one year. See 47 CFR §§ 1.946, 90.155(a).

⁵ Auto Termination Letter at 1.

⁶ Petition at 1.

The Commission has clarified that the objective of the construction notification procedure is to verify whether licensees have in fact met their construction and coverage obligations on time, not to terminate licenses for facilities placed in timely operation because of a failure to notify the Commission.⁷ Although Prescott provides no reason for failing to timely file its Notice of Construction for these locations, we credit Prescott's representation that the facilities were in operation prior to the construction deadline.⁸ We perceive no overriding policy rationale, *e.g.*, avoidance of spectrum warehousing,⁹ that prevents us from granting Prescott's Petition and note that its 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 Prescott for its failure to do so.

IV. ORDERING CLAUSES

5. 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 the Town of Prescott Valley on July 31, 2019 IS GRANTED.

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

⁸ See Petition ("The Town of Prescott Valley is operating on and has been using these frequencies for the past 5 months.").

⁹ 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).