

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

In the Matter of)
State of Nevada Department of Transportation) Call Sign WPWR989
Petition for Reconsideration)

ORDER

Adopted: January 3, 2020

Released: January 3, 2020

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

I. INTRODUCTION

1. On September 19, 2019, the State of Nevada Department of Transportation (Department) filed a Petition for Reconsideration (Petition) of the Commission’s notice partially terminating the Department’s license to operate under call sign WPWR989.1 For the reasons stated below, we deny the Petition.

II. BACKGROUND

2. On May 7, 2019, the Commission’s Universal Licensing System (ULS) sent a reminder to the Department advising it of the pending construction deadlines for the license.2 The Department had a deadline of August 6, 2019 to file a Notice of Construction for two frequencies under call sign WPWR989.3 On September 11, 2019, ULS issued the Department a letter advising it that the deadline to submit the Notice of Construction had passed and that the license was in termination pending status.4 On September 19, 2019, the Department timely filed the instant Petition.5

1 See State of Nevada Department of Transportation, Petition for Reconsideration, re Call Sign WPWR989 (September 19, 2019) (Petition).

2 See Construction/Coverage Deadline Reminder Notice, Reference No. 6490875 (dated May 7, 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.”) The frequencies in question are 807.5625 MHz and 852.5625 MHz.

4 See Construction/Coverage Deadline, Notice of Termination Pending Status, Reference No. 6549432 (dated Sep. 11, 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). Because ULS issued the Notices of Termination Pending Status on September 11, 2019 and Department filed its Petition on September 19, 2019, its petition is timely.

3. The Department concedes that it did not submit the Notice of Construction to the Commission by the deadline.⁶ It contends, however, that this was due to the abrupt retirement of one of its staff.⁷ The Department states that due to materials on backorder and delayed power installation, it fell behind schedule but anticipates placing the system into operation in May 2020, and seeks a waiver to do so.⁸

III. DISCUSSION

4. As an initial matter, we note that the Department is seeking both (a) reconsideration of the partial termination of WPWR989 for failure to comply with the notification requirement of Section 1.946 (d) of the Commission's rules and (b) a waiver of the build-out requirement of Sections 1.955(a)(2) and 90.155 of the Commission's rules.⁹ We address each request separately.

5. 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."¹⁰ It is well settled that an inadvertent failure to file a required Notice of Construction for such reasons as "abrupt retirement of . . . staff," *supra*, is insufficient to warrant grant of the Department's petition.¹¹ 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.¹² Here, the Department has not rebutted that presumption and concedes that it did not timely construct and that it was aware of ongoing construction delays. Thus, the Department could have and should have filed an extension request before the construction deadline.

6. The Department's request for waiver of Sections 1.955 and 90.155 of the Commission's Rules does not meet the Commission's waiver standard.¹³ Under the plain terms of these rule sections, the authorizations for the two frequencies under call sign WPWR989 terminated automatically when Department failed to construct it by the deadline. Denying the waiver request would not frustrate the

⁶ Petition at 1.

⁷ *Id.*

⁸ *Id.*

⁹ 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.").

¹⁰ 47 CFR § 1.106(c)(2).

¹¹ 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). See also *Broward County, Florida*, Order, ___ FCC Rcd ___ (PSHSB Dec. 19, 2018). Cf. *Anderson Communications*, Memorandum Opinion and Order, 16 FCC Rcd 15020, 15021 para 5 (2001); *Peacock's Radio and Wild's Computer Service, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 15016, 15017 para. 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 para. 9 (WTB 2000).

¹² *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).

¹³ See 47 CFR § 1.925. See also, *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *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)).

purpose of the rule, and we see no public interest justification for granting Department’s requested relief.¹⁴

7. However, the Department may file a new, properly coordinated application if it desires to use its previously licensed frequencies. In addition, if the Department needs to operate while its 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.¹⁵

IV. ORDERING CLAUSE

8. 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 September 19, 2019, by the State of Nevada Department of Transportation, IS DENIED.

9. 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

¹⁴ See 47 CFR § 1.925.

¹⁵ See 47 CFR § 1.931.