

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

In the Matter of)
MT. WILSON FM BROADCASTERS, INC.) File No. BNP-20040129AQF
Application for a New AM Broadcast Station) Facility ID No. 160776
at Whitney, Nevada)

MEMORANDUM OPINION AND ORDER

Adopted: March 22, 2013

Released: March 26, 2013

By the Commission:

1. We have before us an Application for Review, filed May 28, 2008, by Mt. Wilson FM Broadcasters, Inc. ("Mt. Wilson"), seeking review of the denial of its request for waiver of Section 73.3568 of the Commission's Rules, and the dismissal by the Media Bureau, Audio Division ("Bureau"), of its application for a construction permit for a new AM broadcast station at Whitney, Nevada. In the dismissal letter, the Bureau denied Mt. Wilson's request to waive the deadline to submit a showing under Section 307(b) of the Communications Act.

2. Upon review of the Application for Review and the entire record, we conclude that Mt. Wilson has failed to demonstrate that the Bureau erred. Mt. Wilson made a decision not to submit a timely Section 307(b) showing, and thus not to participate further in the auction process, and seeks waiver of the filing deadline only because its sole competitor subsequently requested dismissal of its application. An applicant's calculated business decision to forego further participation in the auction process does not constitute unusual or special circumstances sufficient to justify waiver of a filing deadline. As a general matter, the integrity of the auction process requires strict adherence to procedural requirements, and therefore where, as here, an applicant purposely disregards a filing deadline, waiver is particularly unwarranted. The Bureau properly decided the matters raised, and we therefore uphold the Staff Decision.

1 47 C.F.R. § 73.3568.

2 Mt. Wilson FM Broadcasters, Inc., Letter, Ref. No. 1800B3-JP/LAS (MB Apr. 28, 2008) ("Staff Decision").

3 File No. BNP-20040129AQF.

4 47 U.S.C. § 307(b) ("Section 307(b)").

5 See NetworkIP, LLC v. FCC, 548 F.3d 116, 127 (D.C. Cir. 2008) (citing BDPCS, Inc. v. FCC, 351 F.3d 1177, 1184 (D.C. Cir. 2003), quoting 21st Century Telesis Joint Venture v. FCC, 318 F.3d 192, 200 (D.C. Cir. 2003)) (discouraging the Commission from entertaining late-filed pleadings in the absence of extremely unusual circumstances).

6 While Mt. Wilson cites Gulf Coast Community College, Letter, 20 FCC Rcd 17157 (MB 2005) ("GCCC"), in support of its waiver request, that case is inapposite. In GCCC, the applicant initiated filing of a long-form application shortly before expiration of the filing deadline, but failed to submit it before the deadline. In granting (continued . . .)

3. Accordingly, IT IS ORDERED that the Application for Review filed by Mt. Wilson FM Broadcasters, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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waiver of the filing deadline, the Commission emphasized the applicant's prompt remedial action (contacting staff and filing a paper application the following day) and lack of disruption to the auction process. 20 FCC Rcd at 17158-60. Here, on the other hand, Mt. Wilson made a business decision not to submit its Section 307(b) showing by the filing deadline, choosing to submit the showing 30 days later only after its circumstances changed.