

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

In the Matter of	)	
	)	
Gwendolyn May	)	Facility ID No. 34894
Former Permittee of Deleted Low Power	)	
Television Station DK15CC, San Antonio, TX	)	
	)	
Application for Assignment of Construction Permit	)	File No. BAPTTL-19900112IA
For Deleted Low Power Television Station	)	
DK15CC, San Antonio, TX	)	
	)	
Application for Major Modification of Construction	)	File No. BMPTTL-19891208YD
Permit for Deleted Low Power Television Station	)	
DK15CC, San Antonio, TX	)	

**ORDER ON RECONSIDERATION**

**Adopted: July 31, 2018**

**Released: August 1, 2018**

By the Commission:

**I. INTRODUCTION**

1. In this Order on Reconsideration, we dismiss the Petition for Reconsideration (Petition) filed by Ms. Gwendolyn May (May),<sup>1</sup> the former permittee of deleted low power television station DK15CC, San Antonio, Texas (Station or DK15CC), pursuant to Section 1.106(b)(3) of the Commission's rules (Rules).<sup>2</sup> The Petition seeks reconsideration of the Commission's *Memorandum Opinion and Order*<sup>3</sup> (MO&O) denying May's Application for Review<sup>4</sup> (AFR) of the Video Division (Division) of the Media Bureau's reaffirmation of its previous decisions to (1) rescind the grant of the above-captioned application for assignment of the construction permit for the Station to Faith Pleases God Church Corporation (Faith);<sup>5</sup> and (2) dismiss the above-captioned major modification application for the Station, because her construction permit for the Station had expired and she had failed to construct the Station by the permit deadline.<sup>6</sup> For the reasons below, we dismiss the Petition.

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<sup>1</sup> Petition for Reconsideration of Commission Memorandum Opinion and Order (filed July 21, 2016) (Petition). According to the Petition, Gwendolyn May is now Gwendolyn May-Barlow. For purposes of consistency in the proceeding, we will continue to refer to the Petitioner as Gwendolyn May.

<sup>2</sup> 47 CFR § 1.106(b)(3).

<sup>3</sup> *Gwendolyn May*, Memorandum Opinion and Order, 31 FCC Rcd 7442(9) (2016) (MO&O).

<sup>4</sup> Application for Review of Gwendolyn May (filed Jan. 23, 2006) (AFR).

<sup>5</sup> Application for Assignment of Construction Permit DK15CC, San Antonio, TX, File No. BAPTTL-19900112IA (filed Jan. 12, 1990) (Application for Assignment).

<sup>6</sup> Application for Major Modification of Construction Permit DK15CC, San Antonio, TX, File No. BMPTTL-19891208YD (filed Dec. 8, 1989).

## II. BACKGROUND

2. May was granted a construction permit for the Station on August 24, 1987, which expired on February 24, 1989.<sup>7</sup> Upon expiration, May filed for an extension which was granted, with a new expiration date of October 24, 1989.<sup>8</sup> Section 319(b) of the Act provides that a construction permit “will be automatically forfeited if the station is not ready for operation within the time specified....”<sup>9</sup> On January 12, 1990, after the expiration of the construction permit, May filed an application for assignment to Faith, which was granted on March 6, 1990.<sup>10</sup> Following the grant, a petition for reconsideration was filed by Mr. Louis Martinez (Martinez), asserting that the application had erroneously been granted prior to the fulfillment of the required 30-day public notice period set forth in Section 309(b) of the Communications Act, as amended (Act).<sup>11</sup> May proceeded to consummate the assignment to Faith despite Martinez’s pending petition and even though the construction permit had expired.<sup>12</sup>

3. In response to Martinez’s petition for reconsideration, the Division determined that the grant was issued prematurely, and was therefore void *ab initio*. The Division also concluded that the construction permit had automatically expired due to May’s failure to have constructed the Station by the permit deadline, or filed for reinstatement, and therefore could not be assigned.<sup>13</sup> May has since filed numerous petitions for reconsideration and an AFR arguing for reinstatement of the former station’s construction permit and her right to assign that permit.<sup>14</sup> Both the Division and, most recently, the Commission, have rejected May’s arguments and denied her requests.<sup>15</sup> On July 21, 2016, May filed the instant Petition seeking review of the Commission’s *MO&O*.<sup>16</sup>

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<sup>7</sup> See Construction Permit Authorization for File No. BPTTL-19810331JH, [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/app\\_det.pl?Application\\_id=29278](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/app_det.pl?Application_id=29278).

<sup>8</sup> See Construction Permit Extension Authorization for File No. BMPTTL-19890420IA, [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/app\\_det.pl?Application\\_id=127886](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/app_det.pl?Application_id=127886).

<sup>9</sup> 47 U.S.C. § 319(b). Under the then-applicable provision of the Commission’s rules, “A construction permit shall be declared forfeited if the station is not ready for operation within the time specified therein or within such further time as the FCC may have allowed for completion, and a notation of the forfeiture of any construction permit under this provision will be placed in the records of the FCC as of the expiration date.” 47 CFR § 73.3599 (1985).

<sup>10</sup> *Supra* note 5.

<sup>11</sup> 47 U.S.C. § 309(b).

<sup>12</sup> *MO&O*, 31 FCC Rcd at 7443-44, para. 3.

<sup>13</sup> See *Pleading Treated as Petition for Reconsideration of Application for Assignment of Construction Permit DK15CC, San Antonio, TX*, Letter Order, (Vid. Div., Nov. 14, 2002) (noting the permit’s expiration and absence of a Form 307 application for reinstatement resulting in cancellation of the construction permit, deletion of the station’s call sign, and dismissal of the assignment application) (2002 Letter Order); *Petition for Reconsideration of Application for Assignment of Construction Permit DK15CC, San Antonio, TX*, Letter Order, 20 FCC Rcd 20155 (Vid. Div., Dec. 21, 2005) (same) (2005 Letter Order); *MO&O*, 31 FCC Rcd at 7443, para. 2 (upholding expiration of permit and affirmative declarations of forfeiture made in underlying decisions).

<sup>14</sup> See *Petition for Reconsideration of 2002 Letter Order by Gwendolyn May* (filed Dec. 16, 2002); *Petition for Reconsideration of 2005 Letter Order by Gwendolyn May* (filed Feb. 22, 2005); AFR (filed Jan. 23, 2006). Martinez has also filed responses in opposition to May’s prior filings. See *Martinez Opposition to Petition for Reconsideration* (filed Dec. 31, 2002); *Martinez Opposition to Petition for Reconsideration* (filed Mar. 9, 2005); *Martinez Opposition to Application for Review* (filed Feb. 7, 2006).

<sup>15</sup> See *supra* note 13.

<sup>16</sup> Petition at 2.

### III. DISCUSSION

4. Section 1.106(b)(2) of the Rules specifies limited circumstances under which a party may seek reconsideration of a Commission denial of an application for review. Such a petition for reconsideration will be entertained only if the petition (i) “relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission,” and/or (ii) “relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.”<sup>17</sup> A petition for reconsideration that fails to introduce relevant new facts or changed circumstances may be dismissed by staff as repetitious.<sup>18</sup>

5. The instant Petition raises numerous arguments, each of which has either already been fully addressed by both the Commission and the Division or does not meet the standard of review under Section 1.106(b)(2). First, the Petition argues that an affirmative declaration of forfeiture of the construction permit was not made following its expiration,<sup>19</sup> but this is not so. In each decision released, both the Commission and the Division have affirmatively declared, in clear and unambiguous terms,<sup>20</sup> that May’s construction permit had expired and was accordingly forfeited.<sup>21</sup>

6. Second, May asserts that the Commission’s conclusion that she knew or should have known the permit expired “lacks factual support.”<sup>22</sup> According to May, the Division did not find that the construction permit was forfeited because it processed the assignment application.<sup>23</sup> However, as previously explained here and throughout the record, grant of the assignment application was erroneous as it occurred both after expiration of the construction permit on October 24, 1989,<sup>24</sup> and before the end of the 30-day public notice period required by Section 309(b) of the Act.<sup>25</sup>

7. Third, May contends that, assuming the construction permit had expired, she lacked the ability to file an application to reinstate that permit because it had already been forfeited.<sup>26</sup> This argument reflects a misunderstanding of the law. As indicated in the *MO&O*, May could have made such an

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<sup>17</sup> 47 CFR § 1.106(b)(2).

<sup>18</sup> 47 CFR § 1.106(b)(3).

<sup>19</sup> Petition at 3.

<sup>20</sup> May incorrectly asserts that the Commission erroneously applied the current, non-applicable rule, 47 CFR § 73.3598(e), in denying her AFR. Petition at 3-4. This assertion lacks merit and is demonstrably false as the *MO&O* quotes language from the appropriate then-applicable rule. *MO&O*, 31 FCC Rcd at 7442-43, para. 2 (quoting 47 CFR § 73.3599 (1985)). The Commission’s use of the word “automatic” or “automatically” in the *MO&O* to describe expiration of the construction permit was not meant to speak to the issue of whether affirmative action declaring the construction permit expired was required, but rather that, as a matter of law, the construction permit expires following the expiration date listed on the authorization.

<sup>21</sup> See *supra* note 13. See 47 U.S.C. § 319(b) (a construction permit “will be automatically forfeited if the station is not ready for operation within the time specified....”).

<sup>22</sup> Petition at 3.

<sup>23</sup> *Id.*

<sup>24</sup> See Construction Permit Extension Authorization for File No. BMPTTL-19890420IA, [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/app\\_det.pl?Application\\_id=127886](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/app_det.pl?Application_id=127886).

<sup>25</sup> 47 U.S.C. § 309(b). See *MO&O*, 31 FCC Rcd at 7442-43, para. 2; 2005 Letter Order, 20 FCC Rcd at 20156 (“The staff, on reconsideration, agreed that the grant had been premature and void *ab initio*, and rescinded the grant.”); 2002 Letter Order at 2 (concluding the grant had been correctly rescinded).

<sup>26</sup> Petition at 3.

application in a timely manner in accordance with Commission rules, yet failed to do so of her own volition.<sup>27</sup>

8. Finally, May's equitable arguments were fully addressed in the *MO&O*.<sup>28</sup> May's contention that the passage of time between action on her appeals has in some way deprived her of meaningful legal review, including judicial review, is incorrect.<sup>29</sup> May has fully exercised her rights to appeal the Division's decisions to the full Commission and those pleadings have been acted on. It was May who chose not to seek judicial intervention to compel Commission action to the extent she believed she was being prejudiced by the Commission's alleged delay, and it was May who decided to file this Petition instead of undertaking judicial review of the *MO&O*. Moreover, May's assertion that the passage of time prejudiced her because she missed the opportunity to convert her low power television station to Class A status and then participate in the broadcast television incentive auction<sup>30</sup> is baseless because her construction permit for the low power television station expired and was forfeited for the reasons explained above. In short, there was no station she could have converted to Class A status.

9. The Commission and Division have spoken clearly and uniformly for many years regarding the matters raised in this proceeding. Over all this time, May has failed to provide any evidence of material error or set forth any legal or equitable reason that the Commission should grant this Petition. Accordingly, we hereby direct the staff to dismiss summarily by public notice, citing this *Order on Reconsideration*, any subsequent pleadings filed by May with respect to the Commission's decisions regarding this matter.<sup>31</sup>

10. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405(a), and Section 1.106 of the Commission's rules, 47 CFR § 1.106, the Petition for Reconsideration filed by Gwendolyn May IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>27</sup> *MO&O*, 31 FCC Rcd at 7443, para. 3 n.10 ("Then-Section 73.3534(e) of the Rules required the holder of an expired permit seeking its replacement to file an application seeking such action within 30 days of the expiration date of the authorization sought to be replaced.").

<sup>28</sup> *Id.* at 7443-44, para. 3.

<sup>29</sup> Petition at 4.

<sup>30</sup> *Id.*

<sup>31</sup> See, e.g., *Kingdom of God*, Order on Reconsideration, 32 FCC Rcd 3654, 3655, para. 4 and n.14 (2017); *Texas Grace Comm'n*, Memorandum Opinion and Order, 30 FCC Rcd 10545, 10547, para. 4. (2015); *Warren C. Havens*, Order on Reconsideration, 25 FCC Rcd 511, 513 n.22 (2010); *Central Mobile Radio Phone Service, Inc.*, Memorandum Opinion and Order, FCC 86-88, 1986 WL 292748, para. 3 (1986).