



Federal Communications Commission
Washington, D.C. 20554

October 3, 2012

In Reply Refer to:
1800B3-ATS

Rev. Neolin Craig
Down Home Broadcasting
235 Stallworth Street
P.O. Box 347
Beatrice, AL 35425

In re: Down Home Broadcasting

DWCOX(AM), Camden, Alabama
Facility ID No. 17480
File Nos. BR-20120726AFY
BLSTA-20120726AFO

DWYVC(FM), Camden, Alabama
Facility ID No. 17481
File Nos. BRH-20120726AFR
BLSTA-20120726AFL

**Renewal of Licenses
Special Temporary Authority Requests**

Dear Rev. Craig:

We have before us two applications ("Applications") filed on July 26, 2012, by Down Home Broadcasting ("Down Home") for renewal of its licenses for Stations DWCOX(AM), Camden, Alabama, and DWYVC(FM), Camden, Alabama (collectively, "Stations"). In the Applications, Down Home seeks reconsideration of the cancellation of the Stations' licenses. For the reasons stated below, we treat the Applications as petitions for reconsideration and dismiss them as late-filed.¹ We also dismiss as moot two concomitant requests for Special Temporary Authority ("STA Requests") to continue the Stations' operations.

Background. An application for renewal of the Stations' licenses should have been filed by December 1, 2011.² No such application was filed, and the Stations' licenses expired on April 1, 2012. Accordingly, on April 6, 2012, the staff wrote to Down Home, indicating that the Stations' licenses had expired and that: (1) all authority to operate the Stations was terminated; and (2) the Stations' call letters

¹ We also have an Informal Objection filed by David N. Lewis on January 23, 2012, before the filing of the Applications. Lewis asserts that Station DWCOX(AM) was not on the air during his visit to Camden in 2009. Because we are not reinstating that station's license, we will dismiss the Informal Objection as moot.

² See 47 C.F.R. §§ 73.1020, 73.3539(a). The staff contacted Down Home on or about December 12, 2011, to remind it that its renewal applications had not been received. Down Home directed the staff to contact its counsel, Lewis Goldman, Esq. The staff contacted Mr. Goldman several times during the month of December to remind him that the renewal applications had not been filed. Down Home explains that it only realized Mr. Goldman had not filed the required forms in April, after the Stations' licenses were cancelled.

had been deleted from the Commission's data base. The *License Expiration Letters* also advised Down Home that any operation of the Stations was then unauthorized and must cease immediately.³

Down Home did not file a timely petition for reconsideration of the *License Expiration Letters*. Rather, on July 26, 2012, more than two months after the *License Expiration Letters* became final, it filed the Applications, specifically requesting that the Commission reconsider the cancellation of the Stations' licenses, and the STA Requests.⁴

Discussion. Section 405 of the Act⁵ and Section 1.106(f) of the Rules⁶ require petitioners to seek reconsideration no later than 30 days after public notice of the action for which reconsideration is sought. The Commission generally lacks the authority to extend or waive the statutory 30-day filing period for petitions for reconsideration set forth in Section 405 of the Act. Although the Commission may not refuse to consider a late-filed petition for reconsideration if the petitioner shows that its failure to file for reconsideration in a timely manner resulted from "extraordinary circumstances,"⁷ no such showing has been made here.

Down Home explains that its counsel repeatedly assured it in April of 2012 that he would "take care of" getting the Stations' licenses reinstated, and notes that it "terminated" its association with him in late June when it realized that "nothing had been done to remedy the situation."⁸ However, the Commission has held that counsel's failure to timely file a petition for reconsideration is not grounds for waiver of the statutory petition for reconsideration deadline.⁹ Accordingly, we will dismiss the Applications as untimely.¹⁰

With respect to the STA Requests, under Section 309(f) of the Act,¹¹ when an appropriate application has been filed, the Commission may grant special temporary authority if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the

³ *Letters to Down Home Broadcasting, Inc.* (MB Apr. 6, 2012) ("*License Expiration Letters*"). The Bureau provided public notice of the *License Expiration Letters* on April 11, 2012. See *Broadcast Actions*, Public Notice, Report No. 47714 (Apr. 11, 2012) at 6-7. A petition for reconsideration of the *License Expiration Letters* would have been due by May 11, 2012, pursuant to Section 405 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 405, and Section 1.106(f) of the Commission's Rules ("Rules"), 47 C.F.R. § 1.106(f).

⁴ See Applications, Exhibit 6, Request for Reinstatement and Renewal.

⁵ 47 U.S.C. § 405. See *Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). See also *Pueblo Radio Broadcasting Service*, Memorandum Opinion and Order, 6 FCC Rcd 1416 (1991); *Panola Broadcasting Co.*, Memorandum Opinion and Order, 68 FCC 2d 533 (1978).

⁶ 47 C.F.R. § 1.106(f).

⁷ *Gardner v. FCC*, 530 F.2d 1085, 1091-92 (D.C. Cir. 1976); *Richardson Independent School District*, Memorandum Opinion and Order, 5 FCC Rcd 3135, 3136 (1990). That an application is filed one day late does not constitute an "extraordinary circumstance" that would warrant its consideration. *Pueblo Radio Broadcasting Service*, *supra*.

⁸ See Applications at Exhibit 6.

⁹ See *Michigan Center School District*, Memorandum Opinion and Order, 25 FCC Rcd 4381, 4384 (2010) ("An applicant is responsible for the prosecution of its application, and 'the applicant is ultimately responsible if counsel does not vigorously prosecute the applicant's interests'"), citing *Royce International Broadcasting Company*, Memorandum Opinion and Order, 23 FCC Rcd 9010, 9014 ¶ 13 (2008); *Hillebrand Broadcasting, Inc.*, Order, 1 FCC Rcd 419, 420 n.6 (1986).

¹⁰ See, e.g., *Christian Family Network, Inc., Battle Creek, Michigan*, Letter, 24 FCC Rcd 2294, 2295 (MB 2009), *recon. denied*, 24 FCC Rcd 7170 (MB 2009) (license renewal application treated as untimely petition for reconsideration of license expiration letter).

¹¹ 47 U.S.C. § 309(f).

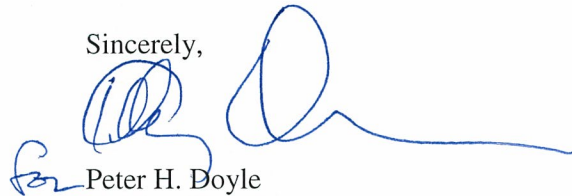
institution of such temporary operations would seriously prejudice the public interest. Because the expiration of the Stations' licenses is now final, there is no basis upon which to grant the Down Home requests to continue operation of the Stations.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the applications (File Nos. BRH-20120726AFY and BRH-20120726AFR) of Down Home Broadcasting for renewal of licenses for expired Stations DWCOX(AM) and DWYVC(FM), Camden, Alabama, treated as Petitions for Reconsideration, ARE DISMISSED as untimely.

IT IS FURTHER ORDERED that the July 26, 2012, Requests for Temporary Authority and the January 23, 2012, Informal Objection filed by David N. Lewis ARE DISMISSED as moot.

Any operation of the DWCOX(AM) and DWYVC(FM) facilities is unauthorized and must cease immediately. Finally, it is imperative to the safety of air navigation that any prescribed painting and illumination of the stations' towers be maintained until the towers are dismantled. Accordingly, the owner of the towers supporting the referenced stations' transmitting antennas must maintain the towers in the manner prescribed by the Commission's rules and the terms of the expired licenses.¹²

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: David N. Lewis

¹² See 47 U.S.C. § 303(q) and 47 C.F.R. § 17.6.