



Federal Communications Commission  
Washington, D.C. 20554

March 20, 2014

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Re: Applications for Extension of Construction  
Permits for New Digital Low Power  
Television Stations  
File Nos. BEP-20131206BBZ, BBV, BBQ, BBM,  
BBJ, BBH, BCR, BCO, BCN, BCM, BCG and BCF  
File Nos. BNPDTL-20090825BAU, BAN, BIP, ARJ,  
BAI, BGH, BMF, BLY, BHW, BGT, BHM, BIB and  
BLW

Dear Counsel:

This concerns your February 6, 2014 petition, filed on behalf of TV Red de Puerto Rico, Inc. (TV Red) seeking reconsideration of the January 17, 2014 letter of the Video Division denying the above-referenced applications for extension of the TV Red's above-referenced construction permits for new digital Low Power Television (LPTV) stations. For the reasons set forth below, we deny the petition.

TV Red's applications for construction permit were granted on December 2, 2009, with an expiration date of December 2, 2013. As indicated in the January 17, 2014 letter, because neither an application for license to cover nor application for extension of construction permit was filed on or before the expiration date, the construction permits expired, were forfeited and could not be extended.<sup>1</sup>

In its Petition and accompanying Declaration, TV Red acknowledges that its permits expired four days before it filed its extension application. TV Red blames its failure to seek a timely extension of its construction permit on its consulting engineer being "out of the office," not being aware and being "confused" as to the expiration dates. TV Red also argues that it believed that it was Commission practice "from time to time . . . to extend the expiration dates of construction permits even when an Application for Extension of Time to Construct had been filed a little late and the permits technically expired, as long as the Application was filed in good faith with the intention that the LPTV station be timely constructed." TV Red also claims that the Video Division has previously allowed late-filed extension applications and argues that the Video Division has now changed its processing procedures to adopt a stricter approach. Finally, TV Red maintains that applicants for new digital LPTV stations should be afforded a September 1, 2015 construction deadline, similar to the construction deadline afforded existing stations seeking construction permits for flash cut or digital companion channels to facilitate their transition to digital.

TV Red's construction permits were granted for a three-year term with an expiration date of December 2, 2013. Because neither an application for license to cover nor application for extension of construction permit was filed on or before December 2, 2013, the construction permits expired. Contrary to TV Red's belief, the Commission's rules do not provide a "good faith" exception for failure to construct by

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<sup>1</sup> See 47 C.F.R. § 74.788(b).

the expiration date of a digital LPTV construction permit. In fact, the rules provide that construction permits expire in such situations “without any further affirmative cancellation by the Commission.”<sup>2</sup>

As for TV Red’s argument that it should have been afforded a September 1, 2015 construction deadline, similar to the deadline afforded other LPTV stations building digital facilities, the Commission recently denied similar arguments raised by petitioners in its *Second Memorandum Opinion and Order* in the LPTV digital proceeding.<sup>3</sup> In that decision, the Commission found that it did not contemplate in the LPTV digital proceeding, nor did it seek comment on, whether to change the existing three-year construction period for new digital low power television stations. Rather, the Commission found, it considered only whether to establish a separate transition deadline for stations converting to digital. Therefore, the Commission concluded that permittees (such as TV Red) for new digital LPTV stations that do not have to transition from analog remain subject to the three-year construction period rule and must complete construction by their individual expiration dates. TV Red’s construction permits were for new digital LPTV stations and were similarly subject to three-year construction periods, all of which expired on December 2, 2013.

The above facts considered, TV Red’s petition for reconsideration, IS DENIED.

Sincerely,

Hossein Hashemzadeh  
Deputy Chief, Video Division  
Media Bureau

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<sup>2</sup> See 47 C.F.R. §74.788(b). As to TV Red’s claim that the Video Division previously granted a late-filed extension application, even if true, such an erroneous action would not change the Commission’s rules or the outcome in this case. It is a well settled principle of administrative law that the fact that an agency made an error in one instance does not require the agency to repeat the error. See *Renewal Application of Gene A. Smith*, 17 FCC Rcd 13369 (2002) citing *Chem-Haulers, Inc. v. FCC*, 565 F. 2d 728, 730 (D.C. Cir. 1977); *Texas International Airlines v. CAB*, 458 F. 2d 782, 785 (D.C. Cir. 1971) (“assuming that the Government made a mistake as to (another) in the application of (a) regulation, the law does not require the Government to perpetuate the mistake”).

<sup>3</sup> See Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Second Memorandum Opinion and Order*, 28 FCC Rcd 14412 (2013).