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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D. C. 20554

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**In the Matter of**

**Gwendolyn May**  
**Former Permittee of Deleted Low Power**  
**Television Station DK15CC,**  
**San Antonio, TX**

**Application for Assignment of Construction**  
**Permit for DK15CC, San Antonio, TX**

**Application for Major Modification of Construction**  
**Permit for Deor DK15CC, San Antonio, TX**

**Facility ID No. 25713**

**File No. BAPTTL-19900112IA**

**File No. BMPTTL-19891208YD**

**To: The Commission**

**PETITION FOR RECONSIDERATION**

**A. Introduction**

Pursuant to Section 1.429(a) of the Commission's Rules, 47 C.F.R. 1.429(a), Gwendolyn May<sup>1</sup> (May) hereby seeks reconsideration of the Memorandum Opinion and Order, released by the Commission on June 21, 2016 (Denial Order). Therein, the Commission denied an application for review of a challenge to a letter decision by the Chief of the Video Division, Media Bureau, which denied a request to review the rescission of the grant of the above captioned application for assignment of the permit for the Station to Faith Pleases God Church Corporation and the dismissal of that application and a major modification amplification the for the station because, according to the denial letter, the construction permit for the Station had automatically expired due to the failure to have constructed the Station by the permit extended deadline.

<sup>1</sup> Gwendolyn May is now Gwendolyn May-Barlow.

As detailed below, (a) the Commission's denial of review fails to address the express wording of the then effective Commission's Rules, permit did not automatically expire but contain a condition precedent to forfeiture that was not satisfied (b) the conclusion in the Denial Order that May "implicitly" knew that the permit had expired lacks a factual basis and lacks legal significance and (c) the twenty five years of delay, including the decade of delay by the Commission in acting upon May's application for review, reflects that the law and equities involved are much more intricate and complex than the Denial Order acknowledges.

Accordingly, May petitions the Commission to reconsider its Denial Order and address overlooked rule provisions and grant May the requested relief.

#### **B. Permit Expiration & Forfeiture**

*There was not an automatic forfeiture; instead, and  
"affirmative declaration of forfeiture was required but not issued.*

At the core of the Denial Order, is the Commission conclusion that the permit had expired automatically before the assignment and modification applications were filed. In the Denial Order, the Commission concludes:

*"Because the construction permit had expired and was automatically forfeited, we need not consider the appropriateness of the Division's recession of the grant of the assignment application." (Emphasis supplied.)*

Denial Order, at 2.

The Denial Order also concludes:

*"...May knew or should have known that her failure to construct by the October 24, 1989, extended resulted in the permit's automatic expiration, yet she failed to timely seek reconsideration of the expired permit..."*

With respects, the two conclusions are inconsistent and disingenuous. First, As the Denial Order at 2 notes, the then applicable rule, Section 73.3599 provided that -

*"A construction permit shall be declared forfeited if not ready for operations within the time specified..."*

This provision by its express terms required the Commission affirmatively to issue a declaration of forfeiture – and thereafter make such a notation in its records. However, no such declaration was ever made – at least not until the Denial Order, sixteen years later. The Denial Order at 3, concludes that the Rule does not require the Commission to provide any notice of forfeiture. That conclusion defies the plain meaning of the expression in the rule that the permit “...shall be declared forfeited...” Indeed, the Commission’s conclusion proves too much: If the old rule means what the Denial Order concludes, there would have been no reasons for the revision to the current rule. As such, the assignment application was timely. The Commission should have considered the merits of the application.

Second, the conclusion that May knew or should have known that the permit had automatically lapsed any factual support. Indeed, if May should have known, then even more so, the Division which administers the rule should have known. Obviously, the Division did not conclude there was an automatic forfeiture: it correctly processed the assignment application.

Third, the Denial Order, at 3 and n. 10, notes that May could have filed an application to reinstate the expired permit. But if the permit had been already automatically forfeited an application reinstated would have lacked legal significance, as there would have been nothing to reinstate. The Denial Order in this respect is disingenuous.

Fourth, instead of applying the then existing applicable rule, the Denial Order applied the *current non-applicable rule* contained in Section 73.3598(e) that had not yet been adopted. That section provides:

(e) Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration *without any further affirmative cancellation by the Commission.* (Emphasis supplied.)

In relying in fact upon the current rule, rather than the then applicable rule, the Denial Order lacks legal support, violates the Commission's own rules, the Administrative Procedure Act and should be reconsidered.

### **C. Prejudicial Delay**

*May filed her original permit application twenty five years ago. Prejudice has resulted.*

Twenty five years is very exceptional delay. A decade of delay for Commission review without any explanation is unconscionable. The cumulative delay has resulted in prejudice to May. Her proposed construction permit assignee is long gone; her antenna site landlord is long gone; her programming options are long gone; her competing applicant is long gone -- indeed, all the parties involved who could provide assistance to May are long gone. Yet, the Denial Order reduces the Division's actions to the simplicity that an automatic forfeiture occurred twenty five years ago. Of course, if this was the case, then a 25-year delay was unnecessary and prejudicial -- as it robbed May of the opportunities of the benefit or here bargains and protections.

The 25 years of delay also robbed May of the opportunity to convert her low power TV permit into a Class A facility so that May could have been able to participate in the ongoing Broadcast Incentive Auction. Indeed, the timing of the Denial Order is likely calculated to avoid any residual "claim of title" by May as to the spectrum that could complicate the results of Auction 1001. Additionally, May submits the 25 year delay, including the 10 year delay for Commission review, has robbed May of meaningful review, including judicial review.

### **D. Conclusion**

Given the foregoing, May petitions the Commission to reconsider the Denial Order, apply the then existing applicable rule and grant the relief requested.

Respectfully submitted,



Gwendolyn May-Barlow

July 21, 2016

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