



Federal Communications Commission
Washington, D.C. 20554

October 26, 2017

In Reply Refer to:
1800B3-ATS

Ms. Sylvia Johnson
Daytona Beach Broadcasting Association
539 Fred Gamble Way
Ormond Beach, FL 32174

In re: Daytona Beach Broadcasting Association
DWDRD-LP, Daytona Beach, Florida
Facility ID No. 197582
File No. BNPL-20131115ACE

Petition for Reconsideration

Dear Ms. Johnson:

We have before us the pleading styled "Petitioner's Petition for Stay of the Deletion of Petitioner's Callsigns and for Reconsideration and Reinstatement of Petitioner's CP as a Matter of Law" (Second Petition) filed on May 8, 2017, by Daytona Beach Broadcasting Association (DBBA) seeking reinstatement of its construction permit (Permit) for Station DWDRD-LP, Daytona Beach, Florida (Station). For the reasons stated below, we deny the Second Petition.

Background. The Media Bureau (Bureau) granted DBBA's application for the Permit on March 6, 2014. Initially, the Permit was to expire on September 6, 2015, and subsequently was reissued with an expiration date of March 6, 2017, pursuant to Section 73.3598(a) of the FCC's Rules (Rules).¹ No covering license was timely filed, and the permit automatically expired pursuant to Section 73.3598(e).² On March 7, 2017, the Bureau staff cancelled the Permit in the Commission's broadcasting database, CDBS, and deleted the Station's call sign.

On April 3, 2017, DBBA filed a pleading styled "Petition for Reconsideration of the Cancellation of Petitioner's Construction Permit and for Reinstatement of the Permit and for Clarification of Rule 47 CFR 73.1620(5) [sic]" (First Petition). DBBA noted that on March 6, 2017, it filed a Program Test Notice (Notice) with the Bureau, indicating that the Station was commencing program tests pursuant to Section 73.1620(5) of the Rules and that DBBA would apply for a license to cover within 10 days of the Notice.³ DBBA argues that the cancellation of the Permit prevented it from conducting testing and filing

¹ 47 CFR § 73.3598(a) (providing that LPM construction permits shall expire after 18 months, but may be extended for one additional 18-month period).

² 47 CFR § 73.3598(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.").

³ Petition at 1-2. The Notice is dated March 2, 2017, but was not received by the Commission until March 6, 2017, as noted by the FCC Mailroom stamp. The Bureau staff was thus apparently not aware of the Notice at the time the Permit was cancelled in CDBS. Additionally, although the First Petition cites to Section 73.1620(5), there is no such rule, and we will assume DBBA was referring to Section 73.1620(a)(5). See 47 CFR § 73.1620(a)(5) ("Except for permits subject to successive license terms, the permittee of an LPM station may begin program tests upon notification to the FCC in Washington, DC, provided that within 10 days thereafter, an application for license is filed. Program tests may be conducted by a licensee subject to mandatory license terms only during the term specified on such licensee's authorization.").

a covering license.⁴ Accordingly, DBBA requested 10 days in which to file a covering license application.⁵

On April 11, 2017, the Bureau granted the First Petition by Public Notice, reinstated the Permit, and advised DBBA that a covering license application must be filed by April 21, 2017.⁶ In addition to the Public Notice, the Staff notified DBBA by e-mail at the address provided in the Application⁷ that it was reinstating the Permit and allowing it 10 days in which to file a covering license.⁸

DBBA did not file a covering license by April 21, 2017, and on April 26, 2017, the Bureau staff again cancelled the Permit in CDBS and deleted the Station's call sign. In the Second Petition, DBBA argues that the Bureau erred by not providing "written notice that it had until April 21, 2017 to file an application for a license to cover."⁹ DBBA argues that the Bureau's failure to provide it with written notice by mail violates Sections 1.47(a) and 0.445(a) of the Rules.¹⁰

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.¹¹ DBBA has not met this burden and we will deny the Second Petition.

Initially, we find that the staff erred in reinstating the Permit in the Reinstatement PN and the Johnson E-Mail. Under our precedent, "we will only waive the automatic expiration provision of Section 73.3598(e) and accept a late-filed covering license application where: (1) the permittee demonstrates conclusively that construction in accordance with the construction permit was complete and the station was 'ready for operation' by the permit expiration date; and (2) the covering license application is filed within 30 days of the expiration date."¹² Here, DBBA had not shown that the Station was constructed,

⁴ First Petition at 2.

⁵ *Id.*

⁶ *Broadcast Applications*, Report No. 28964 (MB Apr. 14, 2017) (Reinstatement PN) ("Petition for Reconsideration filed 04/03/2017 by DAYTONA BEACH BROADCASTING ASSOCIATION granted 4/11/2017 and permit reinstated. Applicant must file covering license on or by 4/21/2017 or permit will be deemed expired pursuant to 47 CFR 73.3598; WKLC, Inc., Memorandum Opinion and Order, 28 FCC Rcd 2061, 2064, para. 9 (MB 2013).").

⁷ Application at Section I, Question 1. The e-mail address provided in the Application, APPLAUDING7@YAHOO.COM, was also provided in the electronically filed versions of the First Petition and the Second Petition.

⁸ Email from Alexander T. Sanjenis, Esq, Audio Division, Media Bureau, FCC, to Sylvia Johnson (Apr. 11, 2017, 14:34 EDT) (Johnson E-Mail). A copy of this email is attached. The staff also attempted to contact DBBA at the telephone number provided in the Application. Application at Section I, Question 1. That number, however, would not accept incoming calls.

⁹ Second Petition at 1-2.

¹⁰ *Id.* at 2-3 (citing 47 CFR §§ 1.47(a), 0.445(a); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594, 1602-03, para. 22 (2011) (*Electronic Notice R&O*)).

¹¹ 47 CFR § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Davis & Elkins Coll.*, Memorandum Opinion and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

¹² *WKLC, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 2061, 2064, para. 9 (MB 2013) (*WKLC*). The Bureau adopted this processing policy following the decision in *Clear Channel Broadcasting Licenses, Inc.*, where the Commission affirmed the Commission affirmed the Bureau's policy of waiving Section 73.3598 and accepting covering licenses application filed within a few days of the expiration of the underlying construction permit. *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, para. 10 (2011).

nor did it file a covering license application within 30 days of the expiration date of the Permit. DBBA is incorrect that the cancellation of the Station's call sign prohibited it from filing a covering license application. DBBA could have in fact filed a covering license application in CDBS even though Bureau had deleted the Station's call sign, but failed to do so.

DBBA is also incorrect that the filing of the Notice afforded it an extra 10 days in which to file a covering license application. Nothing in either Section 73.3598(e) nor Section 73.1620(a)(5) provides that the filing of a program test authority notice extends the expiration date of a construction permit or is equivalent to filing a covering license application. Section 73.1620(a)(5) merely permits an LPFM permittee to conduct program testing for 10 days without a covering license, and does not extend the automatic expiration provisions of Section 73.3598(e). The Commission has stated that "[n]either special temporary authority nor program test authority typically associated with a 'license to cover' application would modify the terms of [a construction permit] or extend its expiration date."¹³ Accordingly, the Permit automatically expired on March 6, 2017, and the staff erred in affording DBBA the opportunity to file a covering license application after failing to meet the requirements of *WKLC*.

Finally, although the issue of notice is moot because the Permit expired on its own terms on March 6, 2017, and DBBA did not file a covering license application within 30 days of the expiration, we also reject DBBA's argument that it did not receive sufficient notice that the Permit had been reinstated. The Communications Act of 1934, as amended, requires that "[t]he Commission, or designated authority within the Commission, shall enter an order, with a concise statement of the reasons therefor . . . granting such petition."¹⁴ Section 0.204 of the Rules provides wide latitude for the form such an order may take,¹⁵ and contrary to DBBA's assertion, Section 0.445 actually provides that notice of such orders may be by mail *or* by electronic means.¹⁶ Thus the, the Johnson Email provided DBBA with adequate notice that the staff had given DBBA until April 21, 2017, to file a covering license application.

Moreover, DRRRA's reliance on Section 1.47(a) is misplaced. The portion of Section 1.47(a) cited to by DRRRA merely permits the Commission to satisfy notice requirements in proceedings with large numbers of parties.¹⁷ It does not preclude the Commission or the Bureau from using public notices to satisfy service requirements in other proceedings, and as discussed above, Section 0.445 specifically allows service by electronic method. Additionally, the issuance of a Public Notice provides constructive notice of Bureau action on an application,¹⁸ and the Bureau regularly grants unopposed petitions for reconsideration seeking reinstatement of applications—such as the First Petition—by Public Notice without a written decision.¹⁹ Finally, we note that all Public Notices issued by the Bureau are released on

¹³ *Urban One Broadcasting Network, LLC*, Memorandum Opinion and Order, 31 FCC 4186, 4188-89, para. 6 (2016).

¹⁴ 47 U.S.C. § 405(a).

¹⁵ 47 CFR § 0.204(d) ("Form of orders. Orders may be issued in any appropriate form (e.g., as captioned orders, letters, telegrams) and may, if appropriate, be issued orally.").

¹⁶ 47 CFR § 0.445(a) ("Adjudicatory opinions and orders of the Commission, or its staff acting on delegated authority, are mailed *or delivered by electronic means* to the parties" (emphasis added)).

¹⁷ See *Electronic Notice R&O*, 26 FCC Rcd at 1602-03, para. 22; see also *Consumer and Governmental Affairs Bureau Notice of Commission's Implementation of Procedures of Serving Parties in an Electronic Format*, Public Notice, 27 FCC Rcd 10233 (CGB 2012) ("The amended rule also provides, in proceedings involving large numbers of parties, that the Commission may now satisfy its service obligation by issuing a public notice that identifies the documents required to be served and explains how parties can obtain copies of the documents.").

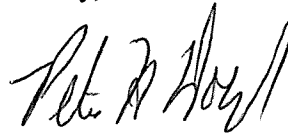
¹⁸ *Antonio Nassar*, Letter Order, 24 FCC Rcd 9283, 9284 (MB 2009) (public notice provided constructive notice of dismissal of application).

¹⁹ See, e.g., *Broadcast Actions*, Public Notice, Report No. 49080 (MB Sep. 28, 2017) (granting petition for reconsideration filed by Arohi Media LLC and reinstating application); *Broadcast Actions*, Public Notice, Report

the Commission's website and via the Daily Digest. Thus, even if the staff had acted properly in reinstating the Permit—which we emphasize it should not have done—DBBA was afforded sufficient notice to file a covering license application. We therefore deny the Second Petition.

Conclusion/Actions. For these reasons, IT IS ORDERED that the Petition for Reconsideration filed on May 8, 2017, by Daytona Beach Broadcasting Association, IS DENIED.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle". The signature is fluid and cursive, with the first name "Peter" being the most prominent.

Peter H. Doyle
Chief, Audio Division
Media Bureau

No. 49069 (MB Sep. 12, 2017) (granting petitions for reconsideration filed by Caron Broadcasting, Inc., and Common Ground Broadcasting, Inc., and reinstating applications); *Broadcast Actions*, Public Notice, Report No. 28725 (MB May 2, 2016) (granting petition for reconsideration filed by Oriental Culture Center and reinstating application).

Alexander Sanjenis

From: Alexander Sanjenis
Sent: Tuesday, April 11, 2017 2:34 PM
To: APPLAUDING7@YAHOO.COM
Subject: Daytona Beach Broadcasting Association

Ms. Johnson,

I attempted to reach you by telephone but your number does not accept incoming calls. We are reinstating your construction permit (BNPL-20131115ACE) today. Your reliance on Section 73.1620(5) is incorrect. Per Section 73.3598, a covering license application was in fact due on March 6, 2017, and your filing of a PTA notice did not extend the filing period for a covering license application. However, our decision in *WKLC, Inc.*, allows us to accept a covering license application in limited cases after the expiration of a permit. *WKLC, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 2061, 2064, para. 9 (MB 2013). We are exercising our discretion to allow you to file the covering license application for the station on or by April 21, 2017. **If a covering license application is not filed on or by that day, the permit will be deemed expired. No further extensions will be given.**

Alexander T. Sanjenis
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