



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

August 24, 2018

In Reply Refer To:  
1800B3-ATS

Mr. Charles Gwyn  
708 Los Lunas Way  
Sacramento, CA 95833

Dennis J. Kelly, Esq.  
Law Office of Dennis J. Kelly  
P. O. Box 41177  
Washington, DC 20018

Frank R. Jazzo, Esq.  
Fletcher Heald & Hildreth PLC  
1300 N. 17<sup>th</sup> Street, Suite 1100  
Arlington, VA 22209

**In re: Women's Civic Improvement Club of  
Sacramento, Inc.**  
Station KWCS-LP, Sacramento, CA  
Facility ID No. 192390  
File No. BLI-20171219ADO

**Petition for Reconsideration**

Dear Mr. Gwyn and Counsel:

We have before us the Petition for Reconsideration (Petition) filed by Women's Civic Improvement Club of Sacramento, Inc. (WCICS), requesting reconsideration of the dismissal<sup>1</sup> of its license to cover application (License Application) for Station KWCS-LP, Sacramento, California (Station).<sup>2</sup> For the reasons set forth, we deny the Petition.

**Background.** The Media Bureau (Bureau) issued WCICS a construction permit (Permit) for the Station on December 8, 2014, with an expiration date of December 8, 2017.<sup>3</sup> No license to cover application was filed by December 8, 2017, and on December 12, 2017, the Bureau cancelled the Permit in the Commission's electronic database, CDBS, and deleted the Station's call sign.

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<sup>1</sup> *Broadcast Actions*, Public Notice, Report No. 49220 (MB Apr. 23, 2018) (*Dismissal PN*).

<sup>2</sup> WCICS filed the Petition on May 22, 2018. Punjabi America Media, LLC (PAM), filed an Opposition on June 1, 2018. New Inspiration Broadcasting Company, Inc. (NIBC), filed a pleading styled "Comments in Support of Punjabi American, LLC's Opposition to Petition for Reconsideration" on June 6, 2018. PAM is the assignee of the license of FM Translator Station K227AH, River Pines, California. See File No. BALFT-20160729ALB. PAM filed an application to modify K227AH, which is mutually exclusive with an application filed by NIBC to modify FM Translator Station K245AR, Little Fish Lake Val, California. See File Nos. BPFT-20160729ALZ, BPFT-20160729ANB. PAM filed an amendment to its modification application which proposes to resolve this mutually exclusively by specifying operation on the same channel as KWCS-LP.

<sup>3</sup> See File No. BNPL-20131104AUY (Permit Application). WCICS filed an application to modify the Permit by specifying operation on a different channel. See File No. BMPL-20160711ABR. The Bureau granted this application on July 18, 2016.

WCICS filed the License Application on December 19, 2017, certifying that the facility had been constructed in accordance with the terms of the Permit.<sup>4</sup> That the same day, the Bureau reinstated the Permit and the Station's call sign.<sup>5</sup> PAM filed an Informal Objection to the License Application on December 20, 2017 (Objection), and a Supplement to the Objection on January 18, 2018 (Objection Supplement).<sup>6</sup> On April 18, 2018, the Bureau dismissed the License Application pursuant to Section 73.3598 of the FCC's rules (Rules) because it was filed after the Permit had expired.<sup>7</sup>

In the Petition, WCICS argues that the Station was timely constructed on December 7, 2017, in accordance with the Permit.<sup>8</sup> It explains that it is "not a seasoned broadcast entity" and was not sure how to inform the Commission that the Station had commenced operations.<sup>9</sup> WCICS notes that the Commission has a policy to accept covering license applications filed after the expiration of the underlying construction permit,<sup>10</sup> and argues that it has met the requirements of this policy because the Station was built on time and WCICS has proven that it was in fact timely constructed.<sup>11</sup>

The Petition is accompanied by a Declaration of Charles Gwyn. Gwyn states that he constructed and operated the Station until the License Application was dismissed.<sup>12</sup> Gwyn further states that the Station was constructed and commenced broadcasting on December 7, 2017, at the WCICS headquarters at 3555 3<sup>rd</sup> Ave, Sacramento, California, and provides a picture of what he claims is that tower.<sup>13</sup> Gwyn also notes—for the first time—that although the Permit authorized an antenna height of 31 meters,<sup>14</sup> the antenna was built at 16.8 meters, but argues that the Station still complies with the minimum requirements of Section 73.811(b) of the Rules.<sup>15</sup> Finally, Gwyn states that "[w]hen the [License Application] was canceled, the station stopped transmitting."<sup>16</sup>

**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.<sup>17</sup> WCICS has failed to meet this burden.

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<sup>4</sup> License Application at Section III, Question 2.

<sup>5</sup> *Broadcast Applications*, Public Notice, Report No. 29138 (MB Dec. 22, 2017).

<sup>6</sup> The Bureau did not address either the Objection or the Objection Supplement in the *Dismissal PN*.

<sup>7</sup> *See Dismissal PN* ("Dismissed 4/18/2018 per 47 CFR Section 73.3598. The original permit BNPL-20131104AUY, as modified by BMPL-20160711ABR, expired on 12/08/2017. No letter sent."); 47 CFR § 73.3598.

<sup>8</sup> Petition at 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2 (citing *WKLK, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 2061 (MB 2013) (*WKLK*)).

<sup>11</sup> Petition at 2-3.

<sup>12</sup> Petition at Gwyn Declaration. Although we note that PAM has raised procedural objections to the Petition (Opposition at 3), we need not address those in light of our disposition here.

<sup>13</sup> *Id.*

<sup>14</sup> Permit Application at Section VI, Question 6.

<sup>15</sup> Petition at Gwyn Declaration (citing 47 CFR § 73.811(b)).

<sup>16</sup> Petition at Gwyn Declaration.

<sup>17</sup> 47 CFR § 1.106(c); *WWJZ, 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 and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

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.”<sup>18</sup> WCICS failed to meet this standard because it did not conclusively demonstrate when it filed the License Application that the Station was timely constructed in accordance with the Permit; in fact, the License Application contained no documentation at all showing that the Station had been timely constructed in accordance with the Permit. The Petition likewise fails to meet this standard. The lone undated photograph WCICS provided, of an unidentified communications tower in an unidentified location, fails to demonstrate that the Station was built in accordance with the Permit by December 7, 2017.<sup>19</sup> Accordingly, we deny the Petition.<sup>20</sup>

Moreover, assuming the Station was constructed, the Petition concedes that it was not constructed in accordance with the Permit.<sup>21</sup> WCICS states in the Petition that the Station’s antenna was constructed at a height of 16.8 meters above ground level when it was authorized at a height of 31 meters, a difference of 14.2 meters below the authorized height.<sup>22</sup> Section 73.875(b)(3) of the Rules provides that an LPFM station may not modify its antenna height by more than 2 meters above or 4 meters below its authorized value without prior approval by the Commission.<sup>23</sup> WCICS’s modification occurred without the required approval from the Commission. We have deemed a construction permit expired where the permittee constructed the facility at a variance from the underlying permit.<sup>24</sup> WCICS’s failure to construct the facility in accordance with the Permit would serve as separate and independent basis to dismiss the License Application, even if WCICS had made a showing that the Station’s construction was complete before the Permit expired.<sup>25</sup>

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<sup>18</sup> *WKYC*, 28 FCC Rcd at 2064, para. 9. The Bureau adopted this processing policy following the decision in *Clear Channel Broadcasting Licenses, Inc.*, where the Commission affirmed the Bureau’s policy of waiving Section 73.3598 and accepting a covering license 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). We note that Section 73.3598 applies to the Station by virtue of 47 CFR § 73.801.

<sup>19</sup> For example, WCICS could have provided station logs, equipment receipts, invoices from contractors, payment records, or other documentation proving the Station was timely constructed.

<sup>20</sup> In light of our finding that the Bureau properly dismissed the License Application, we need not address the numerous issues PAM raised in the Objection, Objection Supplement, and Opposition.

<sup>21</sup> We note that PAM presented a detailed showing in the Objection Supplement to support a claim that the Station was not constructed in the location authorized by the Permit as of January 11, 2018. *See* Objection Supplement at 2-5. WCICS never attempted to rebut that claim and asserted in the Petition that the Station operated until the License Application was dismissed. Petition at Gwyn Declaration. However, we need not address it in light of our disposition here.

<sup>22</sup> Petition at Gwyn Declaration; *see* FCC File No. BMPL-20160711ABR.

<sup>23</sup> 47 CFR § 73.875(b)(3).

<sup>24</sup> *See, e.g. Centro Cristiana Vida Abundante*, Letter Order, 32 FCC Rcd 10072 (MB 2017) (finding that construction permit has expired where permittee modified facility without authority and thus did not timely build facility as authorized).

<sup>25</sup> We reject WCICS’s argument that the License Application should be accepted because the facility it constructed, even with the reduced attend height, nonetheless provides the minimum coverage required under Section 73.811(b). We have held that “[e]xcept to the extent specifically provided in our Rules, we do not allow permittees to self-approve modifications to their construction permits.” *Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239, 8244 n.24 (MB 2009) (“Commission review and prior approval of engineering changes are necessary prior to construction. The Commission operates a national database of authorizations that allows all parties to know where and when broadcast spectrum is available. In an era of intense

**Conclusion.** Accordingly, for the reasons discussed above, IT IS ORDERED that the Petition for Reconsideration filed on May 22, 2018 by Women’s Civic Improvement Club of Sacramento, Inc., IS DENIED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Albert Shuldiner".

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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demand for broadcast spectrum, parties . . . cause substantial harm when they hoard spectrum by holding authorizations . . . but operate minimal facilities that would not have been approved under our Rules had they been presented to us (or, worse, fail to operate any facilities).”). Indeed, here, WCICS’s inaction has precluded the Bureau from processing several applications filed by PAM and NIBC. *See supra* n.2.