

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

In the Matter of	)	
	)	
Daytona Beach Broadcasting Association	)	
	)	
Application for a Construction Permit for	)	File No. BNPL-20131115ACE
Station DWDRD-LP, Daytona Beach, Florida	)	Facility ID No. 197582

**ORDER ON RECONSIDERATION**

**Adopted: November 28, 2018**

**Released: November 28, 2018**

By the Commission:

1. We have before us a “Petition for Clarification” (September 2018 Petition)<sup>1</sup> filed by Daytona Beach Broadcasting Association (DBBA) in response to the Order on Reconsideration (*August 2018 Order*) that dismissed the third petition for reconsideration DBBA filed in this proceeding as untimely.<sup>2</sup> For the reason stated below, we will treat the September 2018 Petition as a petition for reconsideration and dismiss it as untimely.

2. Section 405 of the Communications Act of 1934, as amended (Act), and the FCC’s rules (Rules) require any petition for reconsideration to be filed within thirty days of the date upon which the Commission gives public notice of the decision.<sup>3</sup> In this case, the *August 2018 Order* was released on Wednesday, August 1, 2018, and any petition for reconsideration of that order was due on Friday, August 31, 2018. However, the September 2018 Petition indicates that it was “Submitted this 5<sup>th</sup>, day of September 2018” and the Commission’s broadcast database, CDBS, shows that the September 2018 Petition was filed on September 6, 2018.<sup>4</sup> The September 2018 Petition is therefore untimely.

3. The Commission generally lacks the authority to extend or waive the statutory 30-day filing period for petitions for reconsideration.<sup>5</sup> As with the April 2018 Petition, DBBA neither

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<sup>1</sup> The September 2018 Petition is styled as “Petition for Clarification of the Commission’s Policy on Mailing its Decisions to Parties and Failure of the Commission to Comply with its own Notice Policy Does the Action Become Void Ab Initio [sic].”

<sup>2</sup> *Daytona Beach Broadcasting Association*, Order on Reconsideration, FCC 18-107 (Aug. 1, 2018) (*August 2018 Order*) (dismissing petition for reconsideration filed on April 17, 2018 (April 2018 Petition) as untimely); Memorandum Opinion and Order, 33 FCC Rcd 2732 (2018) (*AFR Order*) (dismissing application for review in part and otherwise denying it); Letter Order, Ref. 1800B3-ATS (MB Oct. 26, 2017) (*Staff Decision*) (denying second petition for reconsideration filed by DBBA seeking reinstatement of construction permit for new LPFM station at Daytona Beach, Florida (Permit)); *see also* E-mail from Alexander T. Sanjenis, Esq., Audio Division, Media Bureau, FCC, to Sylvia Johnson (Apr. 11, 2017, 14:34 EDT) (Johnson E-mail) (granting first petition for reconsideration filed by DBBA (First Petition), reinstating Permit, and affording DBBA 10 days in which to file a covering license application).

<sup>3</sup> 47 U.S.C. § 405(a); 47 CFR § 1.106(f); 47 CFR § 1.4(b)(2) (“For non-rulemaking documents released by the Commission or staff . . . the release date” is the date of public notice).

<sup>4</sup> *See* September 2018 Petition at 1; [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/leg\\_det.pl?Application\\_id=1628296&File\\_number=BNPL-20131115ACE](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/leg_det.pl?Application_id=1628296&File_number=BNPL-20131115ACE).

<sup>5</sup> *See Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986) (holding that express statutory limitations barred the Commission from acting on a petition for reconsideration that was filed after the due date); *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993) (upholding the Commission's refusal to entertain a petition for reconsideration where the petition had been filed one day late, and extenuating circumstances did not prohibit the

acknowledges nor explains this untimely filing,<sup>6</sup> nor does DBBA argue that the *August 2018 Order* erred in dismissing the April 2018 Petition as untimely. Instead, DBBA attempts to circumvent the statutory thirty-day deadline by styling the September 2018 Petition as a “Petition for Clarification” and argues that “under federal law an agency action that is void ab initio due to the agency’s deviant action, is fatally defective as a matter of law, and has no legal effect whatsoever and maybe [sic] attacked at anytime [sic].”<sup>7</sup>

4. Despite its title, which is not contemplated in our Rules, the September 2018 Petition effectively seeks Commission reconsideration of the *August 2018 Order* because it argues that the Commission did not address an argument DBBA raised in the April 2018 Petition—that the Bureau failed to provide adequate notice of the grant of the First Petition and reinstatement of the Permit.<sup>8</sup> The Commission has held that “[a] petitioner cannot avoid filing deadlines by calling its petition something other than a petition for reconsideration when it, in effect, seeks reconsideration or review.”<sup>9</sup> Moreover, DBBA cites no authority for its argument that a Commission action “maybe attacked at anytime [sic],” presumably as a means to avoid a statutory deadline. Therefore, we dismiss the September 2018 Petition as untimely.

5. Finally, we find that dismissal of the September 2018 Petition by the Bureau would have been appropriate under Sections 1.106(p)(1), (2), (3) and (9) of the Rules, which permit the Bureau to act on petitions for reconsideration that “plainly do not warrant consideration by the Commission.”<sup>10</sup> The Commission has decided to act on the September 2018 Petition in order to make clear the full Commission’s position on any further requests for reconsideration or review filed by DBBA. The Commission and Bureau have spoken clearly and uniformly with regard to the matters DBBA raised in this proceeding and determined that DBBA failed to timely file a covering license application and that reinstatement of the Permit is not warranted. DBBA has failed to provide any evidence of material error or set forth any valid basis for reinstating the Permit and affording DBBA additional time in which to file a covering license application. Accordingly, we hereby direct the staff to dismiss summarily by public notice, citing this *Order on Reconsideration*, any subsequent pleadings filed by DBBA with respect to the Commission’s decisions declining to reinstate DBBA’s construction permit for a new LPFM station at Daytona Beach, Florida.<sup>11</sup>

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petitioner from filing within the prescribed time limits); *see also Pueblo Radio Broad. Service*, Memorandum Opinion and Order, 6 FCC Rcd 1416 (1991) (dismissing petition for reconsideration that was filed one day late); *Metromedia, Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909 (1975) (same); *Panola Broad. Co.*, Memorandum Opinion and Order, 68 FCC 2d 533 (1978) (same).

<sup>6</sup> *See August 2018 Order* at para. 3.

<sup>7</sup> September 2018 Petition at 1.

<sup>8</sup> September 2018 Petition at 1 (“the Commission failed to address this in [the *August 2018 Order*]”); April 2018 Petition at 2-3. This issue has been fully considered and rejected by the Commission in the *AFR Order*, 33 FCC Rcd at 2732, para. 11.

<sup>9</sup> *Holy Family Oratory of St. Philip Neri*, Memorandum Opinion and Order, 29 FCC Rcd 13273 (2014).

<sup>10</sup> 47 CFR §§ 1.106(p)(1) (failure to identify any material error, omission or reason warranting reconsideration), 1.106(p)(2) (relying on facts or arguments not previously presented and failure to meet the requirements of Section 1.106(b)(2) or 1.106(b)(3), or 1.106(c) of the Rules), 1.106(p)(3) (relying on arguments that have been fully considered and rejected by the Commission within the same proceeding), and 1.106(p)(9) (untimely filing).

<sup>11</sup> *See, e.g., Kingdom of God*, Order on Reconsideration, 32 FCC Rcd 3654, 3655, para. 4 and n.14 (2017); *Texas Grace Commc’ns*, Memorandum Opinion and Order, 30 FCC Rcd 10545, 10547, para. 4. (2015); *Warren C. Havens*, Order on Reconsideration, 25 FCC Rcd 511, 513 n.22 (2010); *Central Mobile Radio Phone Service, Inc.*, Memorandum Opinion and Order, FCC 86-88, 1986 WL 292748, para. 3 (1986).

6. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405(a), and Section 1.106 of the Commission's rules, 47 CFR § 1.106, the "Petition for Clarification" filed by Daytona Beach Broadcasting Association IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary