

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

IN REPLY REFER TO:
1800B3-MAT/JDB

APR 1 1994

Messrs. Ronald Chaddick
and Albert P. Eaton
Radio Station KRVH(FM)
River Delta Unified School
District
410 S. 4th Street
Rio Vista, CA 94571

In re: Station KRVH(FM), Rio Vista, CA
River Delta Unified School
District
BPED-800207AD (Construction Permit)

Gentlemen:

This letter refers to your petition for reconsideration filed April 16, 1991 requesting reconsideration of the cancellation of the above-referenced construction permit which authorized KRVH to change its frequency from 90.9 MHz to 101.5 MHz.

Construction permit BPED-800207AD, granted on July 23, 1981, required that the modification of KRVH's facilities be completed by May 18, 1982. The station failed to file either an application for extension of time to construct on FCC Form 307 or an application for license to cover that permit on FCC Form 302 by the expiration date. Thus, on February 14, 1991, the Commission issued a letter informing the station that its construction permit had been declared forfeited and cancelled.

In support of reconsideration, you state that in 1980 KRVH filed an application for renewal of the license of KRVH which made reference to the then-pending above-referenced application for a frequency change. Subsequently, when the renewal application was granted in 1983 and when your current license was renewed in 1990, both of the license renewal authorizations received from the Commission indicated that the KRVH license was being renewed for the new frequency (101.5 MHz). Because the renewal authorizations indicated that the station had been licensed for the new frequency, you mistakenly assumed that no further action on your pending construction permit was warranted. Additionally, you indicate that upon receipt of the February 14, 1991 letter, Mr. Eaton telephoned the Commission and was informed by a Commission staff member that "the station would be required to cease operation unless a petition for reconsideration was submitted within sixty (60) days."

Your request for reconsideration must be denied. Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, requires that a petition for reconsideration "must be filed within thirty days from the date upon which public notice is given of the order, decision, report or action complained of." See also 47 C.F.R. § 1.106(f). Public notice of the Commission's decision cancelling construction permit BPED-800207AD was not published in the Federal Register or released on Public Notice. When this situation occurs, the date of public notice commences on the date appearing on the document sent (e.g. mailed, telegraphed, etc.) to persons affected by the action. See 47 C.F.R. § 1.4(b)(5). As a result, the 30-day period for filing began on February 14, 1991 and the filing deadline for the station's petition for reconsideration was March 15, 1991. Your request was filed with the Commission on April 16, 1991. The Commission lacks authority to extend or waive the statutory 30-day filing period for petitions for reconsideration unless the petitioner shows that its failure to file for reconsideration in a timely manner resulted from "extraordinary circumstances." See Gardner v. FCC, 530 F.2d 1086, 1091-92 (D.C. Cir. 1976). You have made no such showing. Therefore, your April 16, 1991 reconsideration request is in violation of the statutory filing period and must be denied.¹

The license renewal authorizations you received in 1983 and 1990 from the Commission indicating that KRVH's license had been renewed for the new frequency was a computer-generated error. The new frequency was entered into the Commission's engineering data base in 1981 when your permit was granted. Even though your permit expired in 1982, until the issuance of the February 14, 1991 letter, the data base continued to indicate the new frequency and that construction permit BPED-800207AD was still pending. The February 14, 1991 letter only cancelled construction permit BPED-800207AD. Your license to operate KRVH was not affected by this action.

Please note that at your current site, KRVH is not in violation of 47 C.F.R. § 73.509. However, pursuant to 47 C.F.R. § 73.512(a), any further renewals for KRVH will not be granted unless the station seeks to upgrade to a Class A station, or move to the commercial band. A preliminary review indicates that three channels in the commercial band may exist (Channels 255, 285, and 286) on which KRVH could operate from the present site in full compliance with the Commission's Rules without

¹ We regret the erroneous information Mr. Eaton received from a Commission employee with reference to the deadline for filing petitions for reconsideration with the Commission. However, erroneous advice received from a government employee is insufficient grounds to support a reconsideration request, particularly when the relief requested would be contrary to an applicable statute or rule. Schweiker v. Hansen, 450 U.S. 785, 788 (1981). Moreover, the Commission has consistently held that a person relying on informal advice given by Commission staff does so at his own risk. See Texas Media Group, Inc., 5 FCC Rcd 2851, 2852 (1990), aff'd sub nom., Malkan FM Associates v. FCC, No. 90-1281, slip op. at 12 (D.C. Cir. June 14, 1991).

causing any interference. Therefore, if KRVH submits a completed construction permit application on FCC Form 340, with the facilities existing on its license BLED-1021, and the new channel, authority to upgrade to Class A status can be granted by the Commission. After KRVH receives grant of a construction permit, and the station is operating on the new channel, KRVH must then file FCC Form 302-FM, application for license, to indicate that operation has commenced.

Accordingly, for the reasons stated above, and pursuant to 47 C.F.R. § 0.283, the petition for reconsideration filed by River Delta Unified School District IS HEREBY DENIED.

Sincerely,

for Linda B. Blair
Larry D. Fads, Chief
Audio Services Division
Mass Media Bureau

Enclosures