



Federal Communications Commission  
Washington, D.C. 20554

February 25, 2021

**Sent via Electronic Mail**

*In Reply Refer to:*  
1800B3-ATS

Ouachita Broadcasting, Inc.  
c/o Elizabeth E. Craig  
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In re: **Ouachita Broadcasting, Inc.**  
FM Translator Station K254CY  
Mena, AR  
Facility ID No. 201113  
File No. BNPFT-20171201AHP

**Petition for Reconsideration**

Dear Counsel,

We have before us the “Petition for Reconsideration, Request for Reinstatement *Nunc Pro Tunc* & Extension of Construction Deadline” (Petition) filed on February 16, 2021, by Ouachita Broadcasting, Inc., seeking reconsideration of the cancellation and reinstatement *nunc pro tunc* of its construction permit (Permit) for a new FM translator station at Mena, Arkansas. For the reasons set forth below, we dismiss the Petition as untimely.

**Background.** Ouachita filed the underlying application for the Permit during Auction 99, and the Media Bureau (Bureau) issued the Permit on January 4, 2018, with an expiration date of January 4, 2021. In response to the COVID-19 pandemic, the Bureau issued a Public Notice on September 10, 2020, that offered permittees of new FM translator stations from Auctions 99 and 100 the opportunity to request an additional six months in which to complete construction of their facilities, provided that they requested such an extension 15 days prior to the expiration of their permits.<sup>1</sup> Ouachita did not file a timely request for extension of the Permit before it expired,<sup>2</sup> nor did it file a covering license application by January 4, 2021, and the Permit expired on its own terms that day.<sup>3</sup>

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<sup>1</sup> *Media Bureau Announces Availability of Construction Deadline Waivers for Certain FM Translator Stations Warded in Auction 99 and 100*, Public Notice, 35 FCC Rcd 9555 (MB 2020) (*September Public Notice*).

<sup>2</sup> Under the *September Public Notice*, the deadline for filing an extension request was December 21, 2020. On February 1, 2021, Ouachita filed an untimely waiver request to reinstate the Permit and extend it for six months, but was informed by the Bureau staff that it would have to file a Petition for Reconsideration. Email from Rob Gates, Audio Division, FCC Media Bureau to Davina Sashkin, Esq., Fletcher, Heald & Hildreth (Feb 1, 2021, 15:17 EST).

<sup>3</sup> 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.”).

On February 16, Ouachita filed the Petition. Ouachita acknowledges that the Petition is untimely, but argues that accepting it and reinstating the Permit is consistent with Executive Order 13924,<sup>4</sup> which requires Federal agencies to waive regulations in order to assist in the economic recovery following the COVID-10 pandemic.<sup>5</sup> Ouachita further argues that, although the Permit expired on January 4, 2021, its counsel expected the Commission to issue a public notice cancelling the Permit, which it believed would begin the 30-day period for filing a petition for reconsideration.<sup>6</sup> Finally, Ouachita requests a waiver of the requirement in the *September Public Notice* that permittees seeking an extension must file 15 days prior to the expiration of their permits, explaining that its failure to do so was attributable to several of its employees contracting COVID-19.<sup>7</sup>

**Discussion.** Section 405 of the Communications Act of 1934, as amended (Act), and the FCC's rules require any petition for reconsideration to be filed within thirty days of the date upon which the Bureau gives public notice of the decision.<sup>8</sup> In this case, the action in question is the expiration of the Permit, which occurred on January 4, 2021.<sup>9</sup> Any petition for reconsideration of the expiration of the Permit therefore, was due on February 3, 2021.

We deny Ouachita's request to waive section 1.106(f) and accept the untimely Petition. The Commission generally lacks the authority to extend or waive the statutory 30-day filing period for petitions for reconsideration.<sup>10</sup> Moreover, the *Executive Order* does not authorize the Bureau to circumvent the statutory deadline for petitions for reconsideration contained in the Act.<sup>11</sup> We will therefore dismiss the Petition as untimely.<sup>12</sup> Finally, because we are dismissing the untimely Petition, we need not address whether a waiver of the 15-day requirement contained in the *September Public Notice* is warranted here.

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<sup>4</sup> Executive Order on Regulatory Relief to Support Economic Recovery, 2020 WL 2538390 (May 19, 2020) (*Executive Order*).

<sup>5</sup> Petition at 3-4.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 4-5.

<sup>8</sup> 47 U.S.C. § 405(a), 47 CFR § 1.106(f).

<sup>9</sup> When there is no Federal Register publication nor descriptive document entitled "Public Notice" released, the public notice date is date of the action. See 47 § CFR 1.4(b)(5). In situations such as the expiration of a construction permit, where the authorization expires automatically as a matter of law without any agency action, the Bureau has held that the period for filing petitions for reconsideration commences on the date that the permit expires. See *Cranesville Block Company, Inc.*, Letter Order, 27 FCC Rcd 2018, 2019-20 (MB 2012) (dismissing as untimely a petition for reconsideration filed more than 30 days after the expiration of a construction permit).

<sup>10</sup> See *Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986) (express statutory limitations barred the Commission from acting on a petition for reconsideration that was filed after the due date).

<sup>11</sup> See *G.I.G. of North Dakota, LLC*, Letter Order, 35 FCC 5373, 5374, n.2 (MB 2020) (declining to reinstate station's expired license pursuant to the *Executive Order* because doing so would be inconsistent with section 312(g) of the Act).

<sup>12</sup> See *Virgin Islands Telephone Corporation 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 petitioner from filing within the prescribed time limits). See also *Pueblo Radio Broadcasting 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 Broadcasting Co.*, Memorandum Opinion and Order, 68 FCC 2d 533 (1978) (same).

**Conclusions.** Accordingly, it is ordered that the Petition for Reconsideration filed on February 16, 2021, by Ouachita Broadcasting, Inc., **IS DISMISSED**.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau