

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

In the matter of)	
)	
AIRBAND COMMUNICATIONS, LLC)	File Nos. 0002722408, 0002722649,
)	0002721188, 0002721189
Request for Waiver of Pending Termination of)	
Licenses for Stations WPUV818, WQFT909,)	
WQFT910, WQFT911, Plano TX and Houston,)	
TX)	
)	

ORDER ON RECONSIDERATION

Adopted: March 13, 2009

Released: March 16, 2009

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a Waiver Request¹ filed by Airband Communications, LLC (Airband), requesting reconsideration of our placing in termination pending status² licenses for four common carrier fixed point to point microwave stations operating as WPUV818, WQFT909, WQFT910, and WQFT911 (the Stations) in Plano, TX and Houston, TX. For the reasons stated below, we dismiss the Request as untimely, repetitious, and moot.

II. BACKGROUND

2. On August 21, 2006, the Wireless Telecommunications Bureau (Bureau) issued common carrier fixed point to point microwave licenses to Airband for Stations WQFT910 and WQFT911.³ On August 22, 2006, the Bureau granted Airband's request to modify its license for Station WPUV818 by adding path 2.⁴ That same day, the Bureau also issued a common carrier fixed point to point microwave station license to Airband for Station WQFT909.⁵ On January 1, 2008, the Bureau sent construction/coverage reminder letters to Airband regarding the facilities and paths in question.⁶ On May

¹ See Waiver Request, Airband Communications, LLC (filed Aug 22, 2008) (Request). We interpret the filing as a petition for reconsideration.

² When a licensee fails to file a notification that it has completed construction by an applicable buildout deadline, the license, location, or frequency is placed in "termination pending" status. For a license, location, or frequency in that status, the Bureau presumes that the licensee did not meet buildout requirement. If the licensee does not file a petition for reconsideration within 30 days after public notice of the termination pending status demonstrating that it met that buildout requirement, the status of the license, location, or frequency is changed to "terminated" as of the buildout deadline. See Wireless Telecommunications Bureau Announces Deployment Of "Auto-Term," the Automated Feature in its Universal Licensing System That Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, *Public Notice*, 21 FCC Rcd 163 (WTB 2006).

³ See File Nos. 0002721188, 0002721189 (granted Aug. 21, 2006).

⁴ See File No. 0002722408 (granted Aug. 22, 2006).

⁵ See File No. 0002722649 (granted Aug. 22, 2006).

⁶ Construct/Coverage Reminders, Ref. Nos. 4693915, 4693916, 4693917 (Jan. 1, 2008).

7, 2008, the Bureau sent auto-termination letters to Airband and the licenses for the Stations or certain paths of the Stations entered the auto-termination process.⁷ On the same day, the Bureau provided public notice of the pending terminations.⁸

3. On May 28, 2008, Airband filed a petition for reconsideration of the placement of Station path1 of Stations WQFT909 and WQFT911 into termination pending status.⁹ On May 30, 2008, the Wireless Telecommunications Bureau granted Airband's Petition and restored path 1 of Stations WQFT909 and WQFT911 to active status.¹⁰ On August 22, 2008, the Bureau received Airband's instant Request.¹¹ The Request asks that Stations WPUV818, WQFT909, WQFT910, and WQFT911 be fully returned to active status.¹²

III. DISCUSSION

4. Initially, we dismiss the Request with respect to Stations WQFT909 and WQFT911. Airband already has been granted relief for those stations on May 30, 2008.¹³ We therefore dismiss the Request as moot with respect to Stations WQFT909 and WQFT911.

5. We dismiss the Request as untimely with respect to path 2 of Station WPUV818 and Station WQFT910. Section 405(a) of the Communications Act, as implemented by Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days from the date of public notice of Commission action.¹⁴ Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.¹⁵ Since public notice of the impending license and path terminations was given on May 7, 2008, pursuant to Section 1.4(b)(4) of the Commission's Rules, the first day to be counted in computing the thirty-day period was May 8, 2008. The last day for filing a petition for reconsideration was June 6, 2008.

6. We received Airband's Request on August 22, 2008. Therefore, we find that the Request was late-filed. Moreover, the Commission has consistently held that it is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act.¹⁶ Consequently, we must dismiss Airband's Request as untimely in regards to path 2 of Station WPUV818 and Station WQFT910.

⁷ Auto Termination letters, Ref. Nos. 4743184, 4743185, 4743186, 4743187 (May 7, 2008).

⁸ Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 4051, *Public Notice* (May 7, 2008) at 2-3.

⁹ Petition for Reconsideration (filed May 28, 2008).

¹⁰ Letters from Federal Communications Commission, Wireless Telecommunications Bureau to Ray V. Nold, Airband Communications, LLC (May 30, 2008) (May 30 Letters).

¹¹ Request.

¹² *Id.*

¹³ *See* May 30 Letters.

¹⁴ 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

¹⁵ 47 C.F.R. § 1.4.

¹⁶ *See Reuters Ltd. V. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). *See also* Petition for Amendment of the Commission's Rules to Establish First and Second Class Radiotelephone Operator Licenses, *Order*, 10 FCC Rcd 3196 (1995). We note the filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late. *See, e.g.,* Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909, 909-01 (1975).

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Waiver Request filed by Airband Communications, LLC, on August 22, 2008 IS DISMISSED.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau