

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

In the matter of	)	
	)	
NEXSTAR BROADCASTING, INC.	)	File No. 0002524725
	)	
Petition for Reconsideration of Termination of	)	
License for Station WQFE803, Utica, NY	)	
	)	

**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 Petition for Reconsideration<sup>1</sup> filed by Nexstar Broadcasting, Inc. (Nexstar), requesting reconsideration of our termination of Nexstar's TV studio transmitter link operating under license WQFE803 in Utica, NY. For the reasons stated below, we dismiss the Petition as untimely.

**II. BACKGROUND**

2. On June 28, 2006, the Wireless Telecommunications Bureau (Bureau) issued a TV studio transmitter link license to Nexstar.<sup>2</sup> On October 2, 2007, the Bureau sent a construction/coverage reminder letter to Nexstar.<sup>3</sup> On February 6, 2008, the Bureau sent an auto-termination letter to both Nexstar and its counsel and the license for station WQFE803 entered the auto-termination process.<sup>4</sup> Accordingly, on the same day, the Bureau provided public notice of the pending license termination.<sup>5</sup> Because the Bureau did not receive the required notification of construction or request for extension of time, the license was terminated through the auto-termination process on April 13, 2008.<sup>6</sup>

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<sup>1</sup> See Petition for Reconsideration. Nexstar Broadcasting, Inc. (filed May 12, 2008) (Petition).

<sup>2</sup> See File No. 0002524725 (granted Jun. 28, 2006).

<sup>3</sup> Construct/Coverage Reminder, Ref No. 4666286 (Oct. 2, 2007).

<sup>4</sup> Auto Termination letter, Ref. No. 4706558 (Feb. 6, 2008).

<sup>5</sup> Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 3812, *Public Notice* (Feb. 6, 2008) at 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).

<sup>6</sup> See File No. 0002524725.

3. On May 12, 2008, the Bureau received Nexstar's Petition.<sup>7</sup> Nexstar claims that neither it nor its counsel received the auto-termination letter.<sup>8</sup> Nexstar's mailing address changed in February 2008.<sup>9</sup> According to Nexstar, it had a system in place to have mail forwarded through the United States and Postal Service, and it "promptly" updated its address in the Universal Licensing System (ULS).<sup>10</sup> The record for WFXV(TV), the parent station of Station WQFE803, indicates that a change of address was filed on March 11, 2008, after the auto-termination letter was sent.<sup>11</sup>

### III. DISCUSSION

4. 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.<sup>12</sup> Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.<sup>13</sup> Since public notice of the impending license termination was given on February 6, 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 February 7, 2008. The last day for filing a petition for reconsideration was March 7, 2008.

5. We received Nexstar's petition on May 12, 2008. Therefore, we find that the Petition was filed late. 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.<sup>14</sup> Furthermore, Nexstar's claim that it and its counsel never received the termination letter does not provide a basis for considering its untimely Petition. When there is an allegation that Commission correspondence was not received, "the question of receipt should be resolved on the basis of all the record evidence, including the regularity of mailing and delivery procedures and the inferences naturally drawn from those facts."<sup>15</sup> In this case, ULS shows that letters were generated and sent to both Nexstar and its counsel at the addresses contained in the system at that time in due course. Furthermore, a public notice announcing the termination was generated.<sup>16</sup> Accordingly, we conclude that Nexstar has failed to overcome the presumption that items mailed in due course are received. Consequently, we conclude that the Petition filed by Nexstar must be dismissed as untimely filed.

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<sup>7</sup> Petition.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.* at 1 n.1.

<sup>10</sup> *Id.*

<sup>11</sup> See Change of Address filing, signed by Perry Sook, President & CEO (filed Mar. 11, 2008).

<sup>12</sup> 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

<sup>13</sup> 47 C.F.R. § 1.4.

<sup>14</sup> 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).

<sup>15</sup> See *Juan Galiano et al., Memorandum Opinion and Order*, 5 FCC Rcd 6442 ¶ 7 (1990).

<sup>16</sup> Compare *JCL El Dorado, AR F Grand Alliance, Order on Reconsideration*, 18 FCC Rcd 10563 (WTB PSPWD 2003) (reconsideration granted where there was no evidence of a letter taking action and no public notice of the action was ever given).

**IV. ORDERING CLAUSES**

6. 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 Petition for Reconsideration filed by Nexstar Broadcasting, Inc., on May 12, 2008 IS DISMISSED.

7. 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

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Deputy Chief, Broadband Division  
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