

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

In the Matter of)	
)	
JCL EL DORADO, AR F GRAND ALLIANCE)	File No. 54408-CM-P-91
)	
Forfeiture of Conditional Authorization)	
to Construct MMDS Station WMY298)	
at El Dorado, Arkansas)	
)	

ORDER ON RECONSIDERATION

Adopted: May 21, 2003

Released: May 23, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. On May 14, 1999, JCL El Dorado, AR F Grand Alliance (“JCL”) filed a petition for reconsideration¹ of the April 14, 1999, action of the Video Services Division of the former Mass Media Bureau (VSD) to cancel JCL’s conditional authorization to construct Multichannel Multipoint Distribution Service (MMDS) Station WMY298, El Dorado, Arkansas.² For the reasons discussed below, we grant JCL’s Petition and reinstate JCL’s conditional authorization to construct the station.³

2. *Background.* On November 22, 1995, JCL was issued a conditional license for Station WMY298. Under the terms of the conditional license, JCL was required to complete construction of the station by no later than November 22, 1996.⁴ On November 20, 1996, JCL filed an application for extension of time to construct the station.⁵ The Commission’s licensing records reflect that the extension application was granted on March 19, 1997,⁶ and JCL was authorized until March 19, 1998, to complete construction of the station. On April 14, 1999, the VSD released a public notice declaring that the license for Station WMY298 was forfeited, effective March 19, 1998, on the ground that the licensee failed to file a certification of completion of construction, as required, by that date.⁷ JCL filed the Petition on May 14, 1999.

3. JCL represents that neither it nor its airtime lessee, Nucentrix Spectrum Resources, Inc., ever received notice that the extension application had been granted.⁸ JCL also states that it did not learn

¹ Petition for Reconsideration (filed May 14, 1999) (Petition).

² See FCC Public Notice, Report No. D-1038-A (April 14, 1999) (“Public Notice”).

³ See File No. 54408-CM-P-91.

⁴ See *id.*

⁵ File No. BEMD-9750172. In its extension of time application, JCL indicated that all of the equipment and materials necessary to complete construction of the site had been received, but that there were zoning issues.

⁶ According to the Commission’s Broadband Licensing System (BLS).

⁷ See Public Notice.

⁸ Petition at 2.

of the extension grant until the Commission issued the Public Notice indicating that the conditional license for WMY298 had expired. JCL argues that had it known of the grant of its extension application, it would have timely constructed the station and filed a certification of completion of construction.⁹ Moreover, JCL states that it is “fully prepared to commence and quickly complete construction of Station WMY298.”¹⁰

4. *Discussion.* Unless otherwise specified by law or rule, the effective date of any Commission action is the date of public notice of that action, as defined in Section 1.4(b) of the Commission’s Rules.¹¹ If a document is neither published in the *Federal Register* nor released, and a public notice announcing the action is not released, the date of public notice is “the date appearing on the document . . . sent to persons affected by the action.”¹² There was no *Federal Register* publication of any document reflecting grant of the extension application. Further, the Commission’s licensing records do not provide any indication that the extension grant was placed on public notice. Thus, the timing of public notice of the extension grant would appear to be dependent upon when a document was sent to the affected persons.

5. We now turn to the question of whether JCL itself was on notice. JCL contends that it did not receive any Commission document stating that the extension application for Station WMY298 was granted.¹³ 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.”¹⁴ While JCL’s statement that it never received notice that the application had been granted,¹⁵ standing alone, would be insufficient to show that it did not receive correspondence informing it that the extension application had been granted, such is not the case here. We have no indication in our records of the existence of a letter to JCL granting the extension request. Taking this circumstance together with lack of *Federal Register* publication and lack of any other public notice, we accept JCL’s representation that it did not receive any notice of a grant to extend JCL’s time to complete its station construction.

6. Consequently, we conclude that the grant of JCL’s application for extension of time to construct the station never became effective because the Commission never provided public notice of that action, as defined by Section 1.4(b) of the Commission’s Rules. Accordingly, we will grant JCL’s petition for reconsideration and reinstate JCL’s conditional license for Station WMY298. In addition, we provide JCL the relief that it was effectively granted on March 19, 1997. Specifically, JCL has one year to construct the facilities for Station WMY298 and to file a certification of completion of construction.

7. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by JCL El Dorado, AR F Grand Alliance IS GRANTED.

⁹ Petition at 2.

¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.103(a).

¹² 47 C.F.R. § 1.4(b)(5).

¹³ Petition at 2.

¹⁴ See Juan Galiano *et al.*, *Memorandum Opinion and Order*, 5 FCC Rcd 6442 ¶ 7 (1990).

¹⁵ Petition at 2.

8. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), that JCL's conditional license for Station WMY298, File No. 54408-CM-P-91 IS REINSTATED.

9. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), that JCL El Durardo, AR F Grand Alliance shall complete construction of Station WMY298, El Dorardo, Arkansas and file a certification of completion of construction on or before May 23, 2004.

10. 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

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau