

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

In the Matter of
Request for Extension of Time to
Construct Digital Facilities
KOCB-DT, Oklahoma City, Oklahoma
File No. BEPCDT-20020301AKH
ID No. 50170

MEMORANDUM OPINION AND ORDER

Adopted: September 10, 2002

Released: September 16, 2002

By the Chief, Media Bureau:

1. The Media Bureau (the "Bureau") has before it a petition for reconsideration filed by KOCB Licensee, LLC (KOCB) seeking reconsideration of the Bureau's letter of June 3, 2002, denying its request for an extension of time to construct the digital facilities for KOCB-DT and admonishing KOCB for failing to meet the May 1, 2002, construction deadline for DTV facilities. For the reasons stated below, we deny the petition.

2. In its petition, KOCB argues that the Bureau (1) misstated relevant facts and ignored the realities of DTV construction; (2) ignored KOCB's good faith efforts to meet the May 1, 2002, construction deadline; (3) failed to provide due process by not providing adequate notice of its intent to impose admonishments; and (4) failed to afford similarly situated parties similar treatment.

3. KOCB relies on essentially the same facts and arguments in support of its first two claimed grounds for reconsideration. On the first issue, KOCB claims that the Bureau misstated relevant facts when it concluded that KOCB had four years to make adequate arrangements to build its DTV facility. KOCB also claims that the Bureau erred in concluding that KOCB's representations that its facility would be operational by November 2002 had no reasonable basis. KOCB states that it was unreasonable for the Bureau to have expected completion of the station by the May 2002 deadline because the construction permit was not issued until October 31, 2000, and the national DTV build out generated market constraints on the availability of engineers due to unusual demand. KOCB also provides a timeline setting out past and future construction steps in support of its position that it made extensive good faith efforts to meet the May 1, 2002, deadline. KOCB contends that its timeline indicates that its statements that the DTV facility would be operational were justified.

4. We find these arguments unpersuasive. To begin with, any delay in the approval of KOCB's DTV application arose from the proposals laid out in the application itself. DTV applications that were incomplete, that presented technical, legal, or financial questions, or that were mutually exclusive with other applications naturally took longer to resolve than applications that were grantable as filed.

Furthermore, KOCB reasonably should have anticipated that there would be heavy demand on engineers due to the nationwide DTV conversion and should have allowed for possible delays based on that workload. Therefore, KOCB's delays either arose from its own actions or from a situation which it easily could have foreseen. In addition, KOCB's statements regarding its ability to commence DTV operation by November 2002 were predicated upon completion of a tower study. According to KOCB, it did not undertake to begin this tower study until after grant of its construction permit. A year later, in October 2001, KOCB abandoned plans to use its intended tower due to structural deficiencies. It was not until five months after that, in March 2002, that KOCB undertook a new tower study, which was completed in May 2002. According to the timeline, KOCB undertook preparations to file a modification application the following June, which Commission records indicate was filed on July 22, 2002. In addition, KOCB's new timeline abandons the November 2002 date and states that the licensee now hopes to commence DTV operation in December 2002.

The Bureau's conclusion that KOCB had failed to justify its failure to meet the May 1, 2002, date and that KOCB's projection that its station would be operational by November 2002 had no reasonable basis were, therefore, well founded.

5. KOCB next argues that the Bureau failed to give sufficient notice that it would admonish parties who failed to meet the DTV construction deadline. Admonishment is not an unusual or excessively punitive remedy, but rather is a penalty regularly imposed in a variety of contexts for failure to abide by Commission requirements.¹ In this context, KOCB failed to comply with a Commission imposed build-out requirement. Its apparent expectation that it would be permitted to do so without ramifications was baseless and mistaken. As a result, KOCB's contention that it was denied "due process" when it received an admonishment for failure to comply with the build-out requirement is without merit. KOCB should note, however, that if it continues to miss deadlines imposed by the Commission on its DTV build out, it will be subject to additional sanctions.

6. Finally, KOCB argues that similarly situated parties were not given similar treatment. Apparently, KOCB contends that it was treated unfairly because its DTV application was approved later than the applications of other parties. As noted above, any delay in processing KOCB's application resulted from the terms of KOCB's proposal, not from any disparate treatment of KOCB. We, therefore, reject KOCB's contention that it was treated differently than similarly situated parties.

7. ACCORDINGLY, IT IS ORDERED, THAT the petition for reconsideration filed by KOCB Licensee, LLC seeking reconsideration of the Bureau's letter of June 3, 2002, which denied KOCB's request for an extension of time to construct the digital facilities for KOCB-DT and admonished KOCB for failure to meet the May 1, 2002, construction deadline for digital television facilities, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

¹ See, e.g., *Davidson County Broadcasting*, 12 FCC Rcd 3375 (1997)(failure to comply with EEO rules); *Rainbow Broadcasting*, 14 FCC Rcd 11099 (1999)(failure to obtain Commission consent prior to replacing authorized antenna); *Black Media Broadcasting*, 16 FCC Rcd 3374 (2001)(broadcast of commercials on noncommercial station).