

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

In the Matter of the Applications of)
CHANNEL 61 ASSOCIATES, LLC) File No. BALCDT-20131115BDM
(Assignor)) Facility ID No. 77515
and)
CROSS HILL COMMUNICATIONS, LLC)
(Assignee))
For Consent to Assignment of License of)
Television Station WNMN(TV),¹ Saranac Lake,)
NY)

MEMORANDUM OPINION AND ORDER

Adopted: May 5, 2017

Released: May 5, 2017

By the Chief, Video Division, Media Bureau:

1. The Media Bureau ("Bureau") has before it a Petition for Reconsideration filed by Convergence Entertainment and Communications, LLC (the "Petitioner"), seeking reconsideration of the decision by the Video Division ("Division") to grant the application to assign the license of WNMN(TV), Saranac Lake, New York ("WNM" or the "Station") from Channel 61 Associates, LLC ("Channel 61") to Cross Hill Communications, LLC ("Cross Hill") (collectively, the "Applicants").² We find that the Petition was untimely filed, and dismiss it accordingly.

I. BACKGROUND

2. In the Assignment Order, the Division granted an application to assign WNMN(TV) from Channel 61 to Cross Hill (the "Application"), and denied an informal objection filed by Convergence opposing the assignment. Convergence, a competing broadcaster,³ had sought a deferral of the review of the application until a New York state court had an opportunity to review a contractual dispute between Channel 61 and Convergence. Convergence also stated that Channel 61 may not be qualified to hold a license because Channel 61 knowingly misrepresented facts to the Commission in its 2007 analog license to cover a new construction permit application.⁴

3. The Assignment Order concluded that Convergence did not raise a substantial and material question of fact warranting further inquiry,⁵ specifically rejecting both of Convergence's arguments. First, the Assignment Order held that the existence of a contractual dispute between Convergence and Channel

¹ On March 9, 2016, WNMN(TV) changed its call sign to WYCI.

² Channel 61 Associates, LLC, Letter Order, 31 FCC Rcd 1340 (MB Vid. Div. 2016) ("Assignment Order").

³ Convergence is the licensee of WGMU-LP, Burlington, Vermont, which is located in the same Designated Market Area, Burlington-Plattsburgh, as the Station. Id. at 1342.

⁴ Id. at 1341.

⁵ Id. at 1343.

61 in a state court does not compel the Commission to stop processing an assignment application pending judicial resolution, and does not prejudice any relief to which the parties may ultimately be entitled pursuant to a subsequent ruling by a state court.⁶ Second, the Division noted that the Bureau and Channel 61 entered into a Consent Decree on November 4, 2015, that terminated the investigation into violations of the Commission's rules, including the construction of an analog facility at an unauthorized location.⁷ Third, the Division concluded that Convergence failed to demonstrate the elements of intent to deceive the Commission, which is the *sine qua non* of misrepresentation or lack of candor.⁸

4. The *Assignment Order* was dated, signed, and released on February 26, 2016, and the Commission's Daily Digest published its release on February 29, 2016.⁹ In an addendum, this Daily Digest announced the release of the text of the *Assignment Order*, and expressly specified that it was one of the items that was released on February 26, 2016, but did not appear in the preceding Daily Digest. The published electronic version of the Daily Digest included a hyperlink to the text of the *Assignment Order* itself.¹⁰ On March 2, 2016, the Commission published another public notice, reiterating that the above-captioned application for assignment was granted with an action date of February 26, 2016.¹¹

5. On April 1, 2016, the Petitioner filed the Petition, seeking reconsideration on several grounds, including changed circumstances and "reversible errors & omissions of fact & law."¹² Among other contentions, the Petitioner alleges that the Licensee never built the tower authorized under its construction permit.¹³

6. On April 14, 2016, the Applicants filed a Joint Opposition, arguing that the Petition must be dismissed because it was filed late and because it is otherwise procedurally defective and without merit.¹⁴ They argue that pursuant to the 30-day window for filing petitions for reconsideration set forth in section 405(a) of the Communications Act of 1934, as amended (the "Act"),¹⁵ the public release of the *Assignment Order* on February 26, 2016, established a deadline for petitions of March 28, 2016.¹⁶ They further argue that the issuance of the *Broadcast Report No. 48462 Public Notice* is irrelevant to and does not affect the deadline for petitions for reconsideration.¹⁷ According to the Applicants, the filing of the Petition on April 1, 2016 was untimely and, therefore, statutorily barred.

7. On April 28, 2016, the Petitioner filed a Reply to the Joint Opposition ("Reply"), and avers that the Petition was indeed timely filed.¹⁸ The Petitioner asserts that it received notice of the Assignment

⁶ *Id.* (citations omitted).

⁷ *Id.* at 1343-1344 (citing *Consent Decree*, 30 FCC Rcd. 12326, 12329, para. 11 (MB 2015) ("*Consent Decree*").

⁸ *Id.* at 1343-44 (citing *Fox River Broadcasting, Inc.*, Memorandum Opinion and Order, 83 FCC 2d 127, 129 (1983)).

⁹ Daily Digest, Vol. 35, No. 37 (rel. Feb. 29, 2016).

¹⁰ *See id.* (citing https://transition.fcc.gov/Daily_Releases/Daily_Digest/2016/dd160229.html).

¹¹ *Broadcast Actions*, Public Notice, Report No. 48462 at 3 (rel. Mar. 2, 2017) ("*Broadcast Report No. 48462 Public Notice*").

¹² Petition at 1 in 2016. On that same date in 2015, Convergence also filed an Application for Review of the *Assignment Order* and of the Staff's renewal of WNMN(DT). *See* File Nos. BALCDT-20131115BDM, BRCDDT-201150202ABE.

¹³ Petition at 5.

¹⁴ Joint Opposition to Petition for Reconsideration, File No. BALCDT-20131115BDM ("Joint Opposition").

¹⁵ 47 U.S.C. § 405(a).

¹⁶ Joint Opposition at 2.

¹⁷ *Id.*

¹⁸ Reply at 5-6.

Order “in early March 2016,”¹⁹ and goes on to allege that in response to its inquiry to Commission staff as to the “official date of public notice,” it was directed to the Commission’s CDBS system.²⁰ The Reply states that CDBS “presented the last Public Notice date as March 2, 2016”²¹ It “avers that the only reasonable, plain language interpretation is that the date given as the Last Public Notice is the effective date of the Public Notice for whatever was noticed in the most recent public notice.”²²

II. DISCUSSION

8. Under the Act and the Commission’s rules, a petition for reconsideration must be filed within 30 days after the date on which public notice is given of an action or decision to be reconsidered.²³ Section 1.4(b)(2) of the Commission’s rules provide that the date of public notice of a non-rulemaking document is the date of the document’s release.²⁴ Here, the release of the *Assignment Order* on Friday, February 26, 2016, established public notice as of that date. Since 30 days after that date was Sunday, March 27, 2016, pursuant to the Commission’s time computation rules for holidays,²⁵ the deadline for filing a petition for reconsideration of the *Assignment Order* fell on Monday, March 28, 2016 – four days prior to the Petitioner’s filing of the Petition. The Commission lacks authority to waive or extend the statutory 30-day filing period for reconsideration unless the petitioner can show that its failure to file in a timely manner resulted from “extraordinary circumstances.”²⁶ The Petitioner does not allege, much less demonstrate, that such circumstances exist here. Accordingly, we find the Petition to be untimely, and hereby dismiss it.

9. With respect to the Petitioner’s arguments for why it filed late, Section 405 contains no requirement of personal notice and no provision for the delay of the 30-day deadline,²⁷ and, therefore, February 26, 2016, remains the date of the public notice that started the 30-day filing window. Moreover, the record that Petitioner submits in support of its Petition undercuts its own theory, and demonstrates that it did or should have had knowledge of the February 26, 2017, publication date. Specifically, the WYCI Application Search Details page states that status of the Application was “GRANTED,” with a “Status Date” of February 26, 2017.

10. We further reject the argument that subsequent publication of the release re-starts the clock for a petition for reconsideration. Convergence provides no case precedent in support for this

¹⁹ *Id.* at 5.

²⁰ The purported staff response is not controlling and in any event could not supersede the Commission’s time computation rules, and Commission precedent has established that parties relying on informal discussions with Commission staff do so at their own risk. *See, e.g., Applications of Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705 (1991) (citations and subsequent history omitted).

²¹ We note that the release date as reflected in the Daily Digest, and not CDBS, provides official public notice. We assume here that Convergence intended to refer to the Daily Digest as providing public notice on March 2, 2016. As noted below, this does not change our legal conclusion.

²² Reply at 6 (emphasis in original).

²³ Section 405(a) of the Act provides that a “petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.” 47 U.S.C. § 405(a). Section 1.106(f) of the Commission’s rules implements section 405(a) and provides that the “petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action.” 47 C.F.R. § 1.106(f).

²⁴ 47 C.F.R. § 1.4(b)(2).

²⁵ *See* 47 C.F.R. §§ 1.4(e), (j).

²⁶ *See Gardner v. FCC*, 530 F.3d 1086, 1091-92 (D.C. Cir. 1976).

²⁷ *Applications for Review of a Decision of the Wireline Competition Bureau by Yakutat School District, Yakutat, Alaska*, Order, 29 FCC Rcd. 10746, 10751, para. 11 (2014).

theory, which runs counter to the example that the Commission provided in the rules for when public notice begins,²⁸ and which is patently inconsistent with the notion of “public notice” itself.

III. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405(a), and section 1.106 of the Commission’s Rules, 47 C.F.R. 1.106, that the Petition for Reconsideration of the *Assignment Order* IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁸ See 47 C.F.R. § 1.4(b)(2).