



Federal Communications Commission
Washington, D.C. 20554

November 24, 2021

Sent via Certified Mail and Electronic Mail

Digital Networks-Northeast, LLC
P.O. Box 11409
Chattanooga, TN 37401
thurley@luken.tv

Re: Request to Reinstate Licenses and
Digital Construction Permits
DWMNE-LP, Portland, ME
DW16AL, Burlington, VT
Facility ID Nos. 47717 and 67941

Dear Counsel:

This letter concerns the Requests for Reinstatement, Waiver, and Tolling/Extension (Requests) filed on behalf of Digital Networks-Northeast, LLC (DNN) seeking reinstatement of the licenses and digital construction permits for DWMNE-LP, Portland, Maine and DW16AL, Burlington, Vermont (Stations).¹ For the reasons set forth below, we deny the Requests.

Background. The Stations were analog low power television stations and were granted construction permits to convert to digital operations (Digital CPs).² The deadline to complete construction of the Stations' digital facilities was July 13, 2021.³ Because neither an application for license to cover nor application for extension of construction permit were filed on or before the July 13, 2021 construction permit expiration date, the Digital CPs expired and were automatically forfeited.⁴ Furthermore, the Stations' analog licenses were automatically cancelled by Commission rule at 12:00 A.M. (local time) on July 14, 2021.⁵ On August 9, 2021, the Video Division sent courtesy letters, by

¹ See LMS Pleading File Nos. 0000156332 and 0000156329.

² See CDBS File No. BMPDTL-20120307ABN (for DWMNE-LP granted March 15, 2012) and LMS File No. 0000054673 (digital displacement for DW16AL granted November 13, 2018). DW16AL's analog facilities were displaced by the Incentive Auction and repacking process and it was granted a digital displacement construction permit for channel 27.

³ See 47 CFR § 74.788(a). Transitioning LPTV/translator stations that experienced delays in completing their digital facilities were permitted to seek one last extension of time of their digital construction permits of not more than 180 days. See 47 CFR § 74.788(c)(1).

⁴ See 47 CFR § 74.788(b)

⁵ See 47 CFR § 74.731(m).

certified mail to DNN notifying it that the Stations' construction permits were automatically forfeited and their licenses had been automatically cancelled.⁶

DNN Request. In its Requests, DNN argues that it did not request extensions of the Stations' Digital CPs "due to the belief . . . that an extension would not be necessitated." DNN argues that, when the equipment was not timely delivered, it was "under the impression that no relief was available." DNN asks that the deadline for filing an extension of time for the Digital CPs be waived. DNN also includes with its Requests a declaration from its chief engineer certifying to the above facts and stating that the equipment will be received within 60-90 days from the date of its filing. Since submitting its Requests in August 2021, no updates have been provided by DNN.

Discussion. DNN's Digital CPs were granted with a July 13, 2021 expiration date. Because neither applications for license to cover construction of the Digital CPs nor applications for extension of construction permits were filed, the Digital CPs were automatically forfeited and the Stations' analog licenses automatically canceled.⁷ We find that neither DNN's mistaken belief that extensions would not be needed, nor the fact that after it did not receive the necessary equipment by July 13 that it believed no further relief was possible justify waiver of the Commission's rules and reinstatement of the Stations' licenses and Digital CPs. It is well settled Commission precedent that ignorance of a rule or law is not an excuse.⁸ Whether intentional or not, DNN allowed its license to expire and construction permit to be forfeited due to its own inaction and ignorance of the rules. The Media Bureau on numerous occasions has made clear the options available to LPTV/TV translator stations that were unable to meet the July 13 deadline and the ramifications of their failure to take the appropriate action if construction cannot be completed by that date.⁹

⁶ See Letters to Digital Networks-Northeast, LLC from Barbara A. Kreisman, Chief, Video Division (Aug. 9, 2021) available in LMS on each stations facility page. The letters were sent as a courtesy. Cancellation of the Stations' construction permits, licenses, and deletion of their call signs by Media Bureau staff in the Licensing and Management System (LMS) was an administrative function and did not constitute an official Commission action. See e.g., *Media Bureau Reminds Remaining Low Power Television and Television Translator Stations that the July 13, 2021 Digital Transition Date and Other Important Deadlines are One Week Away*, Public Notice, DA 21-786 (rel. July 6, 2021) (*Final Transition Reminder PN*); 86 FR 32262 (June 17, 2021).

⁷ See 47 CFR §§ 74.788(b) and 74.731(m). No affirmative action was required by the Commission.

⁸ See, e.g., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) ("[O]ne may not "claim ignorance of the law as a defense" (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) ("PTT's purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission's] [r]ules to which it was subject."); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) ("It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.") (internal cites omitted); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) ("It is well settled that ignorance of the [Commission's] [r]ules does not excuse a violation.") (internal cites omitted).

⁹ See, e.g., *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 35 FCC Rcd 6977, 6980 (MB 2020); *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771, 4774 (MB 2021); *Final Transition Reminder PN*, DA 21-786.

Furthermore, we find unpersuasive as a basis for relief DNN's argument that, as of the date the Requests were filed, equipment could be received in 60-90 days. DNN provides no support for this claim and does not provide a timeline for completing construction. DNN also provides extremely limited evidence of its efforts prior to July 13 to construct its digital facilities. The only evidence DNN provides is a declaration from the Stations' engineer with copies of equipment invoices/proposals. There is no specific information describing what specific efforts were undertaken to construct the facilities in a timely manner, documentation of the shipment delays, or evidence that even if its equipment had been delivered on time that DNN would have even been able to complete construction by its July 13.

Even had DNN filed for a construction permit extension prior to July 13, 2021, the instant showing would not have proved insufficient to warrant grant of an extension of time. An application for extension of time to construct must include an exhibit demonstrating that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control and that the licensee has taken all reasonable steps to resolve the problem expeditiously.¹⁰ Such circumstances include, but are not limited to: (1) delays in obtaining zoning or other approvals, or similar constraints; (2) inability to obtain equipment; or (3) financial hardship. Extension applications must include: (a) a detailed accounting of all steps taken by the station to complete construction of the proposed facilities including dates for each action; (b) a detailed accounting of any and all circumstances outside of the station's control that prevented the station from completing construction including dates of each circumstance; and (c) a timeline plan of how and when the station expects to complete construction and begin operations.¹¹ DNN has failed to provide the required information to justify an extension and does not even state that if its construction permits were reinstated and extended that construction would be completed by an extended construction permit deadline of January 10, 2022.

Accordingly, the Request for Reinstatement, Waiver and Tolling/Extension filed on behalf of Digital Networks-Northeast, LLC **IS DENIED**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Aaron Shainis, Esq.

¹⁰ See 47 CFR § 74.788(c); *supra* note 9.

¹¹ *Id.*