

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

In the Matter of)	
)	
Request for Extension of Time to)	
Construct Digital Facilities)	File No. BEPCDT-20020301ALS
WYZZ-DT, Bloomington, Indiana)	ID No. 5875
)	
)	
)	
)	

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 WYZZ Licensee, Inc. (WYZZ) seeking reconsideration of the Bureau's letter of June 5, 2002, denying its request for an extension of time to construct the digital facilities for WYZZ-DT and admonishing WYZZ 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, WYZZ argues that the Bureau (1) misstated relevant facts and ignored the realities of DTV construction; (2) ignored WYZZ'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. WYZZ relies on essentially the same facts and arguments in support of its first two claimed grounds for reconsideration. On the first issue, WYZZ claims that the Bureau misstated relevant facts when it concluded that WYZZ had three years to make adequate arrangements to build its DTV facility. WYZZ also claims that the Bureau erred in concluding that WYZZ's representations that its facility would be operational before January 2003 had no reasonable basis. WYZZ 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 February 2001 and the national DTV build out generated market constraints on the availability of engineers due to unusual demand. WYZZ further states that it reported in its April 16, 2002, response to the Commission's inquiry regarding WYZZ's request for extension that the tower operators with which it had been negotiating were working actively on the construction of a new tower. According to WYZZ, the tower operators were still working to develop a final antenna configuration and were developing a shared antenna system. WYZZ asserts that the tower was expected to be constructed by November 2002 and the facility was expected to be operational before January 2003. WYZZ 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. WYZZ 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 WYZZ'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, WYZZ reasonably should have anticipated that its tower manufacturer could have a heavy workload due to the nationwide DTV conversion and should have allowed for possible delays based on that workload. Therefore, WYZZ's delays either arose from its own actions or from a situation which it easily could have foreseen. In addition, WYZZ's timeline indicates that its proposed tower operator did not even begin serious planning for the final tower configuration or of the proposed shared panel antenna system until Spring 2002. As of the date of the filing of the reconsideration, WYZZ could only state that tower construction was "expected" to commence in Summer 2002. WYZZ's own uncertainty about the construction schedule of its tower undermines the credibility of it commencing full power operations in January 2003. The Bureau's conclusion that WYZZ had failed to justify its failure to meet the May 1, 2002, date and that WYZZ's projection that its station would be operational by January 2003 had no reasonable basis were, therefore, well founded.

5. WYZZ 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, WYZZ 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, WYZZ'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. WYZZ 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, WYZZ argues that similarly situated parties were not given similar treatment. Apparently, WYZZ 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 WYZZ's application resulted from the terms of WYZZ's proposal, not from any disparate treatment of WYZZ. We, therefore, reject WYZZ's contention that it was treated differently than similarly situated parties.

7. ACCORDINGLY, IT IS ORDERED, THAT the petition for reconsideration filed by WYZZ Licensee, Inc. seeking reconsideration of the Bureau's letter of June 5, 2002, which denied WYZZ's request for an extension of time to construct the digital facilities for WYZZ-DT and admonished WYZZ 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).