

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

In re Applications of)
)
KT BROADCASTING, INC.)
)
)
MARCIA T. TURNER d/b/a)
TURNER ENTERPRISES)
)
For Authority to Construct New Commercial)
Television Station on Channel *46 at Gosnell,)
Arkansas)

MEMORANDUM OPINION AND ORDER

Adopted: July 1, 2003

Released: July 17, 2003

By the Commission:

1. The Commission has before it timely applications for review filed by filed by KT Broadcasting, Inc. (“KT”) and Marcia T. Turner d/b/a Turner Enterprises (“Turner”), seeking review of a September 14, 2000, letter ruling by the Chief, Video Division, Media Bureau, which dismissed their petitions for reconsideration of the dismissal of their applications for a new commercial television service to operate on Channel *46, Gosnell, Arkansas.

2. KT and Turner were among seven applicants for a construction permit to operate a commercial television station on Channel *46 at Gosnell. Although the reservation of Channel *46 for noncommercial use was published in the Federal Register in 1989, the asterisk that reflects the noncommercial status of the channel was inadvertently omitted from the published amendment of the TV Table of Allotments contained in Section 73.606 of the Commission’s Rules. In 1996, an application was filed proposing a new commercial television service on that channel. A subsequently issued Public Notice, establishing a cut-off date for competing applications did not indicate that Channel *46 was reserved for noncommercial use. Competing applications were filed by, among others, KT and Turner. Because the Commission had reserved the channel for noncommercial educational use, the applications proposing commercial services on that channel were returned as unacceptable for filing, and the application fees returned.

3. Four of the seven commercial applicants filed petitions for reconsideration of that decision. They argued that the omission of the asterisk designating the channel’s reserved status in both Section 73.606 of the Rules and the Public Notice misled the applicants, and equities demanded the reinstatement of their applications. They maintained that the Commission should

“void” its action reserving Channel 46 for noncommercial, educational use and reinstate their applications for commercial service; waive Section 73.606 of the rules to permit the processing of applications proposing commercial service on this reserved channel; or permit parties to submit “curative” amendments converting their earlier-filed applications to proposals for authority to construct a new noncommercial station. In its letter ruling, the Division determined that an inadvertent administrative error does not create any right for these applicants to propose a commercial television service on a channel reserved for noncommercial use, and that no basis exists to ignore or waive the Commission’s rules and procedures to permit them to do so.

4. In its application for review, KT alleges that the Division did not adequately consider its request to waive the rules to permit it to apply for a commercial station on a reserved channel. Turner asserts, as argued in its petition for reconsideration, that because the Commission “affirmatively misled” the applicants by erroneously listing the channel as available for commercial use in the TV Table of Allotments, Section 73.606 of the rules, equity requires that its application be reinstated.

5. We have reviewed the Division’s disposition of the petitions for reconsideration and find that its ruling was correct and that no basis exists to warrant reversal. *See, e.g., WAMC, Inc.*, 10 FCC Rcd 12219 (1995). Further, as pointed out by the Division, the applicants could seek to amend the DTV Table of Allotments if they wish to pursue a commercial or noncommercial educational operation for Gosnell.¹

6. Accordingly, IT IS ORDERED, That the applications for review filed by KT Broadcasting, Inc. and Marcia T. Turner d/b/a Turner Enterprises ARE HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹ We have not amended the Table of Allotments to reflect the noncommercial, educational status of Channel 46 at Gosnell because this allotment was deleted pursuant to our DTV Orders. *See Sixth Report and Order, Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 12 FCC Rcd 14588, 14639 (1997).