

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

In the Matter of)	
)	
County of Hinds, Mississippi)	WT Docket No. 02-55
and)	
Sprint Nextel)	
)	
Mediation No. TAM-50047)	

**MEMORANDUM OPINION AND ORDER AND
ORDER ON RECONSIDERATION**

Adopted: February 2, 2011

Released: February 2, 2011

By the Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau:

1. By this *Memorandum Opinion and Order and Order on Reconsideration*, we dismiss, as untimely filed, (1) the Petition for *De Novo* Review (*De Novo* Review Petition)¹ filed September 17, 2010² by the County of Hinds, Mississippi (Hinds) and (2) the Petition for Reconsideration of the Memorandum Opinion and Order (Hinds Reconsideration Petition) filed by Hinds on October 13, 2010. In addition, we deny the Petition for Waiver of the Commission's Rules Requiring that a Petition for *De Novo* Review be Filed Within Ten Days of the Release of the August 23, 2010, Opinion and Order (Waiver Request) filed by Hinds on October 14, 2010.

I. BACKGROUND

2. On August 23, 2010, the Public Safety and Homeland Security Bureau (Bureau), on delegated authority, released a *Memorandum Opinion and Order* in the captioned proceeding resolving a dispute between Hinds and Sprint Nextel.³ The Commission's rules specify that such orders are effective on their release date⁴ and that appeals of such orders must be filed within ten days thereafter.⁵ Hinds did

¹ On Sept. 27, 2010, Nextel Communications Inc., (Nextel) a wholly owned subsidiary of Sprint Nextel Corp. timely filed an Opposition to Petition for *De Novo* Review. On October 21, 2010, Nextel filed a timely Opposition to Petition for Waiver (Nextel Waiver Opposition).

² The *De Novo* Review Petition, dated Sept. 15, 2010, was received by the Commission on September 17, 2010. Documents are considered filed with the Commission upon their receipt at the location designated by the Commission. 47 C.F.R. § 1.7.

³ Hinds County, Mississippi and Sprint Nextel Corp. *Memorandum Opinion and Order*, WT Docket No. 02-55, 25 FCC Rcd 12336 (PSHSB 2010) (*Hinds Order*).

⁴ Section 1.102(b)(1) of the Commission's rules provides: "Non-hearing or interlocutory actions taken pursuant to delegated authority shall, unless otherwise ordered by the delegated authority, be effective on release of the document containing the full text of such action or in the event such a document is not released, upon release of a public notice announcing the action in question." 47 C.F.R. § 1.102(b)(1).

⁵ Section 90.677(d)(1) of the Commission's Rules provides, in pertinent part, that if the Chief, Public Safety and Homeland Security Bureau, decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for de novo (continued....)

not file its *De Novo* Review Petition until September 17, 2010, 25 days after the August 23, 2010 release date of the *Hinds Order*.⁶ Section 1.106(f) of the Commission's rules requires that petitions for reconsideration be filed within 30 days of the release date of the underlying order.⁷ Hinds filed its Reconsideration Petition on October 13, 2010, 51 days after the release date of the *Hinds Order*. On October 14, 2010, Hinds filed its Waiver Request seeking acceptance of its late-filed *De Novo* Review Petition.

II. DISCUSSION

A. Waiver Request

3. In its waiver request, Hinds claims that it did not receive the *Hinds Order* until "several days" after its release.⁸ It asserts that there is "ambiguity" between the *Hinds Order* and an order from the TA mediator terminating mediation of the Hinds case.⁹ Because of this alleged ambiguity, Hinds claims that the Bureau should measure the time for filing a petition for *de novo* review from the date of the TA Mediator's order, not the release date of the *Hinds Order*.¹⁰ In the alternative, Hinds argues that the Commission should grant it a waiver of the filing deadline,¹¹ and cites the *WAIT Radio* case for the proposition that the Commission is required to give waiver requests a "hard look."¹²

4. We perceive no ambiguity between the *Hinds Order* and the TA Mediator's order terminating mediation of the case. Each document had a separate purpose and one followed the other in logical sequence, *i.e.*, mediation was terminated once the case was decided.¹³ Section 90.677(d)(2) of the Commission's rules is clear that it is the "initial decision"—here, the *Hinds Order*—that triggers the ten-day period for filing an appeal, not the TA Mediator's order terminating mediation.¹⁴ Indeed, the rule says nothing about orders from the TA Mediator. We thus reject Hind's inference that "ambiguity" in the two documents caused Hinds to file its *De Novo* Review Petition late.

5. The United States Court of Appeals for the District of Columbia Circuit has "discourage[d] the Commission from entertaining late-filed pleadings 'in the absence of extremely unusual

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review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge." 47 C.F.R. § 90.677(d)(1).

⁶ Sprint Nextel Corporation timely filed an Opposition to Petition for De Novo Review on September 27, 2010.

⁷ See 47 C.F.R. § 1.106(f).

⁸ Waiver Request at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*).

¹³ As Nextel points out, the TA Mediator's order was ministerial and not substantive. Nextel Waiver Opposition at 4.

¹⁴ 47 C.F.R. § 90.677(d)(2) ("... any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for de novo review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge"). (Emphasis supplied.)

circumstances,”¹⁵ and has held that “procrastination . . . is not a ‘special circumstance.’”¹⁶ We perceive no unusual or special circumstance that would have prevented Hinds from making a timely request for *de novo* review. As Nextel points out, “the Hinds Order was publically released and was available on the Commission’s web site the day it was released.”¹⁷ We thus agree with Nextel’s contention that “it was the decision of the County to proceed with *de novo* review at the Bureau, and it is not unreasonable for the Bureau to expect that a party that elects to participate in a proceeding before the Bureau to monitor the status of that proceeding for a decision that affects the party’s rights.”¹⁸

6. Once Hinds received the *Hinds Order* it knew, or should have known, that any appeal was due within ten days. Preparation of a request for *de novo* review is neither complex nor time consuming—a party need only state that it is appealing the Bureau’s decision. Indeed, Hinds’ request for *de novo* review is a one-page, one-sentence document. Thus, even assuming, *arguendo*, that Hinds did not receive the *Hinds Order* until “several days” after its release, it could have prepared a timely notice of appeal had it exercised ordinary diligence. Instead, it procrastinated and filed the *De Novo* Review Petition 15 days late.

7. Section 1.925 of the Commission’s rules provides that, with respect to wireless telecommunications services, the Commission may grant a request for waiver if it is shown that: “(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”¹⁹

8. Hinds has not shown that the underlying purpose of the time restriction in Section 90.677(d)(2) of the Commission’s rules—facilitating the Commission’s prompt disposition of the proceedings before it—would be frustrated were its requested waiver not granted, much less that grant of the requested waiver would be in the public interest. Moreover, Hinds has not pointed to any unusual factual circumstance that would render denial of the requested waiver inequitable, unduly burdensome or contrary to the public interest. For the reasons stated in ¶ 4, *supra*, Hinds’ argument that alleged “ambiguity” in the orders it received constituted an “unusual factual circumstance” is without merit. Finally, we note that Hinds had a reasonable alternative to filing its *De Novo* Review Petition 15 days late, *i.e.*, with the exercise of ordinary diligence it could have filed its one-page, one-sentence, pleading on time.

9. In sum, we have given Hinds’ waiver request the “hard look” mandated by *WAIT Radio*. Our careful analysis of the arguments raised by Hinds reveals that it has not established good cause for grant of a waiver.

¹⁵ *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003) quoting *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 200 (D.C. Cir. 2003).

¹⁶ *NETWORKIP, LLC and Network Enhanced Telecom v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

¹⁷ Nextel Waiver Opposition at 3.

¹⁸ *Id.*

¹⁹ 47 C.F.R. § 1.925(b)(3).

B. Petition for Reconsideration

10. Section 405(a) of the Communications Act of 1934,²⁰ as amended, as implemented by Section 1.106(f) of the Commission's Rules,²¹ requires that a petition for reconsideration be filed within 30 days from the release date of the Commission's action. Hinds filed its Reconsideration Petition 51 days after release of the *Hinds Order*. The Commission consistently has held that it is without authority to extend or waive the statutory thirty-day period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act.²² The filing deadline of Section 405(a) of the Act applies even to petitions for reconsideration filed only one day late.²³ Consequently, we conclude that the Hinds Reconsideration Petition must be dismissed as untimely filed.

11. Moreover, Hinds' Reconsideration Petition is defective for an additional procedural reason. Section 1.106 (b)(2)(i-ii) of the Commission's rules²⁴ provides that petitions for reconsideration are acceptable only if they rely "on facts which relate to events that have occurred or circumstances which have changed since the last opportunity to present such matters" or "the petition relies on facts unknown to the petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence have been learned prior to such opportunity." The gravamen of Hinds' Reconsideration Petition is that its employee, Captain John Wilson, "impermissibly" negotiated the Hinds' Frequency Reconfiguration Agreement (FRA) with Sprint but neglected to include the services and associated costs sought in the Change Notice and, therefore, that "the prior agreement [the FRA] was contemplated in bad faith."²⁵

12. In its Reconsideration Petition, Hinds does not cite to facts or events that occurred or circumstances that have changed since its last opportunity to present such matters, *i.e.*, in its Proposed Resolution Memorandum, or that were unknown to Hinds and could not have been learned through the exercise of ordinary diligence. In fact, Hinds presents no new evidence whatsoever. Rather than arguing new facts or changed circumstances, Hinds uses the Reconsideration Petition merely to reassert the arguments made in its Proposed Resolution Memorandum, *i.e.*, that Captain Wilson "unofficially waived them [Hinds' costs] in his negotiations without proper or actual authority."²⁶ We fully considered Hinds' arguments in that regard in the *Hinds Order* and found them without merit, *inter alia*, because, "[b]oth the County's Planning Funding Agreement (PFA) and FRA were negotiated by Wilson, but the FRA was reviewed by the County's legal counsel and ratified by the president of its Board." Therefore, we concluded, there was no merit to "the County's claim that Wilson lacked 'proper or actual authority' to

²⁰ 47 U.S.C. § 405(a).

²¹ 47 C.F.R. § 1.106(f).

²² See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986).

²³ See, e.g., *Panola Broadcasting Co., Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); *Metromedia, Inc., Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975).

²⁴ 47 C.F.R. § 1.106 (b)(2)(i-ii).

²⁵ Hinds Reconsideration Petition at 1.

²⁶ Hinds Proposed Resolution Memorandum at 4.

negotiate the FRA.”²⁷

13. It is Commission policy that “petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.”²⁸ Hinds’ advancement of the same facts and circumstances previously raised by Hinds and considered and rejected by the Bureau does not meet the requirements of that well-settled policy. Moreover, reconsideration of a Commission decision is appropriate only when the petitioner demonstrates that the original Order contains a material error or omission.²⁹ Nothing offered by Hinds demonstrates a material error or omission in the *Hinds Order* that undercuts the Bureau’s finding that Hinds’ undocumented request for a change order lacked merit.

III. DECISION

14. For the reasons set forth above, we find that Hinds Waiver Request does not meet the waiver criteria in Section 1.925 of the Commission’s rules and the cases interpreting that rule section. We therefore deny the request for waiver.

15. Further, we find that the untimely Petition for *De Novo* Review and the Petition for Reconsideration are procedurally defective, and thus subject to dismissal.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, that the Petition for Waiver of the Commission’s Rules Requiring that a Petition for *De Novo* Review be Filed Within Ten Days of the Release of the August 23, 2010, Memorandum Opinion and Order, filed by Hinds County, Mississippi, IS DENIED.

17. IT IS FURTHER ORDERED that the Petition for *De Novo* Review filed by Hinds County, Mississippi, IS DISMISSED WITH PREJUDICE.

18. IT IS FURTHER ORDERED that the Petition for Reconsideration of the Memorandum Opinion and Order for *De Novo* Review filed by Hinds County, Mississippi, IS DISMISSED WITH PREJUDICE.

²⁷ *Hinds Order*, 25 FCC Rcd at 12340 ¶11. Even assuming, *arguendo*, that Hinds was not aware that it had sued Captain Wilson when it filed its Proposed Resolution Memorandum, that is not a “new fact” sufficient to justify our considering Hinds’ Reconsideration Petition because the mere fact that suit has been filed is irrelevant. See Hinds Reconsideration Petition at 1.

²⁸ Quest Communications Corp., *Third Order on Reconsideration*, 25 FCC Rcd 3422 (2010); see also James Kay, Jr., *Order on Reconsideration*, 19 FCC Rcd 2938, 2940 (WTB 2004) (argument did not rely on any new facts or changed circumstances), *affirmed*, James A. Kay, Jr. *Order*, 20 FCC Rcd 12228 (2005); See also S&L Teen Hospital Shuttle, *Order on Reconsideration*, 17 FCC Rcd 7899, 7900 (2002); Romar Communications, Inc., *Memorandum Opinion and Order on Reconsideration*, 23 FCC Rcd. 2512, 2513 (2008).

²⁹ See, e.g., Toll Free Service Access Codes, *Order on Reconsideration*, 22 FCC Rcd 22188, 22192-22193 (2007); Feature Group IP Petition for Forbearance, *Order on Reconsideration*, 25 FCC Rcd 8867, 8868 (2010); City of Boynton Beach, Florida, *Memorandum Opinion and Order*, 25 FCC Rcd 4551, 4552 (PSHSB 2010); Comcast Corp. and AT&T Corp., *Order on Reconsideration*, 25 FCC Rcd. 3492, 3493 (2010).

19. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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