

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

In the Matter of)	
)	
JNE Investments, Inc.)	File No. BNP-20040128APK
Application for New AM Station at Bethel, MN)	Facility ID No. 160772
)	
and)	
)	
Langer Broadcasting Group, LLC)	File Nos. BNP-20040130BJT
Application for New AM Station at Chanhassen,)	BNP-20071228AAE
MN)	Facility ID No. 161523

MEMORANDUM OPINION AND ORDER

Adopted: December 10, 2014

Released: December 11, 2014

By the Commission:

1. The Commission has before it an Application for Review by JNE Investments, Inc. (“JNE”), applicant for a new AM broadcast station at Bethel, Minnesota. JNE seeks review of a Media Bureau (“Bureau”) decision which denied reconsideration of the dismissal of JNE’s application and of the grant of a mutually exclusive application by Langer Broadcasting Group, LLC (“Langer”) for a new AM station at Chanhassen, Minnesota.¹ For the reasons below, we dismiss the Application for Review.

2. An application for review must be filed within 30 days of public notice of the action at issue, as defined by Section 1.4(b) of the Commission’s Rules.² The Bureau gave public notice of the *Decision* on November 14, 2011,³ and JNE’s April 5, 2012 submission is thus late by about four months. JNE argues, however, that its filing should be considered because it “is being filed within thirty days of the date of mailing of the Audio Division’s letter,” referring to a Commission envelope bearing the postmark date of March 7, 2012, provided as Exhibit A to the Application for Review.⁴

3. We cannot determine any reason that the *Decision* mailed to counsel was allegedly not postmarked until almost four months after its release. Nevertheless, the Bureau released a timely public

¹ *Christopher D. Imlay, Esq.*, Letter (MB Nov. 8, 2011) (“*Decision*”). The Bureau based its analysis of these AM Auction 84 applications on procedures in effect prior to *Rural Radio*, aiming to fairly distribute radio service among communities pursuant to Section 307(b) of the Communications Act of 1934, as amended. *See* 47 U.S.C. § 307(b); *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd 2672, 2575 (2011) (exempting Auction 84 applicants from revised procedures) (“*Rural Radio*”). Under the applicable priorities, the Bureau determined that JNE and Langer each qualified for a preference under Priority 3 (each providing a first local transmission service) but that Chanhassen with a population approximately 50 times larger than that of Bethel was entitled to a preference under the population-based tie-breaker component of Priority 3. *See Decision* at 4, n.21, citing *Royce International Broadcasting Co.*, Memorandum Opinion and Order, 24 FCC Rcd 5880, 5889, n. (2009). On review, JNE argues that the respective proposals were alike through Priority 3 and should have been resolved under Priority 4 (other public interest benefits).

² 47 C.F.R. §§ 1.4(b) and 1.115(d).

³ *See Broadcast Applications*, Public Notice, Report No. 27612, 2011 WL 5519417 (Nov. 14, 2011).

⁴ *See* Application for Review at 1-2, and Appendix A.

notice of the decision and, in this situation, Section 1.4(b) of the Rules computes filing deadlines from the date of the issuance of the public notice, not from the date of mailing of the Commission document taking the action at issue.⁵ Lack of actual service can nevertheless be grounds for waiver of the filing deadline if, as described in the *Gardner* case, Commission action made it impossible for a party to meet the deadline.⁶ To establish this causal connection, petitioners have the burden to show: (a) when and how they received notice in fact, (b) that the time remaining was inadequate to allow them reasonably to meet the 30-day requirement from date of issuance, and (c) that they moved for reconsideration promptly on receiving actual notice.⁷ Because parties typically become aware of decisions in a variety of ways before an official letter arrives from the agency, “it will be an extraordinary case . . . where a petitioner can meet that burden.”⁸

4. JNE’s application for review fails to meet this burden. Its argument consists of a one-sentence statement that “[a]s this Application for Review is being filed within thirty days of the date of the mailing of the [Bureau’s] letter, this Application for Review should be considered timely filed pursuant to Section 1.115(d) of the Commission’s Rules.”⁹ JNE fails to present any information relating to the three *Gardner* criteria. It has utterly failed to demonstrate, as required by *Gardner*, that the alleged late mailing of the Decision made it impossible for it to have timely filed its Application for Review. Accordingly, we find insufficient grounds for waiver and will dismiss JNE’s filing as untimely.

5. Accordingly, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,¹⁰ and Section 1.115(g) of the Commission’s Rules,¹¹ the Application for Review filed by JNE Investments, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵ See 47 C.F.R. § 1.4(b)(4) and (5).

⁶ See *Gardner v. FCC*, 530 F.2d 1086, 1092 (D.C. Cir. 1986) (“*Gardner*”).

⁷ *Id.* at 1092, n.24.

⁸ *Id.*

⁹ Application for Review at 1-2.

¹⁰ 47 U.S.C. § 155(c)(5).

¹¹ 47 C.F.R. § 1.115(g).