

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

In the Matter of )
)
TRANSIT MIX CONCRETE AND )
MATERIAL COMPANY ) FCC File No. D132591
)
Assignment of License for Station WNQJ776, )
Huntsville, Texas )
)
Request for Renewal of License for Station )
WNQJ776, Huntsville, Texas )

ORDER

Adopted: October 17, 2000

Released: October 19, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. Introduction. We have before us a petition for reconsideration (Petition) filed by Transit Mix Concrete and Material Company (Transit Mix) on February 14, 2000. Transit Mix requests reconsideration of the dismissal of the above-captioned application by the Chief, Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division. The subject application requested assignment of the license for Station WNQJ776 from Lafarge Concrete (Lafarge) to Transit Mix. For the reasons discussed herein, we deny the Petition. In addition, we dismiss Lafarge's associated request for renewal of the license for Station WNQJ776.

2. Background. On September 18, 1999, Lafarge's license for 800 MHz Business Radio Service Station WNQJ776 in Huntsville, Texas expired by its terms because Lafarge had failed to submit a renewal of license application prior to the scheduled date of expiration for its Station WNQJ776 license. On October 14, 1999, Transit Mix filed an FCC Form 600, signed by Richard L. Smith, Jr. of Transit Mix, seeking a license for Station WNQJ776. Attached to the FCC Form 600 was a completed FCC Form 1046, signed by Richard Townsend of LaFarge, requesting assignment of the license for Station WNQJ776 from Lafarge to Transit Mix. Upon review of both submissions, the Branch determined that the license for Station WNQJ776 had expired, whereupon the Branch dismissed the applications on the basis that an expired license could not be assigned.

1 Petition for Reconsideration (filed Feb. 14, 2000) (Petition).

2 Id. at 1.

3 FCC Form 600 is the application form for a Mobile Radio Service authorization.

4 FCC Form 1046 is the application form for an assignment of a station license.

5 Notice of Application Dismissal Letter, dated January 25, 2000, from Chief, Licensing and Technical Analysis Branch to Transit Mix Concrete and Material Company.

3. In its Petition, Transit Mix states that “. . . there is no specific Commission Rule Section or notification . . . stating that station reinstatement and reassignment cannot be requested on one and/or the same FCC Form 600 application.”<sup>6</sup> Transit Mix, therefore, contends that neither it nor Lafarge had any basis to know that the application would be deemed defective by the Commission.<sup>7</sup> Attached to the Petition was a completed application FCC Form 600, dated February 3, 2000, and signed by Dickie Schilhab, Vice-President and General Manager of Lafarge, requesting reinstatement of license for Station WNQJ776.<sup>8</sup>

4. *Discussion.* Based on our review of the record, we find that the Branch’s action in this matter was correct. In the instant Petition, Transit Mix claims that LaFarge’s intention was to apply for reinstatement of the license for Station WNQJ776 and, simultaneously, to assign the license to it, Transit Mix.<sup>9</sup> We note, as an initial matter, that the Commission’s rules no longer provide for reinstatement of expired licenses. Thus, to the extent that Transit Mix contends that the October 14, 1999 application should be treated as a reinstatement application, we find that it must be dismissed as defective on the basis that the Commission’s rules no longer provide for the filing of such applications.

5. We nonetheless note that the Commission has adopted a policy regarding the treatment of late-filed renewal applications in the wireless services.<sup>10</sup> Under this policy, renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under our rules. The licensee, however, may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.<sup>11</sup> Applicants who file renewal applications more than thirty days after the license expiration date may also request that the license be renewed *nunc pro tunc*. Such requests, however, will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.<sup>12</sup>

6. To the extent that Lafarge contends that the October 14, 1999 application was intended to be a late-filed renewal application, we conclude that it must be dismissed. In this connection, we find that the FCC Form 600 application is defective because it was not signed by LaFarge, the licensee of record. In this regard, we note that Transit Mix signed the FCC Form 600 as the applicant and did not have standing to request renewal of a license that it did not possess. Further, we are not persuaded by Transit Mix’s contention that Lafarge, as assignor, was a party to the October 14, 1999, filing and had requested reinstatement of Station WNQJ776 by virtue of Mr. Townsend’s signature on the associated FCC Form

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<sup>6</sup> Petition at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission’s Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 (1999).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 11486. In determining whether to grant a late-filed renewal application, we take into consideration all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee. *Id.* at 11485.

1046.<sup>13</sup> We find that a licensee's signature on an associated FCC Form 1046 does not constitute a proper request for renewal of a license. The purpose of FCC Form 1046 is to assign an existing and valid authorization.<sup>14</sup> As a result, we conclude that the FCC Form 1046 may not be used to apply for renewal of a license.<sup>15</sup> Thus, we concur with the Branch's determination that the October 14, 1999 application was not a renewal application for Station WNQJ776 and find that its subsequent dismissal of the application was correct.

7. In addition, we note that Transit Mix submitted a FCC Form 600, signed by a Lafarge representative, in connection with its Petition. We find that the February 14, 2000 FCC Form 600 is a late-filed renewal application that should be analyzed under the Commission's policy for treatment of such applications. In this regard, we note that this renewal application was submitted more than thirty days after the expiration of the license for Station WNQJ776. Transit Mix argues that it should receive the same relief as the licensees in *Andrea Hall*.<sup>16</sup> We have reviewed *Andrea Hall* and find it to be inapposite to this matter. Unlike the licensees in *Andrea Hall*,<sup>17</sup> Lafarge did not submit a waiver request seeking our acceptance of its late-filed renewal application. In the absence of such waiver request, we conclude that Lafarge's request for renewal of the license for Station WNQJ776 must be dismissed as defective because it was submitted after the expiration of the license.<sup>18</sup>

8. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, that the petition for reconsideration, filed by Transit Mix Concrete and Material Company on February 14, 2000, IS DENIED.

9. IT IS FURTHER ORDERED, pursuant to Sections 4(I) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(I), 309, that the FCC Form 600, dated February 3, 2000 and

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<sup>13</sup> See Petition at 2.

<sup>14</sup> See 47 C.F.R. §§ 1.913, 1.948 (1999). FCC Form 603 is now used for filing an application for assignment of license and transfer of control of entities holding authorizations.

<sup>15</sup> See *Applications of Metacomm Cellular Partners, et. al., Order*, 13 FCC Rcd 12192 (WTB 1998) (Metacomm). In Metacomm, the Bureau determined that the filing of Form 489 was not an appropriate means of seeking authorization to construct new cell sites. Rather, "[w]here Commission authorization is required for a cellular licensee to add a new cell site, the licensee must seek authorization by filing a Form 600 . . ." *Id.* at 12198. The Bureau rejected Metacomm's argument that its Form 489 submission was an application, stating that Metacomm misunderstood the purpose of Form 489. *Id.*

<sup>16</sup> See *Andrea Hall and David Fitts, Order*, 15 FCC Rcd 710 (CWD 2000).

<sup>17</sup> See *id.*

<sup>18</sup> 47 C.F.R. §§ 1.934(d) and (f) (1999).

submitted as an attachment to Transit Mix Concrete and Material Company's petition for reconsideration, IS DISMISSED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau