

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

In the Matter of )  
 )  
Prime Time Transportation, Inc. )  
 )  
Petition for Reconsideration of Cancellation )  
of Private Land Mobile Radio Station )  
WNME222, New York, New York )

ORDER ON RECONSIDERATION

Adopted: November 29, 2000

Released: December 1, 2000

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

I. INTRODUCTION

1. On May 3, 2000, Prime Time Transportation, Inc. (Prime Time) filed a Petition for Reconsideration (Petition) of a determination that its authorization to operate Station WNME222, New York, New York had cancelled automatically.<sup>1</sup> On April 3, 2000, Prime Time received a letter from the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division (Division) notifying Prime Time of the status of its authorization to operate Station WNME222.<sup>2</sup> For the reasons set forth below, we grant the Petition.

II. BACKGROUND

2. On November 11, 1998, an assignment application was granted providing Prime Time authorization to operate a private land mobile radio (PLMR) system on Station WNME222 in New York, New York.<sup>3</sup> On January 14, 1999, Prime Time submitted a modification application seeking to relocate its transmitter, which was granted on May 10, 1999.<sup>4</sup> The Branch sent two letters to Prime Time, dated June 16, 1999, and October 6, 1999, to determine whether Station WNME222 had been constructed. On April 3, 2000, the Branch notified Prime Time of the automatic cancellation of its license for Station WNME222 due to its failure to inform the Commission whether Prime Time met its construction obligation.<sup>5</sup> In its

<sup>1</sup> Petition for Reconsideration filed by Prime Time Transportation, Inc. on May 3, 2000 (Petition).

<sup>2</sup> See Letter from Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Yury Kandov, Prime Time Transportation, Inc. (Apr. 3, 2000) (Branch Letter).

<sup>3</sup> FCC File No. 9704R203466. Prime Time was licensed to operate on frequencies 896.1625 MHz and 935.1625 MHz.

<sup>4</sup> FCC File No. 9901D120464.

<sup>5</sup> See Branch Letter.

Petition, Prime Time states that it mailed a response to the October 6, 1999, letter informing the Commission that the station had been fully constructed since May 10, 1999.<sup>6</sup> Our licensing records, however, do not reflect the receipt of any such correspondence.

### III. DISCUSSION

3. Prime Time states that the Branch erred in its conclusion that the license for Station WNME222 automatically cancelled for failure to place its station in operation within one year.<sup>7</sup> As support, Prime Time asserts that a certification accompanied the assignment application, which provided that Station WNME222 had been constructed since July 1998.<sup>8</sup> Therefore, Prime Time concludes that at the time of assignment and authorization, its construction requirements were satisfied.<sup>9</sup> Prime Time also states that a reference by the Branch to an incorrect grant date requires reconsideration of the Branch decision.<sup>10</sup> Furthermore, Prime Time asserts that the construction inquiry letters were improperly issued because the prior licensee submitted a construction certification upon assignment of the license to Prime Time.<sup>11</sup> Prime Time also notes that the Commission granted its modification application to relocate its transmitter on May 10, 1999.<sup>12</sup> Additionally, Prime Times offers an affidavit indicating that it submitted a letter on October 15, 1999, informing the Commission that its station was up and running as of May 10, 1999.<sup>13</sup> Prime Time argues that the automatic cancellation determination was in error and should be reconsidered in light of the information provided.<sup>14</sup> We agree.

4. Sections 90.631(e)-(f) and 90.633(c)-(d) of the Commission's Rules requires licensees for trunked or conventional facilities to place their stations in operation within one year to avoid automatic cancellation of the authorizations.<sup>15</sup> Prime Time states that it had in fact responded to the second letter, dated October 6, 1999. Neither Prime Time nor our records, however, adequately substantiates this claim. We remind Prime Time that it is incumbent upon the licensee to exercise the requisite due diligence to ensure that correspondence sent to the Commission is, in fact, received by the Commission.<sup>16</sup> Consequently,

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<sup>6</sup> See Petition at 1-2.

<sup>7</sup> See Petition at 1-2.

<sup>8</sup> *Id.* at Exhibit 2-B.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 2.

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

<sup>12</sup> *Id.* at Exhibit 2.

<sup>13</sup> *Id.* at Exhibit 2.

<sup>14</sup> *Id.*

<sup>15</sup> 47 C.F.R. §§ 90.631(f), 90.633(c).

<sup>16</sup> Indeed, under the Rules, applicants have the option to receive a date-stamped copy indicating receipt by the Commission. See *Federal Express Corporation, Memorandum Opinion and Order*, 15 FCC Rcd 4289, 4292-93 ¶¶ 13 (WTB PSPWD 2000) (noting that copies of an application or other filing may be date-stamped as proof of receipt); see also *Guidelines For Uniform Filings, Public Notice* (rel. Jan. 10, 1997).

we reject this argument as sufficient basis for overturning the Branch's determination.

5. More importantly, examination of Prime Time's initial authorization and modification application shows that Prime Time has not violated the Commission's construction rules. With respect to Prime Time's initial authorization, the assignor certified in the assignment application that Station WNME222 had been constructed.<sup>17</sup> Another construction requirement began to toll with the grant of Prime Time's modification application, which was granted on May 10, 1999.<sup>18</sup> Prime Time had until May 10, 2000 to construct the modified station.<sup>19</sup> Prime Time's authorization was cancelled on April 3, 2000, before the deadline for construction. Based on these facts, we find that the Branch erred in determining that Prime Time's license had cancelled automatically.

#### IV. CONCLUSION

6. Because Prime Time's modification application was granted on May 10, 1999, we have determined that the Branch sought construction notification prematurely by requesting construction notification on June 19, 1999 and October 6, 1999. Therefore, we conclude that Prime Time's license should be reinstated.

#### V. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by Prime Time Transportation, Inc. on May 3, 2000, IS GRANTED.

8. IT IS FURTHER ORDERED that the Branch reinstate Prime Time Transportation, Inc.'s authorization to operate Station WNME222 in New York, New York.

9. 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

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<sup>17</sup> FCC File No. 9704R203466.

<sup>18</sup> FCC File No. 9901D120464.

<sup>19</sup> 47 C.F.R. §§ 90.631(f), 90.633(c).

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