

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

In the Matter of)
)
San Mateo County Transit District)
)
Request for Reinstatement of License for Private)
Land Mobile Station KYC941)
)
Petition to Deny Applications¹ A051076,)
A051888, A052212, A052524, and A052342² of)
John Gronemeier d/b/a Bay Communications)

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 2000

Released: December 21, 2000

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

I. INTRODUCTION

1. We have before us two petitions, a Petition for Reinstatement³ of its authorization to operate Station KYC941 and a petition to deny⁴ an application submitted by Mr. John Gronemeier, d/b/a/ Bay Communications, to license frequency pairs 483/486.1875, 483/486.2375, 483/486.2625, and 483/486.2875 MHz. On November 12, 1999, we cancelled Samtrans' authorization to operate Station KYC941, on the following frequency pairs: 483/486.1875, 483/486.2375, 483/486.2625, and 483/486.2875 MHz. This cancellation was unbeknownst to Samtrans for over four months, until March 22, 2000.⁵ Meanwhile, between February 22, 2000 and March 16, 2000, Mr. Gronemeier submitted five applications to license the same frequency pairs that were authorized to Samtrans under Station KYC941. In light of the cancellation of Samtrans' license for Station KYC941, Samtrans requested a special temporary authorization (STA) to continue operating the facility. Samtrans' STA was renewed on

¹ These applications were consolidated into File No. A051076.

² In File Nos. A052342 and A052524, Mr. Gronemeier sought to license the same frequency pair, 483/486.2875 MHz.

³ Petition for Reinstatement of License filed by San Mateo County Transit District (Samtrans) on April 3, 2000 (*Petition for Reinstatement*). Supplement to its Petition for Reinstatement filed by Samtrans on April 24, 2000 with attached letter from Mr. Frank Burton, dated April 21, 2000 (*April 21 Letter*). Supplement to its Petition for Reinstatement filed by Samtrans on May 1, 2000 with attached letter from Mr. Frank Burton, dated April 28, 2000 (*April 28 Letter*).

⁴ Petition to Deny filed by Samtrans on March 31, 2000 (*Petition to Deny*). Supplement to the Petition to Deny filed by Samtrans on July 10, 2000 (*Supplement to Petition to Deny*).

⁵ Petition for Reinstatement at 1.

September 24, 2000⁶ and expires on March 24, 2001. For the reasons set forth herein, we grant both petitions.

II. BACKGROUND

2. Samtrans is a public transportation operator that provides bus service throughout San Mateo County, California to over 60,000 daily passengers, including school children.⁷ Samtrans was licensed to operate Station KYC941 in 1980, and the station was constructed and fully loaded a short time thereafter.⁸ Samtrans uses Station KYC941 for the radio communications for its fleet of over 400 buses and related vehicles.⁹ On November 26, 1997, Samtrans filed an application to modify its license to relocate one of its base stations, site 3.¹⁰ Then, six months later, on May 19, 1998, we renewed Samtrans' license to operate Station KYC941 until June 8, 2003.¹¹

3. Because Samtrans modified its license on November 26, 1997, it was required under Section 90.167 of the Commission's Rules to implement such modification by November 26, 1998, one year from the date it was authorized to modify its license. The period of time between the date of grant of an authorization and the date of required commencement of service or operations is the construction period.¹² To determine whether a licensee is complying with the construction requirements, the Branch routinely sends out computer-generated construction notification form letters, specifically Forms 800A, 800B, and 800H. Form 800A is sent near the end of the construction period and requests the licensee to confirm that the construction has been completed.¹³ In the event that the licensee does not respond after two such notices (Forms 800A and 800B), a final computer-generated notice (Form 800H) is mailed indicating that the license will be terminated if a response is not received within a stated time.¹⁴

⁶ *Petition for Reinstatement* at 1.

⁷ *Petition for Reinstatement* at 4.

⁸ *April 21 Letter* at 1.

⁹ *Petition for Reinstatement* at 4.

¹⁰ Application File No. 9706D084877. Site 3 is also known as site C, and was relocated to coordinates 37-41-32/122-26-50. *See*, Letter from Frank Burton, Administrator, Bus Communications Systems, Samtrans, to Mary M. Shultz, Licensing and Technical Analysis Branch, Federal Communications Commission (April 28, 2000).

¹¹ Application File No. 9805R304314.

¹² 47 C.F.R. § 1.946 (1999).

¹³ In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool, *Third Report and Order*, GN Docket No. 93-252, PR Docket No. 93-144, PR Docket No. 89-553, 9 FCC Rcd 7988, 8120 ¶(1994).

¹⁴ *Id.*

4. On November 26, 1998, the Licensing and Technical Analysis Branch (Branch) sent Form 800A to Samtrans. When Samtrans did not respond, it sent Form 800B. Again, Samtrans did not respond. Finally, on June 16, 1999, the Branch sent Form 800H indicating that the Samtrans authorization to operate Station KYC941 would be cancelled; in fact, such action was taken, on November 12, 1999.¹⁵ Samtrans maintains that it did not receive any of these letters and did not discover that its license had been cancelled until March 22, 2000.¹⁶ According to Samtrans, when it discovered that its license had been cancelled, it immediately requested an STA to continue to operate Station KYC941, which was granted on March 24, 2000.¹⁷

5. Between February 22, 2000 and March 16, 2000, John Gronemeier, d/b/a Bay Communications submitted five applications seeking to license frequency pairs, 483/486.1875, 483/486.2375, 483/486.2625, and 483/486.2875, the same frequency pairs that had been authorized to Samtrans under Station KYC941.¹⁸ On March 15, 2000, Mr. Gronemeier sent a letter to the Branch indicating that a large state-wide utility had asked him to supply facilities to accommodate approximately 2800 units that were being displaced from the lower UHF channels.¹⁹ On the same day, March 15, 2000, the Branch returned Mr. Gronemeier's applications, indicating that Mr. Gronemeier was required to show that "an assigned frequency pair is at full capacity before it may be assigned a second or additional frequency pair."²⁰ The Branch further requested that Mr. Gronemeier provide frequency justifications in full detail as required by Section 90.313 of the Commission's Rules, 47 CFR § 90.313.²¹ On April 10, 2000, Mr. Gronemeier responded to the Branch's March 15, 2000 letter.²²

6. On March 31, 2000, Samtrans simultaneously filed two pleadings, a Petition for Reinstatement pursuant to Section 1.41 of the Commission's Rules, and a Petition to Deny, pursuant to Section 1.939 of the Commission's Rules. In its Petition for Reinstatement, Samtrans seeks to have its authorization to operate Station KYC941 reinstated.²³ In its Petition to Deny, Samtrans requests that we

¹⁵ *Petition for Reinstatement* at 1.

¹⁶ *Petition for Reinstatement* at 1.

¹⁷ *Petition for Reinstatement* at note 1. Samtrans' STA was renewed on September 24, 2000 and currently expires on March 24, 2001.

¹⁸ File Nos. A051076, A051888, A052212, A052524, and A052342. In File Nos. A052342 and A052524, Mr. Gronemeier sought to license the same frequency pair, 483/486.2875 MHz.

¹⁹ Letter from Mr. John Gronemeier to Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (March 15, 2000) (*March 15 letter*) at 1.

²⁰ Return Notice for the Private Land Mobile Radio Services from the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Mr. John Gronemeier for File Nos. A051076, A051888, A052212, and A052524 (March 15, 2000) (*Notice Letters*).

²¹ *Id.*

²² Letter from Mr. John Gronemeier to Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (April 10, 2000) (*April 10 letter*) at 1.

²³ *Petition for Reinstatement* at 1.

deny Mr. Gronemeier's five applications seeking the same frequency pairs as were authorized to Samtrans under Station KYC941.²⁴

III. CONTENTIONS OF THE PARTIES

7. *Petition for Reinstatement.* In its Petition for Reinstatement, Samtrans maintains that Station KYC941 was fully constructed within the required time period.²⁵ To support this contention, Samtrans states that Samtrans' license to operate Station KYC941 would not have been renewed on May 19, 1998, less than one year after it applied to modify its license on November 26, 1997, because a license is renewed only if a station is fully constructed.²⁶ Samtrans argues that the May 19, 1998 renewal of its license, therefore, is prima facie evidence that Station KYC941 was fully constructed.²⁷ To further support its position, Samtrans presents a statement from Mr. Frank Burton, Samtrans' Communication Systems Administrator, stating that site 3 was relocated in 1997, well within the required construction period.²⁸ Samtrans further maintains that it never received any of the construction notices, Forms 800A, 800B, and 800H.²⁹ To support this allegation, Samtrans submits a statement from Mr. Frank Burton³⁰ and a statement from Mr. Steven Green,³¹ the Radio Systems Engineer for the County of San Mateo, California, indicating that neither one of them received the construction notices.

8. Samtrans argues that the cancellation of its license to operate Station KYC941 is a "grossly inappropriate punishment where the licensee has in fact constructed and loaded its system, but simply fails to confirm" this fact to the Commission, especially when the licensee has no record of receiving correspondence from the Commission.³² Samtrans further argues that reinstating its license is consistent with the public interest, convenience, and necessity.³³ In this regard, Samtrans notes that this station supports Samtrans' radio communications for its fleet of over 400 transit buses and related vehicles.³⁴ The bus system carries over 60,000 passengers every day, including school children.³⁵ The bus drivers must be able to call for immediate assistance in case of criminal activity, medical emergencies, accidents, or other

²⁴ *Petition to Deny* at 1.

²⁵ *Petition for Reinstatement* at 1.

²⁶ *Petition for Reinstatement* at 3.

²⁷ *Id.*

²⁸ *Petition for Reinstatement*, Exhibit B, Statement of Mr. Frank Burton at 1.

²⁹ *Petition for Reinstatement* at 2.

³⁰ *Petition for Reinstatement*, Exhibit B, Statement of Mr. Frank Burton at 1.

³¹ *Petition for Reinstatement*, Exhibit B, Statement of Mr. Steven Green at 1.

³² *Petition for Reinstatement* at 3.

³³ *Petition for Reinstatement* at 4.

³⁴ *Id.*

³⁵ *Id.*

events.³⁶ Lastly, Samtrans argues that no other licensee will be harmed by reinstating its license because the frequencies in question have not yet been licensed to anyone else.³⁷

9. *Petition to Deny.* In its *Petition to Deny*, Samtrans argues that we should deny Mr. Gronemeier's applications to license the same frequency pairs as were authorized to Samtrans under Station KYC941.³⁸ In addition to the same arguments that it makes in its *Petition for Reinstatement*, Samtrans argues that Mr. Gronemeier's applications should be denied because those applications and Samtrans *Petition for Reinstatement* are mutually exclusive.³⁹ Samtrans states that because its license was erroneously cancelled, its frequencies should not have been made available to any other applicant.⁴⁰ Samtrans alleges that the Commission's policy of sending construction notices to licensees that have recently renewed their licenses may have been the reason for the cancellation.⁴¹ Samtrans contends that Mr. Gronemeier's applications are defective and asks us to take judicial notice of Mr. Gronemeier's history of seizing frequencies that become available due to inadvertent cancellation.⁴² Samtrans further alleges that Mr. Gronemeier's April 10, 2000 letter responding to the Branch's inquiry was non-responsive and his applications should therefore be dismissed because the 60-day time period in which to make an appropriate response has expired.⁴³

IV. DISCUSSION

10. Based on our review of the pleadings in this matter, we believe Samtrans' license should be reinstated. With respect to the sites other than Site 3 authorized under the license for Station KYC941,⁴⁴ the May 19, 1998 grant of the renewal application for Station KYC941 implicitly concluded that the station was validly constructed and operating. At most, the proper remedy for failing to respond to the construction letters would have been to delete site 3 from the license, not Samtrans' entire license to operate Station KYC941.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Petition to Deny* at 1-2.

³⁹ *Petition to Deny* at 2.

⁴⁰ *Petition to Deny* at 3.

⁴¹ *Id.* The Commission does not, in fact, routinely send construction notices to licensees who are merely renewing their licenses. In this case, construction notices were sent to Samtrans, not because it renewed its license on May 19, 1998, but because it modified its license on November 27, 1997.

⁴² *Petition to Deny* at 3-4.

⁴³ *Supplement to Petition to Deny* at 3.

⁴⁴ Samtrans argues that Samtrans' renewal of its license on May 19, 1998, is prima facie evidence that the construction was completed because the Commission does not renew a license unless the station is fully constructed. The grant of the renewal application did not constitute a finding that Site 3 had been modified because the time for Samtrans to complete the modification had not yet run.

11. With regard to the status of the authorization for site 3, we note, as an initial matter, that the Commission has stated previously:

We agree with FCBA and other commenters that the purpose of our construction notification procedure should be to verify whether licensees have in fact met their construction and coverage obligations, not to terminate licenses for legitimately operating facilities based on a failure to notify by the licensee that could be the result of a mailing error. This policy is reflected in the fact that our proposed rule provides for automatic license termination not based on whether the Commission has received confirmation of construction, but based on actual failure by the licensee to meet its construction or coverage deadline. Nevertheless, if a licensee fails to confirm timely construction, we believe it is reasonable to initiate the license termination process as proposed.⁴⁵

In this case, a lack of a response to the 800A, 800B, and 800H letters regarding Station KYC941 were reasonably construed as evidence that the facility was not constructed. While we note that Samtrans contends that two of its representatives did not receive the correspondence, our records indicate that the letters were sent to the address of record. As a result, we remind Samtrans that under the Commission's Rules, Samtrans has the duty to furnish the Commission with a valid mailing address and that it must make "any arrangements which may be necessary to assure that Commission documents or correspondence delivered to [the address of record] will promptly reach him or some person authorized to act in his behalf."⁴⁶ Samtrans has represented that site 3 was relocated in 1997, prior to the November 26, 1998 deadline for modifying the station.⁴⁷ The record does not provide any basis for questioning that representation. Moreover, we note that Station KYC941 authorizes Samtrans' only radio communications for its fleet of over 400 buses and related vehicles. Under the totality of the circumstances presented, we believe it is appropriate to reinstate Samtrans' license, including the authorization for site 3.

12. Given that we are reinstating Samtrans' license to operate Station KYC941, the frequencies are not available to another entity. Thus, Mr. Gronemeier's applications should be dismissed.

V. ORDERING CLAUSES

13. For the reasons discussed herein, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. §§ 1.41, the Petition for Reinstatement, filed on April 3, 2000, and the Petition to Deny, filed on March 31, 2000, by the San Mateo County Transit District are GRANTED.

14. IT IS FURTHER ORDERED that the Licensing and Technical Analysis Branch SHALL REINSTATE Samtrans' license to operate KYC941, consistent with this Memorandum Opinion and Order.

⁴⁵ Biennial Regulatory Review – Universal Licensing System, *Report and Order in WT Docket 98-20*, 13 FCC Rcd 21027, 21076 ¶ 106 (1998).

⁴⁶ 47 C.F.R. §1.5.

⁴⁷ See Letter Dated April 28, 2000 from Mr. Frank Burton, Administrator, Bus Communications Systems, to Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

15. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(d), and Section 1.939 of the Commission's Rules, 47 C.F.R. 1.939, that the Licensing and Technical Analysis Branch SHALL DISMISS Mr. Gronemeier's applications File Nos. A051076, A051888, A052212, A052524, and A05242, consistent with this Memorandum Opinion and Order.

16. 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