

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

In the Matter of
D/FW Communications Services, Inc
Request for Waiver and Application
to Renew Trunked Business Station
WPGW865, Dallas/Fort Worth, Texas
FCC File No. D148329

ORDER ON RECONSIDERATION

Adopted: June 27, 2001 Released: June 29, 2001

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

1. Introduction. On February 26, 2001, D/FW Communications Services, Inc. (D/FW) filed a petition for reconsideration of a decision by the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch), regarding the denial of its waiver request and dismissal of its late-filed renewal application. For the reasons set forth below, we deny D/FW's petition.

2. Background. D/FW is a non-profit cooperative association of fifty-eight members established for the purpose of sharing two-way radio communication service on a cost-sharing basis. The membership is comprised of ambulance; tow truck, excavating service companies, as well as plumbing and electrical businesses. On April 10, 1995, the Commission granted D/FW a license to operate Station WPGW865, Dallas/Fort Worth, Texas. The authorization expired on April 10, 2000. On September 6, 2000, D/FW submitted the above-captioned application and request for waiver of Sections 1.949 and 90.149 of the Commission's Rules seeking renewal of its license to operate Station WPGW865. On January 30, 2001, the Branch denied D/FW's waiver request and dismissed the application because D/FW filed its application nearly five months past the renewal date. The Branch stated that D/FW did not provide sufficient reasoning upon which to justify a waiver of Sections 1.949 and 90.149 to allow submission of a renewal application after the license had expired. On February 26, 2001, D/FW requested reconsideration of the Branch's decision.

3. Discussion. Section 405 of the Communications Act, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on

1 Petition for Reconsideration filed on February 26, 2001 (Petition).

2 Petition at 1.

3 See D/FW Communications Services, Inc., Request for Waiver of Section 1.949 and 90.149 (filed Sept. 6, 2000).

4 See Licensing and Technical Analysis Branch letter of January 30, 2000.

5 Id.

6 Petition at 1.

reconsideration.⁷ Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁸ A petition that simply restates arguments previously considered and rejected will be denied.⁹

4. In the instant petition, D/FW reiterates the reason for its late-filed renewal by stating that D/FW had just recently moved and therefore did not receive the Commission's computer-generated renewal notice.¹⁰ D/FW also states, as it did earlier, that granting of the petition would be in the public interest because members of the cooperative all serve the public in their daily operations, no one will be harmed by the grant of its petition, and it is an efficient use of limited radio spectrum.¹¹ We find no new information, evidence or unique circumstances articulated in D/FW's petition to warrant reversal of the Branch's action.

5. In addition, we believe that the Branch correctly denied D/FW's request for waiver of Sections 1.949 and 90.149 of the Commission's Rules. A waiver may be granted where the applicant demonstrates that: (a) 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 (b) 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.¹² Based on our review of this matter, we conclude that reversal of the Branch's decision is not warranted.¹³

6. Should D/FW wish to obtain a valid authorization for this station, it must file a new, properly coordinated application.¹⁴ Furthermore, if D/FW desires to continue operating this facility until it receives a new authorization, it must obtain authorization to do so.¹⁵

7. 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, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration submitted by D/FW Communications Services, Inc., on February 26, 2001, IS DENIED.

⁷ 47 U.S.C. § 405.

⁸ *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106(c).

⁹ *WWIZ, Inc.*, 37 FCC at 686; *Gains, Bennett Gilbert*, 8 FCC Rcd 3986 (Rev. Bd. 1993); 47 C.F.R. § 1.106.

¹⁰ Petition at 2. D/FW further claims that the staff member assigned to handle the renewal became so desensitized to the Bureau's letters that it ignored misdirected correspondence and consequently, in doing so, may have overlooked the renewal notice. *Id.*

¹¹ *Id.* at 4-5.

¹² 47 C.F.R. § 1.925(b)(3)(i), (ii).

¹³ See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 21027, 21073 ¶ 98 (1998) (“not receiving a renewal reminder notice does not excuse the licensee's failure to seek a timely renewal”).

¹⁴ See 47 C.F.R. § 90.175.

¹⁵ See 47 C.F.R. § 1.931.

8. 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

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