

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

In the Matter of Application of)	
)	
SAN FRANCISCO IVDS, INC.)	File No. R393705
)	
To Renew the License for)	
Station KIVD0012, San Francisco,)	
California in the 218-219 MHz Service)	

MEMORANDUM OPINION AND ORDER

Adopted: October 10, 2001

Released: October 12, 2001

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

I. INTRODUCTION

1. On September 6, 2000, San Francisco IVDS, Inc. (San Francisco) filed a petition seeking reinstatement and grant of its license renewal application for Station KIVD0012, San Francisco, California, in the 218-219 MHz Service.¹ In conjunction with its request, San Francisco also requested a waiver of Sections 1.949(a) and 1.955(a)(1) of the Commission's Rules to permit such a late-filed license renewal application.² In addition, on October 19, 2000, San Francisco submitted a request for special temporary authority (STA) to operate Station KIVD002. For the reasons discussed below, we deny San Francisco's Petition. However, we grant San Francisco's request for an STA for thirty days to conduct field tests.³

II. BACKGROUND

2. On March 28, 1994, Raveesh K. Kumra was granted a 218-219 MHz Service license to operate Station KIVD0012 in the San Francisco, California, market.⁴ At that time, the license term for 218-219 MHz Service licenses was five years.⁵ In 1996, Kumra assigned the license to San Francisco.⁶

¹ Petition of San Francisco IVDS, Inc. for Reinstatement of License and for Reinstatement of Application for Renewal of License, filed Sept. 6, 2000 (Petition).

² Petition at 1-2.

³ San Francisco IVDS, Inc., Request for Special Temporary Authority (STA) for 218-219 MHz Station KIVD0012, filed Oct. 19, 2000 (STA Request).

⁴ See Interactive Video and Data Service Licenses Granted, *Public Notice*, Mimeo No. 42412 (rel. Mar. 30, 1994) (*Lottery Grant Public Notice*).

⁵ Petition at 1. See also former 47 C.F.R. § 95.811(d) (setting forth a five-year license term).

⁶ WTB File No. 9602D024199 (granted July 1, 1996).

3. On March 28, 1999, San Francisco's 218-219 MHz Service license for Station KIVD0012 expired because San Francisco failed to file a renewal application. On May 21, 1999, San Francisco filed a renewal application for Station KIVD0012. San Francisco's renewal application, which was untimely by almost two months, did not include a waiver request seeking acceptance of the late-filed renewal application. On August 7, 2000, the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau (Bureau) dismissed the application as untimely. On September 6, 2000, San Francisco filed the above-captioned Petition and requested a waiver of the Commission's Rules to permit the renewal of its license. On October 19, 2000, San Francisco requested an STA to operate Station KIVD0012. San Francisco seeks the STA to conduct field trials of a vehicle location and tracking product for a potential customer.⁷

III. DISCUSSION

4. Throughout San Francisco's Petition, it attempts to show the similarities between its situation and that of Self Communications Inc. (Self). In the *Self Order*, we concluded that reinstatement of Self's 218-219 MHz Service license was warranted under the circumstances presented.⁸ San Francisco argues that reinstatement of its 218-219 MHz Service license is also warranted. We disagree because San Francisco provided no basis for the grant of in its late-filed renewal application when it initially filed such application. Thus, given the circumstances presented in the instant matter, we believe that reversal of the Branch's action would be inappropriate. Additionally, upon review of San Francisco's waiver request, we find that San Francisco fails to satisfy the late renewal standard⁹ enunciated in the ULS proceeding. Finally, we decline to grant San Francisco an STA to continue operating when its license has expired.

5. San Francisco's license expired on March 28, 1999. Almost two months later, San Francisco filed a renewal application. Given that the Commission no longer provides for reinstatement applications in the Wireless Radio Services,¹⁰ an application that is filed more than thirty days after the expiration date of the license is treated as either a late-filed renewal application or a "new" application.¹¹ As a result, the Branch dismissed San Francisco's application as an untimely renewal application because it

⁷ In the alternative, San Francisco requests an STA (1) to permit restoration of existing facilities to continue communication service; or (2) because its situation involves circumstances which are of such extraordinary nature that delay in the institution of temporary operation would seriously prejudice the public interest. STA at 1-2, n.2.

⁸ Self Communications, *Order and Notice of Apparent Liability for Forfeiture*, 15 FCC Rcd 18661, 18665 ¶ 11 (WTB PSPWD 2000) (*Self Order*).

⁹ 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, 13 FCC Rcd 21027, 21070-74 ¶¶ 95-100 (1998) (*ULS Report and Order*); 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, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11484-86 ¶¶ 20-22 (1999) (*ULS Memorandum Opinion and Order on Reconsideration*) (collectively "ULS Proceeding").

¹⁰ See *ULS Report and Order*, 13 FCC Rcd at 21070-74 ¶¶ 95-100; *ULS Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd at 11484-86 ¶¶ 20-22.

¹¹ A license expires automatically on the date specified on the individual license. 47 C.F.R. § 1.955(a)(1). See also *ULS Report and Order*, 13 FCC Rcd at 21073-74 ¶ 100.

did not include a waiver and we currently are not accepting applications for new 218-219 MHz Service licensees.¹² Section 1.934(d) of the Commission's Rules permits the dismissal of an application that is defective and does not contain a request for waiver of the Commission's rules.¹³ San Francisco fails to show how the Branch's action was in error. Accordingly, we find that the Branch's action was proper.

6. On September 6, 2000, as part of San Francisco's Petition, San Francisco requested a waiver of Sections 1.949(a) and 1.955(a)(1) of the Commission's Rules to permit the untimely filing of its May 21, 1999 application. As indicated above, this application was properly dismissed. We note that independent of our decision to affirm the Branch's action, San Francisco could file a new renewal application with a waiver request to obtain consideration for a late-filed renewal request immediately upon issuance of the present order.¹⁴ Thus, for reasons of administrative efficiency, we shall consider San Francisco's waiver request, although it is not accompanied by a waiver request, on our own motion.¹⁵ Accordingly, in this instance, for reasons of administrative efficiency, we will use the date of the filing of the petition, September 6, 2000, as the date of the application filing for purposes of conducting our analysis of the waiver request.¹⁶

7. In the *ULS Report and Order* and *ULS Memorandum Opinion and Order*, the Commission set forth its current policy regarding the treatment of late-filed renewal applications.¹⁷ Specifically, applicants that file renewal applications more than thirty days after the license expiration date may request that the license be renewed *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action.¹⁸ In determining whether to grant a late-filed renewal application, we consider all of the facts and circumstances. Specifically, we consider 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.¹⁹

8. San Francisco asserts three reasons as to why we should accept its waiver request. First, San Francisco alleges ambiguity existed with regards to whether its license term had been extended from five years to ten years.²⁰ Second, as a result of the relocation of its offices, San Francisco contends that

¹² See para. 3.

¹³ 47 C.F.R. § 1.934(d)(2).

¹⁴ JSM Tele-Page, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 19516, 19517 ¶ 3 (WTB CWD 1999) (although Commercial Wireless Division dismissed JSM's late-filed petition, the CWD considered, on its own motion a waiver request, because JSM could file a new waiver request).

¹⁵ Goosetown Enterprises, Inc., *Memorandum Opinion and Order*, FCC 01-186, ¶ 7 (rel. June 15, 2001) citing *id.*

¹⁶ In the context of these particular facts, we find that the public interest would not be served by requiring the filing of an underlying application, which would result in a later filing date for the associated waiver request.

¹⁷ See *ULS Report and Order*, 13 FCC Rcd at 21070-74 ¶¶ 95-100; *ULS Memorandum Opinion and Order*, 14 FCC Rcd at 11484-86 ¶¶ 20-22.

¹⁸ *ULS Memorandum Opinion and Order*, 14 FCC Rcd at 11485-86 ¶ 22.

¹⁹ *Id.*

²⁰ Petition at 2 – 3.

receipt of its renewal materials was delayed. Finally, San Francisco asserts that the above cited reasons plus San Francisco's May 21, 1999 filing warrant grant of a waiver in this situation. Upon reviewing the facts and circumstances in this matter, we do not believe that a renewal of the license for Station KIVD0012 is warranted.²¹

9. First, we must consider the length of the delay in filing the renewal application. As previously noted, San Francisco's May 21, 1999 application was properly dismissed. By failing to provide supporting information for a waiver of the Commission's rules when the application was first considered, the Branch dismissed the application as defective. San Francisco has submitted no reasons why this determination was not appropriate given the information before the Branch when it took its action. Rather, San Francisco submitted a new pleading providing, for the first time, reasons why its license should be renewed despite its late-filing of the Station KIVD0012 renewal application. Thus, we must consider the length of delay to have ended when we received the reasons for the delay in filing, i.e., on September 6, 2000. Thus, the delay in filing was over seventeen months. Additionally, the relocation of its offices does not excuse a seventeen-month delay in submitting its reasons.²² Finally, we find that San Francisco's arguments that renewal under the circumstances is in the public interest are not persuasive in light of the significant delay of over seventeen months in its explanation of the late filing. Moreover, we reject any suggestion²³ that this delay resulted in part from an alleged ambiguity in the Commission's *Notice of Proposed Rulemaking*, regarding the proposed change in the license term for 218-219 MHz service licenses.²⁴ The requirement for renewal is not ambiguous and we have expressly rejected this argument previously.²⁵

10. Likewise, we find San Francisco's argument unavailing that it is similar to *Self Communications*. In *Self*, we received a late-filed renewal application and an accompanying waiver request within two months of the expiration of *Self*'s license. Consequently, we were able to consider all of the relevant facts while considering the application at a time that was close in time to the expiration of the license. The Commission's processes require that we consider all evidence at one time and not in a piecemeal fashion. These processes operate inefficiently at best when, as here, evidence is presented piecemeal.²⁶ The Commission's rules are intended to promote orderly adjudicative processes and

²¹ We note that as a result of the dismissal of San Francisco's application, San Francisco does not have a current pending renewal application for Station KIVD0012.

²² A licensee is not excused from timely filing a renewal application because it has not received materials from the Commission. See, e.g., *Self Order*, 15 FCC Rcd at 18,663 ¶ 6 citing Daniel Goodman, Receiver, Dr. Robert Chan, Petition for Waiver of Sections 90.633 (c) and 1.1102 of the Commission's Rules, *Memorandum Opinion & Order and Order on Reconsideration*, 13 FCC Rcd 21944, 21973 (1998).

²³ See Petition at 2-3.

²⁴ See, *Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, ¶ 36, WT Docket No. 98-169, 13 FCC Rcd 19064 (1998)

²⁵ See *Self Order*, 15 FCC Rcd at 18,662-3 ¶ 5.

²⁶ *Id.* citing Carolyn S. Hagedorn, *Memorandum Opinion and Order*, 11 FCC Rcd 1695, 1696 (1996); see also Payne of Virginia, Inc., *Memorandum Opinion and Order*, 41 Rad. Reg. 2d (P & F) 1277 (1977) (*Payne*) (The important public interest in "orderly adjudicative processes and administrative finality . . . should not be sacrificed to consider additional evidence which seeks only to offset the party's oversight or lack of diligence . . .")

administrative finality.²⁷ These important public interests should not be sacrificed to consider additional evidence, which seeks only to offset San Francisco's oversight or lack of diligence in adducing evidence at an earlier stage of the proceeding. Accordingly, based on review of the record in this proceeding, we deny San Francisco's Petition.

11. San Francisco has also requested authority to operate Station KIVD0012 pursuant to an STA. Section 1.931(b)(1) permits the filing of an STA, not to exceed 180 days, to operate a new station or to operate a licensed station in a manner which is beyond the scope of that authorized by the existing license.²⁸ We believe San Francisco satisfies the third prong of Section 1.931(b)(2) of the Commission's Rules which permits grant of an STA in the Private Wireless Services to conduct tests to determine necessary data for the preparation of an application for regular authorization.²⁹ In this matter, San Francisco requests an STA to permit restoration of 218-219 MHz service³⁰ to conduct field trials of a vehicle location and tracking product. San Francisco claims that its situation is so extraordinary that delay in the institution of temporary operation would seriously prejudice the public interest.³¹ We grant San Francisco an STA for thirty days to conduct field trials to determine necessary data for the preparation of an application for regular authorization. We believe that thirty days is a sufficient amount of time to conduct tests to obtain data for the preparation of an application for regular authorization. However, we decline to grant the STA to allow San Francisco to restore its 218-219 MHz service because such an STA contemplates the restoration or continuation of communication service. We find that such restoration or continuation is not available to San Francisco as its license to operate Station KIVD0012 expired.

12. Finally, we disagree that San Francisco's situation is of such an extraordinary nature that delay in the institution of temporary operation would seriously prejudice the public interest. San Francisco alleges that its development of a commercially viable application in a major market could make a substantial contribution to the success of the 218-219 MHz service throughout the country.³² San Francisco further alleges that the public would benefit from the generation of revenue because of the profitable use of the 218 219 MHz spectrum and increased productivity.³³ These reasons are speculative and are no indication that serious prejudice to the public interest would result if an STA were not granted.

²⁷ *Payne*, 41 Rad. Reg. 2d (P & F) at 1283 ¶ 8; WTCN Television, Inc., Minneapolis, *Memorandum Opinion and Order*, 16 Rad. Reg. 2d 137 ((P & F 1969) citing *WLIL, Inc. v. FCC*, 352 F.2d 722, 725 (1965) (We cannot allow the appellant to sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.); *Minnie O. Foulk and Renee Ridley Biselli, d/b/a Washoe Shoshone Broadcasting, Memorandum Opinion and Order*, 3 FCC Rcd 5631 (1988).

²⁸ 47 C.F.R. § 1.931(b). We note that on March 28, 1999, San Francisco's license for Station KIVD0012 expired. Thus, as an initial matter, San Francisco does not have an existing license to request operation beyond that authorized by an existing license

²⁹ 47 C.F.R. § 1.931(b)(2)(iii).

³⁰ STA Request at 1 n.2.

³¹ *Id.* at 1-2.

³² *Id.* at 2.

³³ *Id.*

San Francisco has provided no information that indicates serious prejudice to the public interest would result from denying temporary operation in this matter.

IV. CONCLUSION

13. The Commission's important public interest in maintaining orderly adjudicative processes and administrative finality outweighs San Francisco's request to retain its license. For the reasons stated, we conclude that the Petition must be denied and renewal of San Francisco's license for Station KIV0012 *nunc pro tunc* is not warranted under the circumstances presented. Additionally, we grant San Francisco an STA for thirty days from the release date of this *Memorandum Opinion and Order* for the sole purpose of conducting field tests.

V. ORDERING CLAUSES

14. Accordingly, pursuant to Sections 4(i) and 405(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), the petition for reinstatement filed by San Francisco IVDS, Inc. on September 6, 2000, IS DENIED.

15. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(f) and Section 1.931(b)(2) of the Commission's Rules, 47 C.F.R. § 1.931(b)(2), the Petition for Special Temporary Authority to Operate Station KIVD0012 filed by San Francisco IVDS on October 19, 2000 IS GRANTED, to the extent discussed herein.

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
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