

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

In the matter of )
KENT H. SAGER )
Application for Renewal of the License for SMR- )
Trunked System WNSS514 and Associated )
Request for Waiver of the Commission's Rules )

ORDER

Adopted: December 4, 2001

Released: December 6, 2001

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. On March 8, 2001, Kent H. Sager (Sager) filed a Petition for Reconsideration (Petition)1 of the February 22, 2001 letter decision by the Commercial Wireless Division's Licensing and Technical Analysis Branch (Branch) dismissing the captioned renewal application.2 For the reasons discussed below, we grant Sager's Petition and accept the application for renewal filed on February 7, 2001, for processing under Commission rules.

2. Sager was granted the license to operate station WNSS514 on November 6, 1995. The authorization expired on November 6, 2000. Sager submitted an application for renewal on November 2, 2000, to Mellon Bank, the Commission's drop box bank. He, however, did not remit the proper fee and, on November 3, 2000, Mellon Bank returned the application with a form requesting the correct payment.3 The application was not forwarded to the Commission.

3. In response to Mellon Bank's request, Sager resubmitted the application on November 14, 2000, with the correct fee amount.4 After being forwarded to the Commission, the Branch returned the application again on December 12, 2000, as defective because Sager did not include his taxpayer identification number.5 On January 19, 2001, Sager submitted a corrected renewal application on FCC Form 405A with the proper fee and a request for waiver of the application deadline to Mellon Bank. After being informed the waiver must be filed separately, Sager resent the application on FCC Form 601 with the waiver request to the Commission's Gettysburg Office on February 7, 2001.6 On February 22,

1 Petition of Kent H. Sager for Reconsideration (Mar. 8, 2001).

2 The license authorized Sager to operate station WNSS514 on 863.9125 MHz, 864.9125 MHz, and 865.9125 MHz, in Wray, Colorado.

3 Sager remitted \$45.00 with his initial application. Mellon Bank sent Sager FCC Form 250 asking for the correct fee of \$50.00.

4 Application of Kent H. Sager for Renewal of Private Radio Station License, FCC Form 574R, filed November 14, 2000.

5 Notice of Immediate Application Dismissal, FCC Form 694, sent to Kent H Sager (Dec. 12, 2000).

6 Letter from Dennis C. Brown to Federal Communications Commission, Gettysburg, Pennsylvania (Feb. 7, 2001).

2001, the Branch dismissed the application without acting on the waiver request.<sup>7</sup>

4. Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought, and no sooner than 90 days prior to expiration.<sup>8</sup> Further, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.<sup>9</sup> As the Commission has explained, however, if a renewal application is filed up to 30 days after the license expiration date, and the application is otherwise sufficient, renewal will be granted.<sup>10</sup> Applicants that file renewal applications more than 30 days after the license expiration date may request that the license be renewed, but those requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action.<sup>11</sup> The standard for granting a waiver of the Commission's rules is whether the applicant demonstrates that: (a) the underlying purpose of the rule 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 would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>12</sup> Upon reviewing the facts and circumstances in this case, we believe the Branch should have considered Sager's waiver request and acted favorably on it.

5. Denying the waiver request in this case would not serve the underlying purpose of the rule, given Sager's good faith attempts to file timely a renewal application. Sager filed his first renewal application four days prior to the license expiration date for station WNSS514. Sager then refiled his application with the correct filing fee eight days after the license expiration date, well within the 30-day grace period. After the Branch notified Sager that the application was defective again, Sager refiled a third time, seeking waiver of the Commission's filing deadline for renewal applications. While an applicant is always responsible for making sure applications are complete and correct, Sager's diligent efforts to file a timely renewal application and promptly correct any noted errors does not warrant a result as severe as license termination. We find that granting Sager's waiver request is in the public interest. Accordingly, we grant Sager's Petition. We also grant Sager's request for waiver of the deadline for filing renewal applications under Section 1.949(a) of the Commission's rules, accept Sager's application as of February 7, 2001, and refer the application to the Branch for processing.

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.925, the Petition for Reconsideration and Request for Waiver filed by Sager ARE GRANTED.

7. IT IS FURTHER ORDERED that the renewal application for WNSS514 filed by Sager on February 7, 2001, is referred to the Commercial Wireless Division's Licensing and Technical Analysis Branch for processing consistent with this order and applicable Commission rules.

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<sup>7</sup> Notice of Immediate Application Dismissal to Kent H. Sager, Reference No. KLH26 (Feb. 22, 2001). The Notice stated that WNSS514 "is invalid. It is either a typographical error, expired, or has been cancelled/terminated."

<sup>8</sup> 47 C.F.R. § 1.949(a).

<sup>9</sup> *Id.* § 1.955(a) (1).

<sup>10</sup> In the Matter of 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*, 14 FCC Rcd 11476, 11485-86 ¶ 22 (1999).

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

<sup>12</sup> 47 C.F.R. § 1.925(b)(3).

8. This action is taken pursuant to the authority delegated under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze, Chief  
Commercial Wireless Division,  
Wireless Telecommunications Bureau