

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

In re License of )  
 )  
John T. Hower and the )  
Application for Assignment of Authorization )  
to Communications Equipment, Inc. )  
 )  
For Specialized Mobile Radio Service – )  
Conventional Station License )  
WPHJ253 at Topeka, Kansas )

ORDER

Adopted: December 14, 2001

Released: December 18, 2001

By the Deputy Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. In this Order, we address the Petition for Reconsideration (Petition for Reconsideration) and the Application for Review (Application for Review) filed by Communications Equipment, Inc. (Communications Equipment) on July 5, 2000 and September 25, 2000, respectively, seeking review of a letter, dated June 5, 2000,<sup>1</sup> denying its November 22, 1999 Motion to Set Aside and Correct the Commission’s Records. Communications Equipment, which was the assignee of an assignment application regarding the above-captioned license (License), argues in its Petition for Reconsideration that the License was erroneously cancelled and requests that the assignment application be reinstated and granted. The Petition for Reconsideration was dismissed by letter, dated August 25, 2000,<sup>2</sup> for failure to timely file under section 1.106(f) of the Commission’s rules<sup>3</sup> and for failure to file with the Office of the Secretary as required by pursuant to section 1.106(i).<sup>4</sup> As discussed below, we conclude that dismissal of the Petition for Reconsideration was administrative error. Accordingly, we reinstate the Petition for Reconsideration *sua sponte* and, for the reasons discussed herein, deny it on the merits. We therefore dismiss as moot the Application for Review, which reiterates the same substantive arguments for reinstatement of the License and assignment application as are contained in the Petition for Reconsideration.

<sup>1</sup> Letter from Terry L. Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, to Richard Philip Hanno, Attorney for Communications Equipment (June 5, 2000) (June 5, 2000 Letter).

<sup>2</sup> Letter from Terry L. Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, to Richard Philip Hanno, Attorney for Communications Equipment (Aug. 25, 2000).

<sup>3</sup> 47 C.F.R. § 1.106(f).

<sup>4</sup> *Id.* § 1.106(i).

2. In *Goodman/Chan I* and *Goodman/Chan II*,<sup>5</sup> the Commission implemented procedures to grant four-month construction-period extensions to approximately 2,500 so-called “Goodman/Chan” licensees who had obtained 800 MHz General Category Specialized Mobile Radio (SMR) licenses through four application processing companies that were placed in receivership in a federal court action. In *Goodman/Chan II*, the Commission also concluded that certain additional General Category SMR licensees should receive relief similar to that afforded to the Goodman/Chan licensees, provided that they had filed timely extension requests prior to the expiration of their original eight-month construction periods.

3. On October 6, 1998, following the publication of *Goodman/Chan I* in the Federal Register, the Commission released a Public Notice (October 6 Public Notice) announcing that the four-month construction-period extension would expire on December 28, 1998.<sup>6</sup> Commission records reflect that the License was deleted from the Commission’s database on October 19, 1998 pursuant to the October 6 Public Notice for failure to timely construct. On November 22, 1999, Communications Equipment filed a Motion to Set Aside and Correct the Commission’s Records, seeking to reinstate the License. That request was denied in the June 5, 2000 Letter.

4. In its Petition for Reconsideration, Communications Equipment argues that: (1) the License was erroneously cancelled based on the misconception that it was not entitled to relief under *Goodman/Chan I* and *Goodman/Chan II*; (2) the License in fact was granted Goodman/Chan relief and was constructed and fully operational prior to the Goodman/Chan construction deadline; and (3) therefore the assignment application was erroneously dismissed. The Application for Review argues that the Petition for Reconsideration was erroneously dismissed as it met the procedural requirements under the Commission’s rules. Additionally, the Application for Review sets forth the same substantive arguments regarding the reinstatement of the License and assignment application as are made in the Petition for Reconsideration.

5. Commission records reflect that the Petition for Reconsideration was timely filed under section 1.106(f) of the Commission’s rules and that it was filed with the Office of the Secretary as required by section 1.106(i). We conclude, therefore, that dismissal of the Petition for Reconsideration for violation of those rules was administrative error. Accordingly, we will reinstate Communications Equipment’s Petition for Reconsideration *sua sponte* and address it on the merits.<sup>7</sup> We will dismiss the Application for Review as moot, because it raises the same substantive arguments as the Petition for Reconsideration.

6. As stated above, *Goodman/Chan I* limited relief to a specified group of licensees who purchased licenses through four receivership companies. The License at issue here was not obtained through one of those four receivership companies and therefore was ineligible for relief under

---

<sup>5</sup> In the Matter of Daniel R. Goodman, Receiver; Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission’s Rules, *Memorandum Opinion and Order*, 10 FCC Rcd 8537 (1995) (*Goodman/Chan I*); *Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd 21,944 (1998) (*Goodman/Chan II*).

<sup>6</sup> See Commission Announces Construction Deadline for Goodman/Chan Receivership Licensees and Similarly Situated Non-Goodman/Chan General Category SMR Licenses, *Public Notice*, 13 FCC Rcd 20,734, 20,735 (1998).

<sup>7</sup> It is well settled that administrative agencies have the authority to correct inadvertent, ministerial errors. See *Chlorine Institute v. OSHA*, 613 F.2d 120, 123 (5th Cir.), cert. denied, 449 U.S. 826 (1980); *Stratophone, LLC, Order*, 16 FCC Rcd 17,010 (CWD Policy & Rules Branch 2001) (reinstating erroneously-dismissed application).

*Goodman/Chan I*. *Goodman/Chan II* extended relief to certain additional General Category SMR licensees provided that they had filed timely extension requests prior to the expiration of their original eight-month construction periods and that their licenses were granted prior to January 2, 1995.<sup>8</sup> The License therefore also was not eligible for relief under *Goodman/Chan II*, because it was issued on June 1, 1995 and was given a twelve-month construction period. Moreover, the License had to be constructed by June 1, 1996 in order to comply with the Commission's rules, but Communications Equipment admits that the license was not constructed until December 10, 1997. Thus, the License was appropriately canceled for failure to timely construct.<sup>9</sup>

7. Communications Equipment nonetheless argues that the License should be reinstated because of discussions with lower-level Commission licensing staff that purportedly led it to believe that the License would receive relief pursuant to the *Goodman/Chan* proceeding. Specifically, a representative of Communications Equipment allegedly contacted Commission staff on May 8, 1998 and, according to the Petition for Reconsideration, was told that the License was on a list of *Goodman/Chan* licenses. Even if Communications Equipment received such mistaken information, it cannot claim reliance, because any such information was plainly inconsistent with the Commission's *Goodman/Chan* orders.<sup>10</sup> As explained above, under the express terms of *Goodman/Chan I* and *Goodman/Chan II*, the License did not fit into either category of *Goodman/Chan* licenses that were afforded relief. Moreover, by the time that the Communications Equipment representative allegedly contacted Commission staff about entitlement to a construction-period extension, the construction period for the License had expired almost two years earlier. We confirm, therefore, that the License correctly canceled and that the assignment application correctly was dismissed. Accordingly, we deny the Petition for Reconsideration.

8. Accordingly, 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 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Communications Equipment, Inc. on July 5, 2000 is hereby REINSTATED.

9. IT IS FURTHER ORDERED that, 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, the Petition for Reconsideration filed by Communications Equipment, Inc. on July 5, 2000 is hereby DENIED.

---

<sup>8</sup> See *Goodman/Chan II*, 13 FCC Rcd 21,944, 21,976-75, at ¶ 60 & n.212.

<sup>9</sup> See 47 C.F.R. § 90.633(d) (1996) (license cancels automatically if station is not placed in operation within one year).

<sup>10</sup> See *Chadmoore Wireless Group, Inc., Order*, 16 FCC Rcd 7466, 7467 at ¶ 5 & n.6 (2001), citing *Chadmoore Wireless Group, Order on Reconsideration*, 14 FCC Rcd 18,713, 18,715, at ¶ 6 & n.12 (CWD 1999).

10. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.115(c) of the Commission's rules, 47 C.F.R. § 1.115(c), the Application for Review filed by Communications Equipment, Inc. on September 25, 2000 is hereby DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Linda C. Ray  
Deputy Chief, Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau