

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

In the Matter of)
)
Preferred Communication Systems, Inc.)
)
Petition for Correction of)
October 9, 1998 Licensee List)
)
Petition for Correction of Database)

ORDER

Adopted: April 13, 2001

Released: April 17, 2001

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

1. We have before us a Petition for Partial Reconsideration filed by Preferred Communication Systems, Inc. ("Preferred") on December 9, 1999 and a Supplement to Petition for Partial Reconsideration filed on January 6, 2000 (collectively, "Petition"). Preferred seeks review, as to certain specific licensees, of the November 9, 1999 Order ("November 9, 1999 Order")¹ by the Policy and Rules Branch, Commercial Wireless Division ("Division"), Wireless Telecommunications Bureau declining to reinstate those and other licensees who were not included in an October 9, 1998 list of licensees² who were granted an extension of time in which to construct pursuant to the *Goodman/Chan Reconsideration Order*.³ For the reasons discussed herein, we deny Preferred's Petition.

2. In the *Goodman/Chan Order*⁴ and the *Goodman/Chan Reconsideration Order*, the Commission implemented procedures to grant four-month construction extensions to approximately 2,500 so-called "Goodman/Chan" licensees who had obtained 800 MHz General Category SMR licenses through four application processing companies that were placed in receivership in a federal court action. In the *Goodman/Chan Reconsideration Order*, the Commission also concluded that additional General Category

¹ In the Matter of Preferred Communication Systems, Inc.; Petition for Correction of October 9, 1998 Licensee List; Petition for Correction of Database, *Order*, 14 FCC Rcd 18,710 (Policy & Rules Branch, CWD 1999).

² See Letter, Steven E. Weingarten, Chief, Commercial Wireless Division, to Russ Taylor, Esq., Gardner, Carton & Douglas, DA 98-2043, October 9, 1998 (attaching list) ("October Letter").

³ 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 and Order on Reconsideration*, 13 FCC Rcd 21,944 (1998) (*Goodman/Chan Reconsideration Order*).

⁴ 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 Order*).

licensees should receive relief similar to that afforded to the Goodman/Chan licensees, provided that they received initial construction periods of eight months and had filed timely extension requests prior to the expiration of their eight-month construction periods. On October 9, 1998, the Commercial Wireless Division granted a Freedom of Information Act request to release a list of the non-Goodman/Chan 800 MHz General Category licensees who met these requirements and were granted an extension of time in which to construct pursuant to the *Goodman/Chan Reconsideration Order*.⁵

3. In its Petition, Preferred argues that a number of licenses, for which construction-period extension requests allegedly had been filed prior to, or immediately after, the expiration of the construction periods, are entitled to the four-month construction period extension under the *Goodman/Chan Reconsideration Order*. Preferred divides the subject licenses into three categories: (a) those for which individual extension requests allegedly were filed prior to the expiration of the construction deadlines;⁶ (b) those that were included in a request for an extended implementation schedule;⁷ and (c) those for which extension requests were filed within thirty days after automatic cancellation for failure to timely construct.⁸

4. As to the three licenses listed in Attachment A, Preferred alleges that extension requests were filed prior to the expiration of their respective construction periods. Commission records, however, do not support those claims. In each case, Preferred submits documents that purport to demonstrate that a timely extension request was filed, while Commission records indicate that no extension request was received by the Commission for that license until after the expiration of the applicable construction period. Preferred provides no additional documentation beyond what it submitted with its initial pleadings in this proceeding, and we see no basis to change our earlier conclusion that these licenses were not entitled to relief under the *Goodman/Chan Reconsideration Order*.

5. Preferred also claims that twenty-five licenses that were included on the PCC Management Corporation Request for an Extended Implementation Schedule (“PCC Request”) filed on January 12, 1995 met the criteria for relief under *Goodman/Chan Reconsideration Order*. Preferred argues that because the PCC Request was filed prior to the expiration of the licenses’ eight-month construction period, it should be treated as a timely extension request for purposes of the Goodman/Chan proceeding. Preferred acknowledges that a similar argument from Chadmoore Wireless Group (“Chadmoore”) was previously rejected in a decision by the Division.⁹ As that order explained, the extended implementation procedure under former section 90.629 of the Commission’s rules was entirely separate from and had no relation to the extension requests being considered by the Commission in the Goodman/Chan proceeding.¹⁰ Preferred’s attempts to explain why a different result should obtain in this case are based on a misreading, at best, of Commission precedent concerning the different treatment of extended implementation requests

⁵ See October Letter.

⁶ See Attachment A.

⁷ See Attachment B.

⁸ See Attachment C.

⁹ See *In re Chadmoore Wireless Group; Petition for Reconsideration of October 9, 1998 Licensee List, Order on Reconsideration*, 14 FCC Rcd 18,713, 18,715-16, at ¶ 7 (CWD 1999) (*Chadmoore*).

¹⁰ See *id.* at 18,715-16, ¶ 7 & n.15.

and requests for relief in the Goodman/Chan proceeding¹¹ and in any event are not persuasive. As in *Chadmoore*, therefore, we find no basis to extend relief to the subject Preferred licenses under the *Goodman/Chan Reconsideration Order* based on an entirely unrelated filing that was the subject of a prior final disposition by the Commission.¹²

6. Finally, Preferred seeks *Goodman/Chan* relief for three licenses for which construction period extension requests were filed after the expiration of the construction deadline, but within thirty days after automatic cancellation for failure to construct. Preferred argues that these construction period extension requests should be deemed timely since Commission rules at that time allowed licensees thirty days from the expiration of their licenses to seek reinstatement. Preferred's argument based on the existence of reinstatement procedures is not persuasive. These procedures applied to late-filed renewal applications by licensees who had successfully constructed and were operating their systems, not to licensees who failed to construct within the construction period.¹³

7. To conclude, in the November 9, 1999 Order, we declined to reinstate the licenses on the basis of Preferred's initial pleadings in this proceeding. As Preferred in the instant Petition has not provided any new information or persuasive arguments to support reinstatement, we see no basis to change our decision. We therefore will deny the Petition.

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of then 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 Partial Reconsideration filed by Preferred Communication Systems, Inc. on December 9, 1999, as supplemented on January 6, 2000, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

¹¹ Compare Petition at 4, with In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making*, 11 FCC Rcd 1463, 1526, at ¶ 114 (1995) ("Amendment of Part 90 Order").

¹² See Amendment of Part 90 Order, 11 FCC Rcd at 1526, ¶ 114.

¹³ See former 47 C.F.R. § 90.149(a) (1992). This rule has since been deleted. See Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21,027 (1998).