

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

In the Matter of Application of)
)
 STATE CONTRACTING AND) FCC File No. 0000669802
 ENGINEERING CORPORATION)
)
 and Request for Waiver to Operate)
 Other Industrial/Land Transportation)
 Station WZE725, Hollywood, Florida)

ORDER ON RECONSIDERATION

Adopted: February 6, 2003

Released: February 7, 2003

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

1. *Introduction.* On April 25, 2002, State Contracting and Engineering Corporation (State Contracting) filed a petition for reconsideration¹ of a decision by the Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Division).² The Division denied State Contracting's waiver request and dismissed its late-filed dismissed renewal application. For the reasons set forth below, we deny State Contracting's Petition.

2. *Background.* State Contracting constructs various facilities for private and public sector clients, including interstate highways, airports, military facilities, port facilities, schools and public works buildings.³ On October 9, 1996, the FCC granted State Contracting a license to operate Station WZE725, Hollywood, Florida. On July 16, 2001, we issued a renewal reminder notice for Station WZE725.⁴ The authorization was scheduled to expire on October 9, 2001. State Contracting failed to file a renewal of license application on or before October 9, 2001. On November 14, 2001, State Contracting filed an application requesting renewal of its license for Station WZE725.⁵ The Division's Licensing and Technical Analysis Branch (Branch) dismissed the renewal application on November 15, 2001 as untimely filed because it was filed after the license expiration date, and did not include a request for waiver to submit a late-filed renewal application.⁶

¹ See Petition for Reconsideration filed by William D. Wallace on behalf of State Contracting and Engineering Corporation on Apr. 25, 2002 (Petition).

² Letter dated Mar. 26, 2002 from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division, to Timothy M. Smith, State Contracting (Dismissal Letter).

³ Petition at 2.

⁴ See Renewal Reminder Notice, FCC Reference No. 987362, sent July 16, 2001, to State Contracting and Engineering Corporation, 4300 Ravenswood Road, Fort Lauderdale, FL 33312.

⁵ See Application FCC File No. 0000658646 (filed Nov. 14, 2001).

⁶ See FCC Reference Number 1148213, Notice of Dismissal letter sent Nov. 15, 2001.

3. On November 27, 2001, State Contracting again filed an application requesting renewal of its license for Station WZE725.⁷ In conjunction with its application, State Contracting submitted a request for waiver of Section 1.949 of the Commission's Rules to allow filing of the renewal application after the license expiration date.⁸ In the waiver request, State Contracting stated that (a) it did not receive a renewal notification despite having reported a change of address in 1999; (b) it was focused on meeting the needs of clients following the events of September 11, 2001 by processing a large number of requests for preparation of new security and clearance requirements; and (c) it has a history of compliance with the Commission's Rules for the last twenty-one years and has taken steps to track future renewal dates.⁹ Also on November 27, 2001, State Contracting filed an application for Special Temporary Authority (STA) to operate Station WZE725, which the Branch granted on December 6, 2001, and subsequently renewed.¹⁰

4. On March 26, 2002, the Division denied State Contracting's waiver request and dismissed the renewal application. The Division found State Contracting generalized claim that but for the unusual events during the fall of 2001 it would have timely filed its renewal application unpersuasive.¹¹ On April 25, 2002, State Contracting requested reconsideration of the Division's decision.¹²

5. *Discussion.* In 1999, the Commission adopted a new policy regarding treatment of late-filed renewal applications in the wireless services.¹³ Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.¹⁴ Applicants who file renewal applications more than thirty days after the license expiration date may also 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, including more significant fines or forfeitures.¹⁵ In determining whether to grant a late-filed renewal

⁷ See Application FCC File Number 0000669802 (filed Nov. 27, 2001).

⁸ See Waiver Request at 1.

⁹ *Id.* at 1-2.

¹⁰ See FCC File Number 0000668784, Application for Special Temporary Authority (STA) filed on Nov. 27, 2001. The Branch granted the STA under Call Sign WPTS555 on Dec. 6, 2001, with an expiration date of June 6, 2002. On April 30, 2002, State Contracting filed an application, FCC File No. 0000869068 to renew the STA, which the Branch granted on May 6, 2002. On Oct. 2, 2002, State Contracting filed an application, FCC File No. 0001045824, which was granted on Oct. 7, 2002, with an expiration date of April 7, 2003.

¹¹ Dismissal Letter at 2.

¹² Petition at 1.

¹³ See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476 (1999) (*ULS MO&O*).

¹⁴ See *id.* at 11485 ¶ 22.

¹⁵ See *id.* at 11486 ¶ 22.

application, we take into consideration all of the facts and circumstances, including 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.¹⁶

6. State Contracting asserts that the Division failed to correctly apply the Commission's policy on treatment of late-filed renewal application for Wireless Radio Services licenses; that the requested relief has been granted under similar facts; and that the Division failed to consider all relevant circumstances in State Contracting's request.¹⁷ State Contracting reiterates that the reasons for its late-filed renewal application were that the Commission failed to update the licensing record for Station WZE725 in accordance with the address change filed on September 30, 1999, thereby causing State Contracting not to receive a timely renewal notice;¹⁸ and that it was distracted from its usual business routines due to a high level of requests for consultation on security issues following the events of September 11, 2001.¹⁹ State Contracting further explains, for the first time, that its two-way radio system is invaluable to State Contracting's business, particularly when the company is enlisted by state and local governments in emergency relief efforts following natural disasters.²⁰

7. With respect to State Contracting's argument that it did not timely renew its license because the Commission sent the renewal reminder to an obsolete address, we acknowledge that State Contracting did in fact file an address change in 1999. Nonetheless, this does not provide a sufficient basis for the relief requested, because it is well established that a licensee's obligation to file a timely renewal is not dependent on the Commission sending a renewal notice.²¹

8. Next, State Contracting argues that we should be solicitous of licensees that renewed their licenses late due to the events of September 11, 2001.²² We agree, and in fact have granted such relief, where appropriate.²³

¹⁶ See *id.* at 11485 ¶ 22.

¹⁷ Petition at 5-10.

¹⁸ *Id.*

¹⁹ *Id.* at 2-3.

²⁰ *Id.* at 10.

²¹ See First National Bank of Berryville, *Order*, 15 FCC Rcd 19693 at 19696 ¶ 8 ((citing Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027, 21071 ¶ 96 (1998)) (holding that a "licensee's obligation to timely file a renewal application is not dependent upon the Commission sending a renewal notice to the licensee, rather it is the responsibility of each licensee to renew its application prior to the expiration date of the license").

²² Petition at 9.

²³ See, e.g., Letter dated June 3, 2002 from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to William W. Curry, Telecommunications Chief, Emergency Management Agency, District of Columbia Government (granting waiver to permit late filing of Application FCC File No. 0000743814 (filed Jan. 23, 2002)); Letter dated May 3, 2002 from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Charles P. Schmohl, Jr., Central Massachusetts Emergency Medical Systems Corporation, Holden, Massachusetts (granting waiver to permit late filing of Application FCC File No. 0000693329 (filed Dec. 12, 2001)).

9. We however, do not believe that this provides a basis for relief in light of the circumstances presented. Unlike State Contracting, those licensees explained how the aftermath of September 11, 2001 impaired their ability to renew their licenses in a timely manner. In contrast, State Contracting has failed in both its waiver request and its petition for reconsideration to explain how *its* ability to file a timely renewal application was directly affected. In denying the waiver request, the Division indicated that State Contracting had not explained with sufficient particularity how the events of September affected its operations.²⁴ In its petition for reconsideration of the Division's decision, State Contracting provides no additional information. Rather, it states that "The events of September 11, 2001 distracted State Contracting from its normal business routine. . . . State Contracting received a large number of requests for consultation on security and clearance requirements. [Its] focus was redirected to meet the needs and requirements of its clients as they responded to the national emergency."²⁵ These general statements regarding requests for preparation of new security and clearance requirements provide no information on how many requests State Contracting received, who made the requests, or what the requests entailed. Grant of a waiver generally requires a specific showing of why the particular applicant is entitled to relief. State Contracting has not made such a showing in either pleading it has filed in this matter. Based on the information before us, we are unable to conclude that State Contracting's failure to renew its license before October 9, 2001 was a direct result of the events of September 11, 2001. Further, we disagree with State Contracting's apparent contention that, in light of the events of September 11, 2001, the Commission should excuse a failure to file a timely renewal application by any "regulated entit[y] that use[s] communications to serve clients that also want to improve their security."²⁶

10. We also reject State Contracting's suggestion that a waiver is appropriate because it and its clients are engaged in public safety functions. Even in the case of public safety licensees, the Commission has determined that a licensee will not be afforded special consideration when it fails to file a timely renewal application simply because it engages in activities relating to public health or safety.²⁷

11. Finally, we note that State Contracting's reliance²⁸ on our decisions in *Monroe County*²⁹ and *City of Henderson*³⁰ is misplaced. Monroe County explained clearly how the unusual circumstances

²⁴ See Dismissal Letter at 2-3 ("State Contracting claims that but for the unusual combination of events during the fall of 2001 it would have timely filed the renewal application. We find this generalized claim unpersuasive. Although the events of September 11th were disruptive and may have caused an increase in demand for client security and new clearance requirements services, State Contracting had ample opportunity to renew its license prior to its expiration on October 9, 2001.") (footnote omitted).

²⁵ Petition at 8; see also *id.* at i ("State Contracting was distracted from its usual business routines due to the high level of requests for consultation on security issues following the events of September 11, 2001"), 3 ("after September 11, 2001, State Contracting was inundated with requests to consult on security issues"), 7 ("State Contracting was inundated with requests for consultation on security measures").

²⁶ See *id.* at 9.

²⁷ See Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 ¶ 20 (1991).

²⁸ See Petition at 5-7, 11-12.

²⁹ Monroe County, *Order*, 16 FCC Rcd 16447 (WTB PSPWD 2001) (*Monroe County*).

³⁰ City of Henderson, Nevada, *Order*, 14 FCC Rcd 16156 (WTB PSPWD 1999) (*City of Henderson*).

it cited³¹ impaired its ability to renew its license in a timely manner; as set forth above, State Contracting has not done the same. In addition, Monroe County demonstrated that it recognized the seriousness of the situation by adopting a specific and effective plan to prevent a reoccurrence of such an incidence.³² This was an important factor in the Division's decision to afford Monroe County relief.³³ We previously have concluded that a waiver is not warranted in the case of a licensee, like State Contracting,³⁴ that states generally that it has taken additional steps to track future renewal dates, but does not describe those steps.³⁵ The City of Henderson made a timely but defective attempt to renew its license.³⁶ There is a clear distinction between a licensee that unsuccessfully attempts to renew the license before it expires, and one, like State Contracting, that submits nothing to the Commission until more than thirty days after the license expiration date.³⁷

12. 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 State Contracting on April 25, 2002, IS DENIED.

13. 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
Wireless Telecommunications Bureau

³¹ The unexpected retirement of a county supervisor to care for his ill wife. *See Monroe County*, 16 FCC Rcd at 16449 ¶ 6.

³² *Id.*

³³ *See id.* at 16449 ¶ 7.

³⁴ *See* Waiver Request at 2 ("if the license is reinstated, we intend to take steps to keep close track of future renewal dates").

³⁵ *See* Southwest Central Dispatch, *Order*, 16 FCC Rcd 19509, 19510-11 ¶¶ 4, 7 (PSPWD WTB 2001).

³⁶ *See City of Henderson*, 14 FCC Rcd at 16158 ¶ 4.

³⁷ *See id.* at 16159 ¶ 7.