

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

In the Matter of Application of)
)
GRAND TELEPHONE COMPANY, INC.) File No. 0001806319
)
For Renewal of Multipoint Distribution Service)
Station WLW846, Jay, Oklahoma)
)

MEMORANDUM OPINION AND ORDER

Adopted: October 7, 2004

Released: October 8, 2004

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address the pending application filed by Grand Telephone Company, Inc. (Grand Telephone) for renewal of Multipoint Distribution Service (MDS)¹ Station WLW846, Jay, Oklahoma.² We also address the request made by Grand Telephone for a waiver and reinstatement of the license for Station WLW846.³ For the reasons discussed below, we deny Grand’s Petition and dismiss the Application.

II. BACKGROUND

2. On August 16, 1995, Grand Telephone was granted a license to operate Station WLW846, Jay, Oklahoma.⁴ The license for Station WLW846 expired on May 1, 2001.⁵ J. L. Houck was Grand Telephone’s General Manager at the time it received the license for Station WLW846.⁶ At the end of

¹ On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* that transforms the rules governing MDS and the Instructional Television Fixed Service (ITFS) in order to encourage the deployment of broadband services by commercial and educational entities. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*; WT Docket Nos. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004). To better reflect the forward-looking vision for these services, the Commission renamed MDS the Broadband Radio Service and ITFS the Educational Broadband Service. Once the new rules become effective, we will no longer refer to these services as MDS and ITFS.

² See File No. 0001806319 (filed Jul. 14, 2004) (Application).

³ Petition for Reinstatement and Waiver of Part 21.44(b)(1) (filed May 10, 2004) (Petition).

⁴ File No. BLMD-9350051.

⁵ Radio Station Authorization, Station WLW846.

⁶ Petition at 1.

1998, Mr. Houck retired, and Rex Brixey became the new General Manager.⁷ In early 1999, Mr. Houck died unexpectedly, and he was unable to advise Mr. Brixey of all of his job duties.⁸

3. According to Grand Telephone, Mr. Brixey was under the “impression” that Grand Telephone’s license term was for ten years therefore he was unaware that the license expired on May 1, 2001⁹ Grand Telephone explains its failure to apply for timely renewal of its license on the unforeseen death of Mr. Houck and Mr. Brixey’s impression that the license was granted for a ten year period.¹⁰

4. Grand Telephone asserts that no further lapses in complying with the Commission’s filing requirements will occur because it has taken actions to rectify the previous omissions.¹¹ Grand Telephone has hired an assistant to ensure future timely filings.¹²

III. DISCUSSION

5. Under the Commission’s MDS rules, licensees must file their renewal applications between thirty and sixty days prior to the license expiration date.¹³ Section 21.44(b) of the Commission’s Rules limits consideration of reinstatement petitions to petitions that are filed within thirty days of the expiration date of the license.¹⁴

6. If a licensee fails to file a timely renewal application, the licensee automatically forfeits the MDS station license as of the expiration date.¹⁵ However, a licensee may file a petition for reinstatement of a forfeited license within thirty days of the license expiration date.¹⁶ A timely filed petition for reinstatement must adequately explain the failure to timely file the renewal application, and specify the procedures the licensee has established to ensure timely filings in the future.¹⁷

7. Grand Telephone’s license for Station WLW846 expired on May 1, 2001, without further action by the Commission, because Grand Telephone failed to submit a timely renewal application for its license. Grand Telephone was required to submit its renewal application for the license between March 1, 2001 and April 2, 2001. However, Grand Telephone failed to file its renewal application as required under the Commission’s Rules.¹⁸

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See 47 C.F.R. § 21.11(c).

¹⁴ See 47 C.F.R. § 21.44(b)(1).

¹⁵ Burlington Cablevision, Inc., *Order on Reconsideration*, 13 FCC Rcd 772 ¶ 7 (VSD MMB 1998) (*Burlington*); Superior Broadcasting Corporation, *Memorandum Opinion and Order*, 7 FCC Rcd 7543 (DRB CCB 1992) (*Superior*); see also 47 C.F.R. § 21.44 (a)(2).

¹⁶ *Burlington*, 13 FCC Rcd 772 ¶ 7 citing 47 C.F.R. § 21.44(b)(1) – (3).

¹⁷ *Id.*

¹⁸ See 47 C.F.R. § 21.11(c); *Burlington*, 13 FCC Rcd at 775 ¶ 7.

8. Although Grand Telephone failed to file a timely renewal application, under the Commission's Rules it had another option to regain the authorization for Station WLW846 – namely, to file a petition for reinstatement.¹⁹ Under the Commission's Rules, Grand Telephone had until June 1, 2001- thirty days after the license expiration date - to submit its reinstatement request. However, Grand Telephone did not file the petition for reinstatement until May 10, 2004.²⁰

9. In conjunction with its Petition, Grand Telephone requested a waiver of the filing deadline set forth in Section 21.44(b)(1) of the Commission's Rules. Because Grand Telephone failed to meet either filing deadline identified above, a waiver of the Commission's Rules is required for us to provide the requested relief.²¹ We may grant this waiver if the purpose of the rule will not be served, or would be frustrated by its application in the instant case, or the grant of waiver is otherwise in the public interest. The Commission's MDS reinstatement rule serves two purposes: first, to ensure that parties will have a date certain after which they may file applications for an area covered by an expired license; and second, to ensure uninterrupted authorized service to the public.²² The Commission has a fervent interest in preserving the clarity and certainty of when other applicants may permissibly file for spectrum previously utilized by expired licenses.²³

10. We find that Grand Telephone has failed to make the requisite showing that grant of a waiver is warranted under the circumstances presented. "An applicant for waiver faces a high hurdle even at the starting gate. When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action."²⁴ Grand Telephone asserts that waiver of the reinstatement filing requirement is warranted because its failure to renew the license was the result of oversight due to a change in management.²⁵ While Grand Telephone's Petition provides a "reason" for its failure to file a timely renewal, it cannot be said that Mr. Houck's death and Mr. Brixey's misplaced impression of the license expiration date adequately addresses Grand Telephone's burden to *explain*²⁶ how it was unaware of its license obligations. We note that Grand Telephone could have easily ascertained the expiration date of the license by reviewing the license.

11. We believe that to grant the waiver request and reinstate the forfeited license, under the circumstances presented here, would frustrate the goals of the Commission and would be inconsistent with case precedent.²⁷ We do not believe that Grand Telephone's management failures warrant grant of a waiver.²⁸ Grand Telephone has not shown how granting a waiver due to management failures will promote the Commission's goals that parties will have a date certain after which they may file applications for an area covered by an expired license and that such action ensures uninterrupted, *authorized*, service to the public. In fact, Grand Telephone has shown the opposite in that it filed its

¹⁹See 47 C.F.R. § 21.44(b)(1).

²⁰ See Petition for Re-Instatement and Waiver of Part 21.44(b)(1) dated May, 10, 2004.

²¹ See *Burlington*, 13 FCC Rcd at 775 ¶ 7; see also *Superior Broadcasting*, 7 FCC Rcd 7543.

²² See *Burlington*, 13 FCC Rcd at 778 ¶ 16; see also *Superior Broadcasting*, 7 FCC Rcd at 7543 ¶ 4.

²³ See *Burlington*, 13 FCC Rcd at 778 ¶ 16.

²⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT*).

²⁵ Petition and Waiver Request at ¶ 2.

²⁶ 47 C.F.R. 21.44(b)(2).

²⁷ See *Burlington*, 13 FCC Rcd 775 ¶ 16.

²⁸ 47 C.F.R. §21.19 requires a person seeking a waiver to demonstrate unique facts and circumstances. See *Burlington*, 13 FCC Rcd 780 ¶ 19.

waiver request over three years after its license expired. To allow the grant of a waiver in this context would eviscerate the reinstatement rule.²⁹

IV. CONCLUSION AND ORDERING CLAUSES

12. Grand Telephone has not justified a waiver to allow consideration of its late-filed renewal application. We therefore deny the Petition. In light of our denial of Grand Telephone's waiver request, its Application is subject to dismissal on the basis it was untimely filed.³⁰

13. Accordingly IT IS ORDERED that pursuant to the authority contained in Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Section 21.44 of the Commission's Rules, 47 C.F.R. § 21.44, the Petition for Reinstatement and filed by Grand Telephone Company, Inc. on May 10, 2004 IS DENIED.

14. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309 and Section 21.11 of the Commission's Rules, 47 C.F.R. § 21.11(c), that the licensing staff of the Broadband Division SHALL DISMISS the application (File No. 0001806319) filed by Grand Telephone Company, Inc. on July 14, 2004.

15. 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

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

²⁹ See *WAIT*, 418 F.2d at 1159 (the Commission neither "must [n]or should tolerate evisceration of a rule by waivers."

³⁰ See 47 C.F.R. §§ 21.11(c), 21.44(b)(1).