

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

In the Matter of
Hussein Assalinabati
d/b/a West Coast Cab Company and
White & Yellow Cab
Application for Renewal of Conventional
Industrial/Business Pool Station License
Call Sign WPQI770
File No. 0002271629

ORDER ON RECONSIDERATION

Adopted: January 31, 2007

Released: January 31, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau

I. INTRODUCTION

1. We have before us a petition for reconsideration filed by Hussein Assalinabati d/b/a West Coast Cab Company and White & Yellow Cab (Assalinabati) on January 17, 2006 (Petition). Assalinabati seeks reconsideration of the January 10, 2006, dismissal by the Wireless Telecommunications Bureau (Bureau) of both the above-captioned application for renewal of his license for Conventional Industrial/Business Pool Station WPQI770, and his accompanying request for a waiver of Section 1.949 of the Commission's Rules. Specifically, Assalinabati asks that we return his application to pending status, grant the waiver requested, and process and grant this application. For the reasons below, we grant this petition.

II. BACKGROUND

2. On August 1, 2000, the Commission granted Assalinabati a license in the Conventional Industrial/Business Pool for Station WPQI770 with an expiration date of August 1, 2005. On May 9, 2005, a renewal reminder was sent to Assalinabati. On August 1, 2005, the license expired by its own terms. Eight days later, on August 9, 2005, Assalinabati applied for renewal and requested a waiver of Section 1.949 to permit consideration of his late-filed application. On August 30, 2005, Wireless Telecommunications Bureau (Bureau) licensing staff returned the application to Assalinabati, stating that, before his application could be processed, he must advise if the station was constructed and operational.

1 Petition for Reconsideration (filed Jan. 17, 2006) (Petition).

2 47 C.F.R. § 1.949(a) ("[a]pplications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization for which renewal is sought").

3 Petition at 5.

4 Ref. No. 3488912.

5 FCC File No. 0002271629, Waiver of Commission Rules Request.

6 Notice of Return, FCC Form 698, sent to Hussein Assalinabati (Aug. 30, 2005). The letter indicated that the required notification of construction had not been filed for the station, and the license could not be renewed without that information. It cautioned that if Assalinabati did not amend the application accordingly within 60 days, the application would be dismissed.

When Assalinabati failed to respond to within the specified period, the Bureau dismissed his renewal application on January 10, 2006, and cancelled the license on February 26, 2006.

3. Within the period specified for such petitions, on January 17, 2006, Assalinabati filed the instant petition for reconsideration asserting that, while he never received the Bureau's return letter, the subject station was fully constructed and operational on all frequencies at all the sites on April 8, 2001, a date well before the applicable one-year construction deadline.<sup>7</sup> Assalinabati notes that the Bureau has stated that, in cases where applicants fail to file construction notifications within the applicable one year periods, they are allowed thirty days to file from the date of public notice announcing license termination.<sup>8</sup> He asserts this "additional" thirty days was deemed acceptable by the Bureau to "provide a licensee that has timely met its construction or coverage obligations with additional notice and the opportunity to prevent termination of its license by submitting documentation that it has timely constructed."<sup>9</sup> He acknowledges that those automatic termination procedures did not apply in this particular matter because the license was granted well before construction notifications were automated by the Commission's Uniform Licensing System, but argues that the Bureau's January 10, 2006, dismissal of his renewal application was "essentially the same thing as an automatic termination notice for failure to construct the license."<sup>10</sup> Thus, he requests that the Bureau treat the instant reconsideration petition as a notice of completion of construction which was filed "well within" the thirty-day period following dismissal of Assalinabati's renewal application.<sup>11</sup>

4. Assalinabati explains that he owns a large taxi cab company that operates in and around Los Angeles and Orange County, California, and that that the radios authorized by this license are the primary means of communicating with his taxi cabs for the safety of the drivers and their passengers.<sup>12</sup> Through his White & Yellow Cab company, he states that he provides transportation services to approximately 50,000 people each month. Through an account with the City of Santa Monica, he claims that White & Yellow also provides services to handicapped persons and senior citizens.<sup>13</sup> He adds that this company has accounts with many area hospitals, clinics and shelters to provide reliable transportation services at low cost that these operations have come to rely upon.<sup>14</sup>

5. If his renewal application is not reinstated, Assalinabati explains that obtaining a new license for alternate frequencies in the Los Angeles area would be difficult especially because of the exclusive channel use required due to the high volume of both voice and data communications needed day and night for a large taxi cab company.<sup>15</sup> Even if he were able to find alternate exclusive frequencies in the Los Angeles area that would be available at all four of his sites, he submits that the time and cost to

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<sup>7</sup> *Id.* at 2-3.

<sup>8</sup> *Id.* at 3 (*citing* In the Matter of Clarification of Reconsideration Period and Effective Date for Termination of Wireless Radio Service Authorizations, WT Docket No. 05-23, *Declaratory Ruling*, 20 FCC Rcd 1494 (WTB 2005)).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

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

<sup>12</sup> *Id.* at 2-3.

<sup>13</sup> *Id.* at 4. Assalinabati notes that his other company, West Coast Cab, also operates many handicap vans. *Id.*

<sup>14</sup> *Id.* Assalinabati provides the following examples of entities that he states would be affected should the petition for reconsideration be denied: American Cancer Society, Women's Transitional Learning Center, Victim Witness Program, Share Ourselves Homeless Shelter, Children's Hospital – Orange County, AIDS Service, AA Auto Club, and Disneyland Properties. *Id.*

<sup>15</sup> *Id.* at 3.

retune his radios and their system would effectively put him out of business.<sup>16</sup> Also, if his application is not reinstated, Assalinabati cautions that, not only would his taxi cab business be ruined leaving hundreds unemployed and Assalinabati unable to honor his contracts, but that over one hundred different organizations would have to make alternative transportation arrangements and all of them would have to make those arrangements at the same time.<sup>17</sup> For these reasons, Assalinabati argues it would be in the public interest to return his renewal application to pending status and to grant that application.

### III. DISCUSSION

6. Section 405(a) of the Communications Act of 1934, as amended,<sup>18</sup> provides that, “[a]fter an . . . action has been . . . taken in any proceeding by the Commission, or by any designated authority within the Commission pursuant to a delegation under section 5(c)(1), any party thereto . . . may petition for reconsideration only to the authority . . . taking the . . . action; and it shall be lawful for such authority . . . in its discretion, to grant such a reconsideration if sufficient reason therefore be made to appear.” In implementing Section 405(a) of the Act, however, the Commission specified that, “[a] petition for reconsideration which relies on facts not previously presented . . . may be granted only under” certain circumstances such as where “[t]he petition relies on facts which relate to events which have occurred or circumstances which have changed since the [petitioner’s] last opportunity to present such matters. . . .”<sup>19</sup>

7. The Commission’s policy regarding treatment of late-filed renewal applications in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc*<sup>20</sup> if the application is otherwise sufficient under our 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.<sup>21</sup> 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.<sup>22</sup> In determining whether to grant a late-filed 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.<sup>23</sup>

8. Based on the specific facts of this case, we find that the public interest would be served by granting the petition for reconsideration, reinstating the application for renewal, and processing that application.<sup>24</sup> First, we note that Assalinabati applied for renewal within thirty days of the expiration of

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<sup>16</sup> *Id.* at 3-4.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> 47 U.S.C. § 405(a).

<sup>19</sup> 47 C.F.R. §§ 1.106(b)(2)(ii), (c)(1).

<sup>20</sup> *Nunc pro tunc* is a phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, *i.e.*, with the same effect as if regularly done.

<sup>21</sup> 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, 11486 ¶ 22 (1999) (*ULS MO&O*).

<sup>22</sup> See *id.* at 11486 ¶ 22.

<sup>23</sup> See *id.* at 11485 ¶ 22.

<sup>24</sup> Accordingly, we refer the renewal application to the staff for processing consistent with this order and applicable Commission rules. If Assalinabati, is otherwise qualified, the Commission will grant that application *nunc pro tunc*.

the license and requested a waiver to permit the late filing, and, before the license was cancelled, he filed a timely petition for reconsideration of the Bureau's dismissal of that application. Second, Assalinabati has asserted that the station was timely constructed and operational by the August 1, 2001 construction deadline.<sup>25</sup> Third, Assalinabati has provided evidence of possibly significant disruption to the public if his license is not renewed. In view of the unique and unusual factual circumstances presented, we find strict application of the rules would be unduly burdensome on Assalinabati and contrary to the public interest. Accordingly, in accordance with Sections 4(i) and 405(a) of the Act<sup>26</sup> and applicable Commission orders and rules, we find sufficient cause to grant the reconsideration requested by Assalinabati and reinstate as pending the renewal application for this license and to proceed to consider a grant of the requested renewal.

9. We also take this opportunity to remind Assalinabati that, as the Commission has repeatedly stated, each licensee is fully responsible for knowing the term of its license and for filing a timely renewal application.<sup>27</sup> Furthermore, we urge the licensee to take whatever actions are necessary to meet its obligations under our rules and prevent a recurrence of its failure to timely file and diligently prosecute its renewal application.

#### IV. ORDERING CLAUSES

10. 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) and 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 submitted by Hussein Assalinabati d/b/a West Coast Cab Company and White & Yellow Cab on January 17, 2006, is GRANTED, and application FCC File No. 0002271629 SHALL BE REINSTATED and PROCESSED consistent with this *Order on Reconsideration* and the Commission's Rules.

11. 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

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>25</sup> We note that, while he did not file a timely construction notification, Assalinabati did report that the station was operational in his April 29, 2002 response to the Bureau's audit of private land mobile radio spectrum.

<sup>26</sup> 47 U.S.C. §§ 154(i), 405(a).

<sup>27</sup> See *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21. See also *Sierra Pacific Power Company, Order*, 16 FCC Rcd 188, 191 ¶ 6 (WTB PSPWD 2001) (holding that "each licensee bears the exclusive responsibility of filing a timely renewal application"); *Alameda-Contra Costa Transit District Private Land Mobile Stations KBY746, WFS916, and KM8643, Order*, 15 FCC Rcd 24547, 24551 ¶ 10 (WTB PSPWD 2000) (holding that "each licensee is responsible for knowing the expiration date of its licenses and submitting a renewal of license application in a timely manner"); *World Learning, Order*, 15 FCC Rcd 23871, 23872 ¶ 4 (WTB PSPWD 2000) (holding that licensee "is solely responsible for filing a timely renewal application"); *First National Bank of Berryville, Order*, 15 FCC Rcd 19693, 19696 ¶ 8 (WTB PSPWD 2000) (*Berryville*) (holding that "it is the responsibility of each licensee to renew its application prior to the expiration date of the license"); *Montana Power Company, Order*, 14 FCC Rcd 21114, 21115 ¶ 7 (WTB PSPWD 1999) (holding that "it is the responsibility of each licensee to apply to renew its license prior to the license's expiration date").