

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

In the Matter of)
)
Nathan Sherman Enterprises, Inc.)
Lubbock SMR, Inc.)
S&C Investments, Inc.)
Triangle Communications, Inc.)
Mobilecom One, L.L.C.)
Hawaiian Wireless, Inc.)
HBS Communications, Inc.)
SRI, Inc. and Spectrum Resources)
of the Northeast, Inc.)
)
Applications for Review of)
the Cancellation of 800 MHz)
Specialized Mobile Radio Licenses)

ORDER

Adopted: April 20, 2001

Released: May 14, 2001

By the Commission:

I. INTRODUCTION

1. We have before us eight substantively identical Applications for Review filed by the above-captioned licensees (Petitioners) on January 3, 2000.¹ Petitioners seek review of a December 3, 1999 *Order on Reconsideration* issued by the Policy and Rules Branch of the Commercial Wireless Division (Division) declining to reconsider the cancellation of certain Specialized Mobile Radio (SMR) licenses.² Petitioners argue that their licenses were erroneously cancelled and that the Division should have found to them to fall within the scope of the relief granted in the Commission's *Goodman/Chan I* and *Goodman/Chan II* orders.³ For the reasons discussed herein, we dismiss Petitioners' Applications.

¹ Since all of the Applications are substantively identical, we cite to the Application for Review filed by Nathan Sherman Enterprises, Inc. for convenience.

² See Nathan Sherman Enterprises, Inc. *et al.*, *Order on Reconsideration*, DA 99-2705 (rel. Dec. 3, 1999) (*Sherman*).

³ See Application for Review filed by Nathan Sherman Enterprises, Inc., January 3, 2000, at ii, 7 (Application). See also 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*).

II. BACKGROUND

2. In *Goodman/Chan I* and *Goodman/Chan II*, 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 *Goodman/Chan II*, the Commission also concluded that additional General Category 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 eight-month construction periods.

3. On October 9, 1998, following the issuance of *Goodman/Chan II*, the Commercial Wireless Division released a list identifying those non-Goodman/Chan licenses that met the criteria for relief under *Goodman/Chan II*. On October 19, 1998, the Division cancelled and deleted from its database those licenses that had been found not to qualify for relief under *Goodman/Chan II*. Petitioners filed petitions for reconsideration of certain of these cancellations, claiming that relief should have been extended to their licenses even though they did not file timely extension requests.

4. On December 3, 1999, the Commercial Wireless Division denied the Licensees’ reconsideration petitions. The Division found that the petitions were not timely because they challenged the underlying scope of relief granted in the June 1998 *Goodman/Chan II* order rather than the Division’s October 1998 implementation of the order that resulted in Petitioners’ licenses being cancelled.⁴ The Division rejected Petitioners’ contention that prior to the time the Division cancelled their licenses, Petitioners lacked notice that they were not entitled to relief under *Goodman/Chan II*. The Division also affirmed the conclusion that Petitioners were not entitled to relief under *Goodman/Chan II* because they had failed to file timely extension requests.⁵

III. DISCUSSION

5. Petitioners raise no new arguments in their Applications for Review, and we see nothing in the arguments they have made that would lead us to change the Division’s decision. The Division correctly found the reconsideration petitions filed by Petitioners to be untimely challenges to the scope of relief granted by *Goodman/Chan II*. Although Petitioners claim that they lacked notice that they were denied relief until the Division cancelled their licenses,⁶ *Goodman/Chan II* plainly put Petitioners on notice that non-Goodman/Chan licensees who had failed to file timely extension requests would not receive relief. Petitioners were also in a position to know or easily ascertain from their own records whether they had filed extension requests and the timing of such requests. Therefore, we affirm that Petitioners’ challenge was untimely.

6. Even if we were to overlook these procedural defects, Petitioners have presented no compelling argument that the scope of relief afforded by the Commission in *Goodman/Chan II* should be expanded. Petitioners assert that they received disparate treatment in comparison to eight Goodman/Chan licensees whose licenses expired for failure to construct shortly before the petition was filed, but were

⁴ See *Sherman* at ¶ 3.

⁵ See Application at 6, ¶ 10; see also *Sherman* at ¶4.

⁶ See *Sherman* at ¶ 3.

reinstated by *Goodman/Chan I*.⁷ To the extent that Petitioners argue that relief should be granted on this basis, we limit the reinstatement decision in *Goodman/Chan I* to its facts and decline to give it precedential effect. The vast majority of *Goodman/Chan* licensees had time remaining on their construction periods when the petition was filed, and the Commission's deliberations in *Goodman/Chan I* were directed to resolving the strongly-contested and controversial issues associated with extending the time to construct of those licensees. The Commission did not discuss the reinstatement request, and it provided no indication of its rationale for granting that request, which was contrary to the weight of agency precedent regarding untimely extension requests.⁸ We also note that requiring licensees to file extension requests on a timely basis serves important policy objectives. As a general matter, allowing the filing of untimely extension requests, as Petitioners propose, would undermine orderly and efficient spectrum management, lead to administrative uncertainty and delay, and hinder our ability to relicense scarce spectrum resources to other licensees who are ready and able to construct. For these reasons, we reject the suggestion that we are compelled to grant similar reinstatement relief to other General Category SMR licensees whose extension of time requests were denied in *Goodman/Chan II*.⁹

7. 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 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Applications for Review filed by the above-captioned licensees on January 3, 2000 are DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁷ See Application at 8-9, ¶¶ 13-14; see also *Goodman/Chan I*, 10 FCC Rcd at 8550.

⁸ See, e.g., *Norris Satellite Communications, Inc., Memorandum Opinion and Order*, 12 FCC Rcd 22,299, 22,307-08, at ¶¶ 19-22 (1997) (upholding dismissal of untimely request for extension of the satellite construction commencement deadline); *Richardson Independent School District, Memorandum Opinion and Order*, 5 FCC Rcd 3135, 3136, at ¶¶ 9-10 (1990) (denying late-filed motions for extension of a cancelled Instructional Television Fixed Service (ITFS) license); *Universal Cable Communications, Inc.*, 15 FCC Rcd 18,614 (Wireless Tel. Bur. 2000) (canceling point-to-point microwave station license when an extension request was untimely filed); *Associated Information Services Corporation, Memorandum Opinion and Order and Declaratory Ruling*, 3 FCC Rcd 5617 (1988) (denying an untimely request for waiver of the construction period); *Multichannel Media, Inc., Order*, 3 FCC Rcd 5782 (Priv. Radio Bur. 1988) (same); *Aeronautical Radio, Inc., Memorandum Opinion and Order*, 3 FCC Rcd 6994 (Priv. Radio Bur. 1988) (same).

⁹ See *SouthEast Telephone v. FCC*, No. 99-1164, 1999 WL 1215855 (D.C.Cir. Nov. 24, 1999) (stating that an agency need not repeat in a later case an error made in a prior case).