

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

In the Matter of)
Daniel R. Goodman, Receiver;)
Dr. Robert Chan)
Petition for Waiver of Section 90.633(c) and)
1.1102 of the Commission's Rules)
Request for Waiver of Section 90.633(c) of the)
Commission's Rules by Various 800 MHz SMR)
Licensees)
Request for Waiver of Section 90.609(b) of the)
Commission's Rule Prohibiting the Transfer and)
Assignment of Unconstructed Licenses)
Request for Extension of License Term of 800)
MHz Licensees)

ORDER

Adopted: April 26, 2001

Released: May 14, 2001

By the Commission:

1. In this Order, we deny the Petition for Partial Reconsideration (Petition) filed by Preferred Communication Systems, Inc. (Preferred)1 of our Preferred Reconsideration Order in the Goodman/Chan matter.2 Preferred seeks partial reconsideration of our decision in the Preferred Reconsideration Order declining to extend relief to licensees who were outside the scope of the relief granted in the Commission's Goodman/Chan I and Goodman/Chan II orders.3

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

1 Petition for Partial Reconsideration, filed December 9, 1999 (Petition).

2 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, Order on Reconsideration, 14 FCC Rcd 20,547 (1999) (Preferred Order on Reconsideration).

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, 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).

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. Preferred filed a petition for reconsideration of *Goodman/Chan II*, requesting that the Commission reconsider its determination that non-Goodman/Chan licensees must have filed timely extension requests with the Commission in order to receive the same relief granted the Goodman/Chan licensees. On November 9, 1999, the Commission issued the *Preferred Reconsideration Order*, in which it concluded that 1) Preferred lacked standing, and 2) that there was no evidence to support Preferred's contention that licensees who failed to file timely extension requests had received or detrimentally relied on Commission staff advice. Preferred filed the instant petition for partial reconsideration on December 9, 1999.

3. In its latest petition, Preferred argues that General Category licensees who filed extension requests after the expiration of their eight month construction periods should be deemed to have filed "timely" extension requests on the grounds that 1) a small number of the 2,500 original Goodman/Chan licensees were afforded relief even though the original Goodman/Chan petition was filed by the receiver shortly after the expiration of their eight-month construction periods, and 2) the Commission's rules in effect in 1994-1995 provided a 30 day window in the renewal context for licensees to request reinstatement.

4. We note that Preferred did not present these arguments in its previous petition for reconsideration, and that the Petition is not based on new or previously undiscovered facts or circumstances. Thus, Preferred's Petition is procedurally defective under Section 1.106(c)(1) of the Commission's rules. We also conclude that there is no public interest reason to consider Preferred's Petition pursuant to Section 1.106(c)(2). As in the prior petition, Preferred has failed to establish that it has standing on behalf of any specific licensee that filed an untimely extension request and was denied relief under *Goodman/Chan II*.

5. Even leaving aside these procedural defects, Preferred has presented no compelling argument that the scope of relief afforded by the Commission in *Goodman/Chan II* should be expanded. To the extent that Preferred's claim is based on the reinstatement in *Goodman/Chan I* of a very small number of Goodman/Chan licenses whose construction periods had expired before the petition was filed,⁵ we limit that decision 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 is contrary to the weight of agency precedent regarding untimely extension requests.⁶ We also note

⁴ Petition at 2-3.

⁵ See *Goodman/Chan I*, 10 FCC Rcd at 8550.

⁶ 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 (continued....)

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 Preferred's suggestion that the Commission was compelled to grant similar reinstatement relief with respect to other General Category SMR licensees whose extension of time requests were denied in *Goodman/Chan II*.⁷ Preferred's argument based on the existence of reinstatement procedures is also 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.⁸

6. 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), 405, and Sections 1.106 and 1.115 of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.115, the Petition for Partial Reconsideration filed by Preferred Communication Systems, Inc. is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

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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).

⁷ 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).

⁸ 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).