

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

In the Matter of Applications of)	
)	
TRANSIT MIX CONCRETE AND)	File No. D132591
MATERIAL COMPANY)	File No. D148330
)	
For Assignment of License for Station WNQJ776,)	
Huntsville, Texas)	
)	
Request for Renewal of License for Station)	
WNQJ776, Huntsville, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: July 24, 2001

Released: August 2, 2001

By the Commission:

I. Introduction

1. We have before us an Application for Review (AFR)¹ filed by Transit Mix Concrete and Material Company (Transit Mix) on November 7, 2000, and a Petition for Reconsideration (2001 Petition)² filed by Transit Mix on January 2, 2001. The AFR seeks review of the Public Safety and Private Wireless Division's (Division) denial of Transit Mix's petition for reconsideration filed February 14, 2000. The Division affirmed the decision of its Licensing and Technical Analysis Branch (Branch), which dismissed applications seeking to assign the license for Station WNQJ776, Huntsville, Texas, from Lafarge Concrete (Lafarge) to Transit Mix.³ The Division also dismissed Lafarge's application seeking reinstatement of the license for Station WNQJ776. The 2001 Petition seeks reconsideration of the Branch's November 13, 2000 notice of dismissal of the February 14, 2000 application. For the reasons discussed herein, we deny the AFR and dismiss the 2001 Petition.

II. Background

2. On September 18, 1999, Lafarge's license for 800 MHz Business Radio Service Station WNQJ776 in Huntsville, Texas, expired by its own terms because Lafarge failed to submit a license

¹ Application for Review (filed Nov. 7, 2000) (AFR).

² Petition for Reconsideration (filed Jan. 2, 2001) (2001 Petition).

³ In the Matter of Transit Mix Concrete and Material Company, Assignment of License and Request for Renewal of Station License for WNQJ776, Huntsville, Texas, *Order*, 15 FCC Rcd 20198 (WTB PSPWD 2000) (*Order*). This *Order* was adopted on October 17, 2000, and released on October 19, 2000.

renewal application prior to the license expiration.⁴ On October 14, 1999, Transit Mix filed an Form 600 signed by Richard L. Smith, Jr. of Transit Mix, seeking a license for Station WNQJ776 (Transit Mix Form 600). The Form 600 was not signed by Lafarge, as required for renewal of an expired license. Attached to the Form 600 was a completed Form 1046, signed by both Lafarge and Transit Mix, requesting assignment of the license for Station WNQJ776 from Lafarge to Transit Mix.⁵ On January 25, 2000, the Branch dismissed the applications (Forms 600 and 1046) on the basis that a former licensee cannot assign an expired license.⁶ On February 14, 2000, Transit Mix filed a petition for reconsideration of the Branch's dismissal of the applications filed on October 14, 1999.⁷ As an attachment to that petition, Transit Mix submitted a Form 600 signed by Lafarge requesting reinstatement of Lafarge's license for Station WNQJ776 (Lafarge Form 600).⁸

3. On October 19, 2000, the Division denied Transit Mix's petition for reconsideration. The Division affirmed the Branch's action.⁹ The Division also concluded that the Transit Mix Form 600 was not an acceptable late-filed renewal application for a license for Station WNQJ776 because the form was signed by Transit Mix. The Division determined that Transit Mix did not have standing to request renewal of a license that it did not possess. Rather, such a request must be submitted by Lafarge, the former licensee of Station WNQJ776.¹⁰ The Division also dismissed Lafarge Form 600 as defective because it was late-filed.¹¹ On November 13, 2000, the Branch removed Lafarge's renewal application from the FCC database to implement the Division's decision. This enabled the frequency previously assigned to Lafarge for Station WNQJ776 to be reassigned to a new applicant.¹² The Branch

⁴ 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 our rules. 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 Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485-6 (1999) (*ULS Memorandum Opinion and Order*). Therefore, Lafarge had until October 18, 1999 within which to file a late-filed renewal application that could be routinely granted.

⁵ The applications were assigned File Number D132591.

⁶ Notice of Application Dismissal Letter, dated January 25, 2000, from Chief, Licensing and Technical Analysis Branch to Transit Mix Concrete and Material Company.

⁷ In that petition, Transit Mix asserted that Lafarge intended the 1999 Form 600 to be a renewal/reinstatement application.

⁸ The application was later assigned File Number D148330.

⁹ *Order*, 15 FCC Rcd at 20199 ¶ 4.

¹⁰ *Id.* at 20199-200 ¶ 6.

¹¹ *Id.* at 20200 ¶ 7.

¹² See Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Stations, *Memorandum Opinion and Order*, PR Docket No. 90-481, 8 FCC Rcd 6690, 6693 ¶ 24 (1993) (a frequency is not available for reassignment until the previous license is deleted from the Commission's licensing database).

sent a courtesy notice of the “database removal” to Transit Mix’s counsel.¹³ Transit Mix filed its AFR on November 7, 2000,¹⁴ and its Petition for Reconsideration on January 2, 2001.

III. Discussion

4. In its AFR, Transit Mix submits three reasons to support reinstatement of the assignment application, and reinstatement/renewal of Lafarge’s license for Station WNQJ776.¹⁵ First, Section 1.917 does not prohibit the filing of a reinstatement application by an assignee. Second, our Form 600 instructions do not preclude a proposed assignee from serving as the applicant on a Form 600 seeking reinstatement of a license that had been expired for less than thirty days.¹⁶ Finally, Transit Mix argues that under our Late-filed Renewal Policy, the Branch erred in not granting a late-filed renewal application. We find all three arguments to be frivolous. Section 1.917 and Form 600 require that only those parties listed may sign a license application. A proposed assignee is not included in this listing. Also, Transit Mix failed to offer adequate reasons warranting grant of its significantly late-filed renewal application.

5. Transit Mix fails to understand the role of Section 310(d) of the Communications Act of 1934, as amended, upon our application processing requirements. Section 310(d) of the Communications Act provides that no station license or *any rights thereunder* shall be assigned or disposed of in any manner except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.¹⁷ Accordingly, a proposed assignee has no rights under a station license.¹⁸ In this case, Transit Mix was not even an assignee because the license expired before the assignment application was filed. Clearly, only Lafarge, as the former licensee, had standing to request renewal its license. Transit Mix has no right to seek renewal of the license for Station WNQJ776. Unless and until the Commission acts favorably on an assignment application, the proposed assignee has no legal right with regard to the station, including applying for a reinstatement or renewal of a license.¹⁹ To hold otherwise would effectively legitimize an assignment of license for which the Commission had not

¹³ Notice of Application Dismissal Letter, dated November 13, 2000, from Chief, Licensing and Technical Analysis Branch to Shulman, Rogers, Gandal, Pordy & Ecker, P. A.

¹⁴ We note that the caption in Transit Mix’s AFR has two errors. Application File Number D143281, shown in the caption, identifies an application that was filed by Hot Shot Delivery Service, not Transit Mix. The correct file is D132591. The caption also lists Houston, Texas, as the location of Station WNQJ776. That station, however, was located in Huntsville, Texas.

¹⁵ Although Transit Mix terms its filing as a reinstatement application, our rules do not provide for reinstatement of expired licenses.

¹⁶ AFR at 3.

¹⁷ 47 U.S.C. § 310(d) (emphasis added).

¹⁸ Tsooris Corp. and Talkline Broadcasting Corp., *Memorandum Opinion and Order*, 12 FCC Rcd 1675, 1679 ¶ 9 (1997) (Commission does not confer licensee status upon an applicant absent consummation); Syracuse Channel 62, Inc. and Thomas J. Flatley, *Memorandum Opinion and Order*, 60 Rad. Reg.2d (P&F) 1161, 1165 ¶ 10 (1986) (transferees lacked standing to file a petition to deny because the parties had not consummated the Commission-approved transaction).

¹⁹ 47 U.S.C. § 310(d), as implemented by 47 C.F.R. § 1.948.

approved.²⁰ Such a result would be contrary to the precedent concerning unauthorized transfers.²¹

6. Finally, Transit Mix appears to argue that renewal of its license for Station WNQJ776 and imposition of a forfeiture is the appropriate result. As explained above, the Transit Mix Form 600 was not a sufficient renewal application because it was not filed by the former licensee.²² With respect to the Lafarge application, which was submitted on February 14, 2000, almost five months after the license for Station WNQJ776 expired, the Division did not find the explanation for the late filing sufficient to justify granting the renewal and issuing a forfeiture. We find no reason to reverse this finding.²³

7. On a procedural note, Transit Mix filed a Supplement to the Application for Review incorporating by reference the Petition for Reconsideration, dated January 2, 2001, into the AFR.²⁴ Transit Mix states that the November 13, 2000 dismissal notice was not received in the mail until December 14, 2000.²⁵ It therefore asks that we consider the 2001 Petition even though it was filed more than thirty days after November 13, 2000.²⁶

8. While the Commission's Rules do permit a party to supplement an application for review,²⁷ Transit Mix is actually asking us to accept its late-filed petition for reconsideration in violation of the Communications Act. Transit Mix is mistaken as to the time period within which it was permissible to file a petition for reconsideration or supplement to an application for review. Section 405 of the Communications Act, as implemented by Section 1.106 of our Rules, provides thirty days in which an interested party may file a petition for reconsideration. Section 1.4(b)(2) of our rules provides that the release date of non-rulemaking documents is considered the public notice date of this document. Therefore, October 19, 2000 - - the release date of the Division's *Order* dismissing Lafarge Form 600 - - is the pertinent date for determining the appropriate filing period, not the date a courtesy notice of "database removal" is mailed to, or received by, an interested party or a license applicant. Interested parties could file a petition for reconsideration or a supplement to an application for review during the statutory thirty-day period that commenced on October 19, 2000, and terminated on November 18, 2000. Filings after this

²⁰ Tsooris Corp. and Talkline Broadcasting Corp., *Memorandum Opinion and Order*, 12 FCC Rcd at 1679 ¶ 9; Syracuse Channel 62, Inc. and Thomas J. Flatley, *Memorandum Opinion and Order*, 60 Rad. Reg.2d at 1165 ¶ 10.

²¹ See, e.g., Enserch Corp., *Forfeiture Order*, 15 FCC Rcd 13551 (2000); Roadrunner Transportation, Inc., *Forfeiture Order*, 15 FCC Rcd 9669 (2000).

²² See 47 C.F.R. § 1.917; see also Hardrock Concrete Placement Company, *Memorandum Opinion and Order*, 16 FCC Rcd 2593, 2594-95 ¶¶ 6-8 (2001).

²³ Applicants who file renewal applications more than thirty days after the license expiration date may request that the license be renewed *nunc pro tunc*. Such requests, however, will not be routinely granted. They are subject to stricter review than renewal applications filed up to thirty days after the expiration date of the license. See *ULS Memorandum Opinion and Order*, 14 FCC Rcd at 11485-86.

²⁴ Supplement to Application for Review (filed Jan. 2, 2001) (Supplement).

²⁵ Petition at 4.

²⁶ *Id.* at 5.

²⁷ See 47 C.F.R. § 1.115(d).

time period are untimely and are dismissed without consideration.

IV. Conclusion

9. Accordingly, for the reasons discussed above, we conclude that the Division's denial on October 17, 2000, of the petition for reconsideration filed by Transit Mix Concrete and Material Company on February 14, 2000, and the Branch's dismissal on November 13, 2000, of Lafarge's reinstatement application were correct and should be affirmed. Transit Mix's Application for Review, filed November 7, 2000, is denied and its Petition for Reconsideration is dismissed.

V. Ordering Clause

10. **IT IS ORDERED** that, pursuant to the authority of Sections 4(i), 5(c), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 405, and Sections 1.106 and 1.115 of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.115, Transit Mix's Application for Review, filed November 7, 2000, **IS DENIED**, and its Petition for Reconsideration, filed January 2, 2001, **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary