

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

In the Matter of)
)
PEACOCK’S RADIO AND WILD’S)
COMPUTER SERVICE, INC.)
21ST CENTURY WIRELESS GROUP, INC.)
)
Request for Reinstatement of Specialized Mobile)
Radio System Call Sign WNWK964)
Wabash, Arkansas)

MEMORANDUM OPINION AND ORDER

Adopted: July 24, 2001

Released: August 1, 2001

By the Commission:

1. The Commission has before it an Application for Review, filed on July 2, 2000, by Peacock’s Radio and Wild’s Computer Service, Inc. (“Peacock”) and 21st Century Wireless Group, Inc. (“21st Century”). Peacock and 21st Century (collectively, “Petitioners”) seek review of a decision by the Deputy Chief, Licensing and Technical Analysis Branch (“Branch”), Commercial Wireless Division, Wireless Telecommunications Bureau, denying 21st Century’s request for reinstatement of SMR License, Call Sign WNWK964, Wabash, Arkansas. For the reasons discussed below, we deny the Petitioners’ Application for Review.

2. The authorization for WNWK964 expired on May 31, 1996. At the time of expiration, an application was pending at the Commission to transfer control of the station from Peacock to 21st Century. Because a license renewal application was not timely filed, the license was purged from the Commission’s database on July 22, 1996. 21st Century submitted a request for reinstatement on November 9, 1996. On September 28, 1999, the Deputy Chief denied the request for reinstatement. On October 28, 1999, 21st Century filed a Petition for Reconsideration of that action. On June 6, 2000, the Deputy Chief denied the Petition for Reconsideration.

3. In their Application for Review, the Petitioners state that the Branch did not take into consideration the unique circumstances leading to their failure to timely file a renewal application.¹ The Petitioners claim that, at the time the license expired, the pending transfer application precluded the licensee from filing a renewal application.² The Petitioners assert that the Commission should reinstate the authorization because their failure to renew was “inadvertent.”³

4. We find that the Branch properly dismissed 21st Century’s request for reinstatement. Under the Commission’s rules in effect at the time the license for WNWK964 expired, license renewal applications had to be filed during the term of the license.⁴ Licensees had an additional thirty days after

¹ Application for Review at 3.

² *Id.*

³ *Id.* at 5.

⁴ 47 C.F.R. § 1.926(b) (1996).

the expiration of the license term to apply for reinstatement.⁵ If no application for reinstatement was filed, the license was deemed to have been automatically cancelled on the date specified on the authorization.⁶ Requests for reinstatement filed more than thirty days after license expiration were reviewed on a case-by-case basis under the Commission's waiver rules.⁷ Because 21st Century's request for reinstatement was filed more than five months after the license expired, its request was reviewed under the Commission's waiver standards.

5. The Commission rules permit the grant of a waiver if it is (a) in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case, or (b) in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁸ After reviewing 21st Century's request for reinstatement, the Branch determined that 21st Century had failed to set forth sufficient grounds warranting grant of its requested relief, and concluded that reinstatement would not be appropriate under the circumstances. The Petitioners present no new arguments in their Application for Review, and we see nothing in the record that would lead us to change the Branch's decision. We agree with the Branch that the Petitioners have failed to present unique or unusual circumstances that would justify failure to renew the license. As we have held before, "[w]e do not believe that an inadvertent failure to renew a license in a timely manner is so unique or unusual to warrant a waiver of the rules."⁹ Each licensee is solely responsible for knowing the term of its license and submitting a renewal application in a timely manner.¹⁰

6. The Petitioners claim in the Application for Review that "[t]he pendency of the transfer application resulted in the inability of the licensee to file a renewal application."¹¹ They further explain that, "at the time the renewal application would have been considered, Peacock would no longer have been the licensee, and the renewal application would have been dismissed."¹² We find these claims to be without merit and neither sufficiently unique or unusual to support a waiver. Initially, we note that in earlier filings in this proceeding, the parties characterized the renewal filing situation not as one of *inability* but of *uncertainty*.¹³ Petitioners offer no evidence that either one attempted to file a renewal

⁵ 47 C.F.R. § 90.149(a) (1996).

⁶ 47 C.F.R. § 90.149(b) (1996).

⁷ 47 C.F.R. § 90.151(a) (1996).

⁸ 47 C.F.R. § 1.925(b)(3) (2000). *See also* 47 C.F.R. § 90.151(a) (1996).

⁹ Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10,998 ¶ 11 (2000), *citing* Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575, ¶ 9 (2000).

¹⁰ *ULS MO&O* at 11485 ¶ 21. *See also* Sierra Pacific Power Company, *Order*, DA 00-2922, ¶ 6 (rel. Jan. 3, 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*, DA 00-2769, ¶ 10 (rel. Dec. 11, 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, ¶ 4 (2000) (holding that licensee "is solely responsible for filing a timely renewal application"); First National Bank of Berryville, *Order*, 15 FCC Rcd 19693, ¶ 8 (2000) (holding that "it is the responsibility of each licensee to renew its application prior to the expiration date of the license"); and Montana Power Company, *Order*, 14 FCC Rcd 21,114, ¶ 7 (1999) (holding that "it is the responsibility of each licensee to apply to renew its license prior to the license's expiration date").

¹¹ Application for Review at 3.

¹² *Id.*

¹³ *See* Letter to Terry L. Fishel, Chief, Land Mobile Branch, Commercial Wireless Division, from Lloyd W. Coward, Attorney for 21st Century Wireless Group, Inc., at 2 (dated Nov. 9, 1996) ("As such, neither the prior licensee, Peacock, nor the proposed assignee, 21st Century, submitted a request for the timely renewal and/or

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application or attempted to obtain staff guidance as to how to proceed with the filing of a renewal application under the circumstances presented. The licensee, at the time the renewal filing was due, could have timely filed the renewal application. If the Commission had granted the renewal application before it granted the transfer application, the license would have been properly renewed and no further filings would have been required. If, on the other hand, the Commission had granted the transfer application before the renewal application, then upon consummation of the pending transaction, the parties could have promptly submitted an amendment to substitute the new licensee in the pending renewal application.¹⁴

7. The Petitioners contend that the Branch's denial of reinstatement is inconsistent with prior Wireless Telecommunications Bureau ("Bureau") staff decisions, including *Self Communications, Inc.*¹⁵ and *ADF Communications, Inc.*¹⁶ In both of these cases, the petitioners demonstrated unique circumstances supporting license reinstatement. In *Self Communications*, the petitioner did not file a timely renewal application because of the pendency of a rulemaking in which the Commission had proposed to change the license term from five to ten years. The Public Safety and Private Wireless Division granted Self's request for waiver of the Commission's license renewal rules and reinstated the license. In *ADF Communications, Inc.*, the Revere Police Department demonstrated that unique circumstances were involved, and that irreparable injury would result if it were to lose access to its public safety frequency. The Bureau found that denying the Revere Police Department the requested relief would create an emergency situation in which police, fire, and medical units would lose communications service vital to the health and safety of an entire community. In light of these unique circumstances, the Bureau found that application of the rules would leave the Revere Police Department with no reasonable alternative and would be contrary to the public interest. In contrast to these two cases, the Petitioners have not presented any unusual circumstances, nor have they presented compelling public interest reasons that would justify reinstatement of the license. Further, the Petitioners' Application for Review does not identify any harm to public safety or consumer welfare that would result from license termination. In its original request for reinstatement, 21st Century states that its customers would be adversely affected by a denial of a waiver, but it provided no showing that termination of service to these customers would leave them without service alternatives or result in loss of a unique service. We do not believe, therefore, that the Petitioners have justified a waiver of the Commission's rules.

8. The Petitioners cite a number of other Bureau-level cases¹⁷ to support their contention that the Branch's denial of reinstatement is inconsistent with prior Commission precedent. The

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reinstatement of the station. It is unclear whether such renewal or reinstatement would have been submitted in the name of [the] transferor or transferee, as the transfer application was then pending and the transferee's name was subsequently changed to reflect a different licensee name as set forth above."); 21st Century Wireless Group, Inc. Petition for Reconsideration at 3 (filed Oct. 28, 1999) ("It is unclear which party should have submitted the renewal application.").

¹⁴ Commission staff apparently did not check the database to verify whether the license was still active. However, because the license automatically cancelled pursuant to 47 C.F.R. § 90.149(b) (1996), Peacock had no license to transfer at that point. The fact that Commission staff requested information on the status of construction and granted consent to transfer control of this station subsequent to its cancellation does not in any way require us to reinstate the subject license.

¹⁵ *Self Communications, Inc., Reinstatement Application for 218-219 MHz Service License KIVD0006, Chicago, Illinois and Request for Waiver of Sections 1.949(a) and 1.955(a)(1) of the Commission's Rules, Order and Notice of Apparent Liability for Forfeiture*, 15 FCC Rcd. 18,661 (PSPWD 2000) ("*Self Communications*").

¹⁶ *ADF Communications, Inc., Application for a New 470 MHz Radio Station in Boston, Massachusetts, Memorandum Opinion and Order*, 14 FCC Rcd 17,037 (WTB 1999) ("*ADF Communications*").

¹⁷ *Champion Communications Services, Inc., DA 99-2438 (WTB Enf. rel. Nov. 5, 1999)*; *Pampa Communications Centers, Inc., 15 FCC Rcd 8448 (WTB Enf. 1999)*; *Euclid Telecommunications, Inc., 15 FCC Rcd*

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Petitioners allege that the Bureau granted renewal in these cases where the license renewal application was late-filed without any unique circumstances. All of the cases cited by the Petitioners involve the issuance of Notices of Apparent Liability (“NAL”) for Forfeiture to entities that had failed to file timely renewal applications. Although these orders do not discuss or explain the Bureau’s separate actions to reinstate the licenses, we have reviewed the underlying waiver requests and the decisions granting reinstatement. In most of these cases, we find that the parties did demonstrate unique factual circumstances or public interest reasons supporting their requests for reinstatement.¹⁸ We decline to treat the failure in those cases to articulate the bases for relief as modifying the standards in our rules for granting waivers. We reject the Petitioners’ suggestion that we are compelled to grant them similar reinstatement relief based on the action taken in these cases.¹⁹

9. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act, as amended, 47 U.S.C. § 155(c)(5), and Section 1.115(g) of the Commission’s rules, 47 C.F.R. § 1.115(g), the Application for Review filed by Peacock’s Radio and Wild’s Computer Service, Inc. and 21st Century Wireless Group, Inc on July 2, 2000 in the above-captioned proceeding IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

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21,822 (WTB Enf. 1999); Communications Equipment & Services, Inc., 15 FCC Rcd 8444 (WTB Enf. 1999); Advanced Telecom, Inc., 15 FCC Rcd 8442 (WTB Enf. 1999); William S. Mills, 15 FCC Rcd 8436 (WTB Enf. 1999); Vincent Communications, Inc., 15 FCC Rcd 8432 (WTB Enf. 1999); Telenet of Dickinson, Inc., 15 FCC Rcd 8430 (WTB Enf. 1999); Brandon Communications, Inc., 15 FCC Rcd 8426 (WTB Enf. 1999); Berkshire Communicators, Inc., 15 FCC Rcd 8428 (WTB Enf. 1999); Stogner Pumping Service, Inc. d/b/a Lamesa Paging Service, 14 FCC Rcd 20,045 (WTB Enf. 1999); and Snider Communications Corp., 14 FCC Rcd 20,047 (WTB Enf. 1999).

¹⁸ For example, the Branch granted a waiver to Communications Equipment & Services, Inc., noting that “disruption of service would deprive customers of emergency items such as heating oil and a variety of supplies essential to surviving the severe winter weather in Fairbanks, Alaska.” Letter from Michael H. Kleeb for Roger S. Noel, Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division to Lewis H. Goldman, Counsel for Communications Equipment & Services, Inc., File No. 0000017488 (Sept. 21, 1999). In another case, the Branch granted a waiver to Brandon Communications, Inc., noting that the company “provides critical community needs for public safety professionals and also provides services to foster care homes and handicapped persons.” Letter from Roger S. Noel, Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division to Michael L. Higgs, Counsel for Brandon Communications, Inc., File No. 0080017162 (Sept. 1, 1999).

¹⁹ See *SouthEast Telephone, Inc. 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). See also Daniel R. Goodman, Receiver; Dr. Robert Chan, *Order*, FCC 01-144, ¶ 5 (rel. May 14, 2001); and Nathan Sherman Enterprises, Inc. et al., *Order*, FCC 01-138, ¶ 6 (rel. May 14, 2001).