

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

In the Matter of)
ANDERSON COMMUNICATIONS)
Request for Reinstatement of Specialized Mobile) File No. D141514
Radio System Call Sign WNQC571)
Oxford, Mississippi)

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 June 29, 2000, by Anderson Communications ("Anderson"). Anderson seeks review of a decision by the Deputy Chief, Licensing and Technical Analysis Branch ("Branch"), Commercial Wireless Division, Wireless Telecommunications Bureau, denying Anderson's request for reinstatement of SMR License, Call Sign WNQC571, Oxford, Mississippi. For the reasons discussed below, we deny Anderson's Application for Review.

2. Anderson's license for WNQC571 expired on August 25, 1999. Following Anderson's failure to timely file a license renewal application, the license was purged from the Commission's database on November 1, 1999. Anderson filed a request for reinstatement on December 9, 1999. On May 30, 2000, the Deputy Chief dismissed Anderson's request for reinstatement.

3. In its Application for Review, Anderson states that the Branch did not take into consideration the unique circumstances leading to its failure to timely file a renewal application. Anderson states that it neglected to file a license renewal application because it was unaware that its license had expired.1 Anderson claims that it never received a renewal notice from the Commission because its address was changed by the county for 911 service reasons, and that it was not aware that mail sent to its original address would not be forwarded to its office.2 Anderson also claims that it did not realize that its March 6, 1996 license renewal was authorized subject to the outcome of a pending finder's preference proceeding, and was not for a five-year term from the date of grant.3 In its letter denying Anderson's request for reinstatement, the Branch stated that "[r]enewal notices are only a courtesy provided by the Commission. It is the responsibility of the licensee listed on the Commission's database to apply for renewal of its station. It is also the responsibility of the licensee to make sure that any

1 Application for Review at 3.

2 Id. at 2-3.

3 Id. at 1-2.

Commission documents or correspondence delivered to the address listed on the license will promptly reach them.”⁴

4. We find that the Branch properly dismissed Anderson’s request for reinstatement. Under the Commission’s rules, applications for renewal of licenses in the Wireless Radio Services must be filed no later than the expiration date of the license for which renewal is sought.⁵ Further, licenses automatically terminate upon the expiration date unless a timely application for renewal is filed.⁶ Requests for reinstatement filed more than thirty days after license expiration are not routinely granted and are reviewed in light of the complete facts and circumstances involved, including the length of the delay in filing, the licensee’s performance record, the reasons for the failure to timely file, and the potential consequences to the public were the license to terminate.⁷ Because Anderson’s renewal application was filed more than three months after the license expired, its request for a waiver allowing reinstatement of its licenses was subject to this level of review.

5. After reviewing Anderson’s request for reinstatement, the Branch determined that Anderson had failed to set forth sufficient grounds warranting grant of its requested relief, and concluded that reinstatement would not be appropriate under the circumstances. Anderson presents no new arguments in its Application for Review, and we see nothing in the arguments Anderson has made that would lead us to change the Branch’s decision. We agree with the Branch that Anderson has failed to present unique or unusual circumstances that would justify its failure to renew its 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.”⁸ Each licensee is solely responsible for knowing the term of its license and submitting a renewal application in a timely manner.⁹

⁴ Letter to Allan S. Tilles from Ronald B. Fuhrman, for Terry L. Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division (May 30, 2000), *citing* 47 C.F.R. § 1.5 (providing that “[e]ach licensee shall furnish the Commission with an address to be used by the Commission in serving documents or directing correspondence to that licensee[.]” and that “[t]he licensee is responsible for making any arrangements which may be necessary in his particular circumstances to assure that Commission documents or correspondence delivered to this address will promptly reach him or some person authorized by him to act in his behalf.” 47 C.F.R. §§ 1.5(a), 1.5(b).

⁵ 47 C.F.R. § 1.949(a).

⁶ 47 C.F.R. § 1.955(a)(1).

⁷ Biennial Review—Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11,476, 11,485-86 ¶ 22 (1999) (“*ULS MO&O*”). See 47 C.F.R. § 1.925(b)(3).

⁸ 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).

⁹ *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 “[r]egardless of whether the renewal notices [are] received, 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 “a licensee’s obligation to timely file a renewal application is not dependent upon the Commission sending a renewal notice to the licensee; rather, 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 licensee’s expiration date”).

6. We also reject the contention that Anderson lacked notice of the expiration date of its license. The license expiration date, August 25, 1999, was clearly printed on the face of Anderson's license. That expiration date represented a five-year renewal term running from the date of the previous license's expiration, August 25, 1994.¹⁰ Moreover, while Anderson's license renewal was granted subject to the outcome of a finder's preference proceeding, that condition had no effect on the term of the license or the expiration date. Accordingly, Anderson's claim that it was not aware of the correct license expiration date does not excuse its failure to timely file a renewal request, nor does it support grant of a waiver.

7. Anderson contends that the Branch's denial of reinstatement is inconsistent with prior Wireless Telecommunications Bureau ("Bureau") staff decisions, including *Self Communications, Inc.*¹¹ and *ADF Communications, Inc.*¹² 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, Anderson has not presented any unusual circumstances, nor has it presented compelling public interest reasons that would justify reinstatement of the license. Anderson had no basis to believe the term of its license would be extended beyond five years. Further, Anderson's 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, Anderson provided a list of some of its customers, 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 Anderson has justified a waiver of the Commission's rules.

8. Anderson cites a number of other Bureau-level cases to support its contention that the Branch's denial of reinstatement is inconsistent with prior Commission precedent.¹³ Anderson alleges

¹⁰ Anderson apparently and erroneously expected the five-year renewal term to run from the renewal license grant date.

¹¹ *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*").

¹² *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*").

¹³ *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 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).

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 Anderson 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 petitioners did demonstrate unique factual circumstances or public interest reasons supporting their requests for reinstatement.¹⁴ In the remaining cases, the decisions did not identify the unique facts or circumstances that would satisfy the waiver standard. 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 Anderson’s suggestion that we are compelled to grant it similar reinstatement relief premised on the actions taken in these cases.¹⁵

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 Anderson Communications on June 29, 2000 in the above-captioned proceeding IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

¹⁴ 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).

¹⁵ 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).