

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

In the Matter of Applications of)
)
ROBERT D. RYAN) FCC File No. A050009
)
For Assignment and Renewal of Authorization for)
Conventional Industrial/Business Station WIH657,)
West Orange, New Jersey)
)

ORDER ON RECONSIDERATION

Adopted: August 5, 2002

Released: August 7, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. On May 4, 2001, Robert D. Ryan (Ryan or Mr. Ryan) requested reconsideration1 of the dismissal of his applications to assign and renew the license for Conventional Industrial/Business Station WIH657, West Orange, New Jersey. For the reasons discussed below, we deny the Petition.

2. Background. On January 28, 2000, Mr. Ryan submitted an FCC Form 600 Application for Mobile Radio Service Authorization (Form 600) to assign and renew the license for Industrial/Business Station WIH657 and an FCC Form 1046 Assignment of Authorization (Form 1046) to assign the license for Station WIH657 from Frassetto Construction Company, Inc. (Frassetto) to Mr. Ryan.2 When the applications were filed Frassetto was the licensee of record. Frassetto's vice-president, Angelo Frassetto, signed the Form 1046, but Mr. Ryan signed the Form 600.

3. On March 27, 2000, Overlook Hospital (Overlook) objected to the assignment and renewal applications.3 Subsequently, while the objection was pending, on August 7, 2000, the license for Station WIH657 expired. On April 5, 2001, we dismissed the applications (Forms 1046 and 600) because Mr. Ryan lacked the authority to request the renewal of a license that he did not possess and an expired license cannot be assigned.4 On May 4, 2001, Mr. Ryan requested reconsideration of this decision.

4. Discussion. Ryan raises six reasons why the Public Safety and Private Wireless Division's "dismissal was wrong" and should reinstate and grant the subject applications.5 First, Mr.

1 Robert D. Ryan, Petition for Reconsideration (filed May 4, 2001) ("Petition").

2 FCC File No. A050009 (filed Jan. 28, 2000). At the time of the filings, Frassetto was the licensee of record.

3 See Overlook Hospital, Opposition to the Granting of Pending License Transfer A050009 (filed Mar. 27, 2002; dated Mar. 22, 2002).

4 Letter from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC, to Robert D. Ryan (dated Apr. 5, 2001) ("Dismissal Letter").

5 See Petition at 1-2.

Ryan argues that the Form 600 was proper because the assignment of authorization was signed by an officer of the licensee and he did not need the signature of an officer of Frassetto on the renewal application.⁶ Second, assuming the signature of an officer of Frassetto was needed, Ryan contends that we should permit him to provide that signature now.⁷ Ryan argues that if his application had been granted earlier, there would have been no issue as to whether the license expired on August 7, 2000.⁸ Third, Ryan asserts that the license for Station WIH657 cannot expire while the Form 600 is pending.⁹ Fourth, Ryan asserts that we should have notified him that the license could expire while the application was pending.¹⁰ Fifth, Ryan contends that the Overlook objection can not form the basis for dismissal of his application.¹¹

5. Based on our review of the record, we find that the Division's dismissal of Mr. Ryan's applications was correct. As filed, the application containing the renewal request was defective and could not be granted. Mr. Ryan was not the proper entity to sign the renewal application. Section 1.917 of the Commission's Rules¹² and the instructions for completing Form 600 clearly state that only those parties listed may sign a license application. A proposed assignee is not among those individuals who may sign an application for renewal of license.¹³ Accordingly, the Form 600 application was defective to the extent that it sought renewal because it was not signed by an officer of Frassetto, the licensee of record for Station WIH657, or another appropriate party pursuant to Section 1.917 of the Commission's Rules.¹⁴

6. Additionally, in the *Transit Mix MO&O*,¹⁵ the Commission emphasized the role of Section 310(d) of the Communications Act of 1934, as amended (the Act)¹⁶ upon the Commission's application processing requirements. The Commission noted that Section 310(d) of the 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 The Commission therefore explained that "[u]nless 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. To hold otherwise

⁶ *Id.* at 2-3.

⁷ *Id.* at 3.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *See id.*

¹¹ *Id.* at 3.

¹² 47 C.F.R. § 1.917.

¹³ *Id.*

¹⁴ *See* Dismissal Letter at 1 (*citing* 47 C.F.R. § 1.917).

¹⁵ *See* *Transit Mix Concrete and Material Company, Memorandum Opinion and Order*, 16 FCC Rcd 15005, 15007 ¶ 5 (2001) (*Transit Mix MO&O*).

¹⁶ 47 U.S.C. § 310(d).

¹⁷ *See Transit Mix MO&O*, 16 FCC Rcd at 15007 ¶ 5 (*citing* 47 U.S.C. § 310(d)).

would effectively legitimize an assignment of license for which the Commission had not approved. Such a result would be contrary to the precedent concerning unauthorized transfers.”¹⁸ We find such precedent to be controlling in this matter. Mr. Ryan, as the proposed assignee, lacked standing to request the renewal of a license that he did not possess. Rather, Frassetto, the licensee of record for Station WIH657 was required to sign the application seeking renewal of the station license in order to constitute a valid, and proper renewal application.¹⁹ We reiterate “that a licensee’s signature on an associated FCC Form 1046 does not constitute a proper request for renewal of a license. The purpose of FCC Form 1046 is to assign an existing and valid authorization. As a result, the FCC Form 1046 may not be used to apply for renewal of a license.”²⁰

7. Ryan’s next argument is that if his application had been granted, there would have been no issue as to whether the license expired on August 7, 2000. However, as noted above the application was defective and could not be granted. Thus, the license expired on August 7, 2000 due to the absence of a timely filed and proper renewal application being filed prior to such date.

8. Ryan’s third argument assumes that the mere act of filing an application means the status of a license does not change until the application is acted upon. Thus, he argues that Station WIH657 cannot expire while the application is pending. The filing of an assignment application does not relieve a Commission licensee of the responsibility of renewing its authorization. Rather, it is well-settled that a license remains subject to our rules, including operational and renewal provisions, even where an assignment or transfer of control application is pending for the underlying license. In accordance with its terms, the license for Station WIH657 expired on August 7, 2000. Thus, to continue as a valid operating station, Frassetto should have filed a renewal application while the assignment application was pending because an expired license cannot be assigned.

9. Fourth, Ryan asserts that the Division should have notified him that the license could expire while the application was pending.²¹ As noted above, a proposed assignee has no legal right with regard to a station until or unless the Commission approves the assignment.²² Since the assignment application was still pending, any renewal notification would have been sent to the licensee of record, Frassetto, and not Mr. Ryan.

10. Fifth, Ryan cites several reasons concerning why the Overlook objection can not form the basis for dismissal of his application.²³ We need not address these concerns because the Overlook objection was not the reason for the dismissal of the application.²⁴ Rather, the application was dismissed

¹⁸ *Transit Mix MO&O*, 16 FCC Rcd at 15007-15008 ¶ 5 (internal citations omitted).

¹⁹ *See Transit Mix MO&O*, 16 FCC Rcd at 15008 ¶ 6.

²⁰ *Transit Mix Order*, 15 FCC Rcd at 20199 ¶ 6 (internal citations omitted).

²¹ *See* Petition at 3.

²² *See* para. 6.

²³ Mr. Ryan argues that in addition to never receiving a copy of the objection, there is no possibility of harmful interference to hospital communications; Overland does not hold a Commission license; no station on the Overlook Hospital site is used for hospital purposes; and, there is no activity on the channel at that site. *See* Petition at 3.

²⁴ On Thursday, July 18, 2002, in response to Mr. Ryan’s concern that he had not seen the Overlook objection, he was provided with a copy of it. We reiterate that this objection did not form the basis for the dismissal of Ryan’s applications.

because it was procedurally defective. The renewal application was not signed by the licensee of record and the license expired before a proper renewal application was filed. Although we noted the receipt of the Overlook objection, we did not consider the merits thereof in disposing of the application.²⁵

11. We therefore find that the captioned application was correctly dismissed. Accordingly, we deny the Petition.

12. 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 Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Robert D. Ryan on May 4, 2001 IS DENIED.

13. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(d) and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, the Opposition to the Granting of Pending License Transfer A050009 filed by Overlook Hospital on March 27, 2000 IS DISMISSED.

14. These actions are taken pursuant to delegated authority granted under the provisions of Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

²⁵ We note that assuming arguendo that Ryan could seek a renewal request, the subject application still would have been subject to dismissal. Specifically, such application seeking renewal of the license for Station WIH657 would have been premature. Applications for renewal of license may not be filed more than ninety days prior to the expiration of the license. 47 C.F.R. § 1.949(a). While the license for Station WIH657 was scheduled to expire on August 7, 2000, Ryan filed his application on January 28, 2000, or over six months before the license was scheduled to expire. Accordingly, the January 28, 2000 filing was premature.