

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

In the Matter of)	
)	
SAN FRANCISCO IVDS, INC.)	
)	
To Renew the license for Station KIVD0012, San Francisco, California in the 218-219 MHz Service; and,)	File No. R393705
)	
Petition for Reinstatement of License and for Reinstatement of Application for Renewal of License)	File No. MTS 2002031333
)	

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: January 21, 2003

Released: January 23, 2003

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

I. INTRODUCTION

1. In this *Memorandum Opinion and Order on Reconsideration* we address a Petition for Reconsideration¹ (Reconsideration Petition) filed by San Francisco IVDS, Inc. (San Francisco). San Francisco seeks reconsideration of a *Memorandum Opinion and Order (MO&O)* issued by the Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau (Bureau).² The *MO&O* denied San Francisco's request³ for a waiver of Sections 1.949(a) and 1.955(a)(1)⁴ of the Commission's Rules to permit acceptance of a late-filed license renewal application⁵ for Station KIVD0012, San Francisco, California, an expired authorization in the 218-219 MHz Service.⁶ For the reasons, discussed below, we deny the Reconsideration Petition.

¹ Petition for Reconsideration of San Francisco IVDS, Inc. (filed Nov. 13, 2001) (Reconsideration Petition).

² San Francisco IVDS, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 18,008 (WTB, PSPWD 2001) (*MO&O*).

³ Petition of San Francisco IVDS, Inc., for Reinstatement of License and for Reinstatement of Application for Renewal of License (filed Sept. 6, 2000) (Reinstatement Petition).

⁴ See 47 C.F.R. §§ 1.949(a), 1.955(a)(1).

⁵ See FCC File No. R393705 (filed May 21, 1999).

⁶ The 218-219 MHz Service is a short distance communications service that allows one- and two-way communications for both common carrier and private operations on a fixed or mobile basis. See 47 C.F.R. §§ 95.803(a), 95.807(a).

II. BACKGROUND

2. On March 28, 1994, Raveesh K. Kumra was granted a 218-219 MHz Service license to operate Station KIVD0012 in the San Francisco, California market.⁷ At that time, the license term for 218-219 MHz Service licenses was five years.⁸ In 1996, Kumra assigned the license for Station KIVD0012 to San Francisco.⁹

3. On September 17, 1998, the Commission sought comment on numerous modifications to the licensing and technical rules for the 218-219 MHz Service, including changing the license term from five to ten years.¹⁰ On March 26, 1999, the Division waived the five-year construction benchmark requirement set forth in former Section 95.833 of the Commission's Rules, in response to requests for waiver from several 218-219 MHz Service licensees who were granted licenses on March 28, 1994.¹¹ The *Waiver Order* specifically stated that the Commission had not yet released a final order addressing the proposed rule changes in the 218-219 MHz Service.¹²

4. On March 28, 1999, San Francisco's 218-219 MHz Service license for Station KIVD0012 expired because San Francisco failed to file a timely renewal application.¹³ On May 21, 1999, San Francisco filed a renewal application for Station KIVD0012.¹⁴ San Francisco's renewal application, which was untimely by almost two months, did not include a waiver request seeking acceptance of the late-filed renewal application.¹⁵

5. On September 7, 1999, the Commission revised its 218-219 MHz service rules. As part of the revisions, the Commission changed the license term from five to ten years for licensees granted licenses by lottery on March 24, 1994, and "who have timely filed renewal applications or timely filed waiver requests pending at the FCC."¹⁶ In this connection, the Commission noted that licenses of all licensees who failed to file a timely renewal application automatically cancelled as of the expiration date without further action by the Commission.¹⁷ Accordingly, the Commission clarified in the *218-219 MHz*

⁷ See Interactive Video and Data Service Licenses Granted, *Public Notice*, Mimeo No. 42412 (rel. Mar. 30, 1994).

⁸ See *MO&O*, 16 FCC Rcd 18,008 ¶ 2. See also former 47 C.F.R. § 95.811(d) (1994) (setting forth a five-year license term).

⁹ WTB File No. 9602D024199 (granted July 1, 1996).

¹⁰ See Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service and Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Services (proceeding terminated), *Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, WT Dkt. No. 95-47, 13 FCC Rcd 19,064, 19,084 ¶ 36 (1998) (*218-219 MHz Flex NPRM*) (examining ways to maximize the efficient and effective use of the 218-219 MHz band).

¹¹ See Request of Licensees in the 218-219 MHz Service for Waiver of the Five-Year Construction Deadline, *Order*, 14 FCC Rcd 5190 (WTB PSPWD 1999) (*Waiver Order*).

¹² *Id.* at 5194 ¶ 9.

¹³ See *MO&O*, 16 FCC Rcd at 18,009 ¶ 3.

¹⁴ See FCC File No. R393705 (filed May 21, 1999).

¹⁵ *MO&O*, 16 FCC Rcd at 18,009 ¶ 3.

¹⁶ See Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, WT Dkt. No. 98-169, 15 FCC Rcd 1497, 1517 ¶ 32 (1999) (*218-219 MHz Flex R&O*).

¹⁷ *Id.* See also 47 C.F.R. §§ 1.949(a), 1.955(a)(1).

Flex R&O that “[i]f the licensee has timely filed the appropriate license renewal form, we will extend the license term ten years from the initial date of license issuance.”¹⁸

6. On August 7, 2000, the Division’s Licensing and Technical Analysis Branch (Branch) dismissed San Francisco’s renewal application as untimely.¹⁹ On September 6, 2000, San Francisco filed its Reinstatement Petition, which requested a waiver of Sections 1.949 and 1.955(a)(1) of the Commission’s Rules to permit renewal of its expired license.²⁰ On October 19, 2000, San Francisco requested special temporary authority (STA Request) to operate Station KIVD002.²¹

7. On October 12, 2001, we denied San Francisco’s Reinstatement Petition.²² As an initial matter, we noted that the Branch’s dismissal of San Francisco’s untimely renewal application was proper.²³ We also noted that as a result of the Branch’s dismissal of the renewal application, which was not appealed, San Francisco did not have a pending renewal application for Station KIVD0012 at the time it filed its Reinstatement Petition.²⁴ Nonetheless, because San Francisco submitted a new pleading providing, for the first time, reasons why its license should be renewed despite its late-filing of the Station KIVD0012 renewal application, we noted that San Francisco could have filed a new renewal application with a waiver request independent of our decision to affirm the Branch decision.²⁵ For reasons of administrative efficiency, we considered San Francisco’s waiver request using the filing date of the Reinstatement Petition as the filing date for conducting our analysis of the waiver request.²⁶

8. In considering the circumstances presented we found that the renewal application was defective as untimely, and that San Francisco had failed to comply with the Commission’s procedures for filing late-filed renewal applications. We further found that San Francisco provided no reasons why the Branch’s determination was not appropriate given the information before the Branch when it took its

¹⁸ *Id.* at 1517 ¶ 32. The new rules took effect on January 3, 2000. *See* 63 Fed. Reg. 59,656 (1999).

¹⁹ *See MO&O*, 16 FCC Rcd at 18,009 ¶ 3.

²⁰ *Id.* citing 47 C.F.R. §§ 1.949(a), 1.955(a)(1).

²¹ San Francisco IVDS, Inc., Request for Special Temporary Authority (STA) for 218-219 MHz Station KIVD002, filed Oct. 19, 2000.

²² *Id.* at 18,013 ¶ 13.

²³ *Id.* at 18,009-10 ¶ 5.

²⁴ *Id.* at 18,010-11 ¶ 8 n.21. San Francisco did not file a petition seeking reconsideration of the Branch decision within the thirty day statutory period prescribed by Section 405(a) of the Communications Act of 1934, as amended, and implemented by Section 1.106(f) of the Commission’s Rules. 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f). The Branch decision is now beyond review in light of the strong policy favoring administrative finality set forth by Congress in 47 U.S.C. § 405. In this connection, we note that the courts have noted a strong policy in favor of administrative finality, and have held that proceedings that have become final will not be reopened unless there has been fraud on the agency’s or court’s processes, or unless the result is manifestly unconscionable. *See, e.g., Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 64 S.Ct. 997 (1944); *Greater Boston Television Corporation v. FCC*, 463 F.2d 268 (D.C.Cir.1971); *KIRO, Inc. v. FCC*, 438 F.2d 141 (D.C.Cir.1970); *Radio Para La Raza, Memorandum Opinion and Order*, 40 FCC 2d 1102, 1104 (1973). We do not find, and San Francisco has not demonstrated, that such circumstances are present here.

²⁵ *See MO&O*, 16 FCC Rcd at 18,010 ¶ 6.

²⁶ *Id.* at 18,010-11 ¶¶ 5, 9 n.16. We noted that in the context of these particular circumstances that the public interest would not be served by requiring the filing of an underlying application, which would result in a later filing date for the associated waiver request.

action.²⁷ Moreover, we found that San Francisco's alleged confusion as to whether its license term was extended from five to ten years and the relocation of San Francisco's offices did not excuse San Francisco's delay in submitting its reasons as to why its untimely renewal application should be accepted.²⁸ Moreover, we stated that the requirement for renewal is not ambiguous and that we have expressly rejected this argument previously.²⁹

9. Further, we disagreed with San Francisco's claim that its situation is sufficiently similar to the circumstances in *Self Communications, Inc.*,³⁰ such that a grant of San Francisco's waiver request was warranted.³¹ In *Self Communications* we received a late-filed renewal application and accompanying waiver request within two months of expiration of petitioner's 218-219 MHz Service license.³² Consequently, the *MO&O* noted that in *Self Communications*, unlike the situation here, we were able to consider all of the relevant facts while considering the application at a time that was close in time to the expiration of the license.³³ In this connection, we found that granting San Francisco's Reinstatement Petition would have been inconsistent with the Commission's rules, which are intended to promote orderly adjudicative processes and administrative finality.³⁴ Accordingly, we determined that San Francisco failed to show unique or unusual circumstances warranting grant of its requested relief, concluded that granting a waiver would not be appropriate under the circumstances and denied the Reinstatement Petition.³⁵ We did, however, grant San Francisco's STA Request to operate Station KIVD002 for thirty days in order to conduct field tests for preparation of a new application.³⁶ On November 13, 2001, San Francisco filed the instant Reconsideration Petition which seeks reversal of the *MO&O* and grant of San Francisco's renewal application and waiver request or extension of San Francisco's license term to ten years.³⁷

III. DISCUSSION

10. 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.³⁸ Further, licenses automatically terminate upon the expiration date unless a timely application for renewal is filed.³⁹ If a renewal application is late-filed up to thirty days after expiration and it is otherwise

²⁷ *Id.* at 18,010 ¶ 7.

²⁸ *Id.* at 18,010-11 ¶ 8.

²⁹ *Id.* at 18,011 ¶ 9.

³⁰ See *Self Communications, Inc., Order and Notice of Apparent Liability for Forfeiture*, 15 FCC Rcd 18,661, 18,665, ¶ 11 (WTB PSPWD 2000) (*Self Communications*).

³¹ See *MO&O*, 16 FCC Rcd at 18,011-12 ¶ 10.

³² See *id.* at 18,011 ¶ 10.

³³ *Id.*

³⁴ *Id.* at 18,011-12 ¶ 10.

³⁵ *Id.*

³⁶ *Id.* at 18,014 ¶ 13. In this connection, we rejected San Francisco's arguments that we should restore its authorization for Station KIVD002 because its license expired.

³⁷ See Reconsideration Petition at 1.

³⁸ 47 C.F.R. § 1.949(a).

³⁹ 47 C.F.R. § 1.955(a)(1). See 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 (continued....)

sufficient under the Commission's Rules, we will grant the renewal *nunc pro tunc* subject to possible enforcement action.⁴⁰ Applicants, such as San Francisco, who file renewal applications more than thirty days after license expiration may also request renewal *nunc pro tunc* but such requests will not be routinely granted, will be subject to stricter review, and may be accompanied by enforcement action, including more significant fines or forfeitures.⁴¹ Such requests 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.⁴²

11. In the Reconsideration Petition, San Francisco asserts that we failed to consider all of the facts and circumstances.⁴³ Specifically, San Francisco claims that the complete facts and circumstances demonstrate that San Francisco's late filing was inadvertent and caused by a confluence of unusual factors and that enforcement of the renewal requirement as set forth in the *218-219 MHz Flex R&O* is arbitrary and capricious. San Francisco repeats its argument that *Self Communications* provides controlling precedent for the instant case. Specifically, it contends that the same "unusual circumstance," the scheduled expiration of a license during the pendency of a rulemaking which addresses the duration of the term for such license, which we relied upon in granting the requested waiver in *Self Communications*, applies equally to San Francisco's situation.⁴⁴ In this connection, San Francisco contends that we placed too much emphasis on San Francisco's failure to request a waiver when it filed the late renewal application in May 1999.⁴⁵ Additionally, San Francisco contends that we erroneously used September 6, 2000, as the filing date in our analysis of the facts and circumstances rather than May 21, 1999, the date San Francisco filed its previously dismissed renewal application. In this regard, San Francisco claims that most of the delay in the filing of its waiver request is attributable to the Commission because the renewal application filed on May 21, 1999 was not dismissed until August 7, 2000.⁴⁶ Finally, San Francisco contends that license cancellation is a disproportionate penalty in the instant matter and that cancellation would have potential public interest consequences.⁴⁷

12. We reject San Francisco's claim that we did not consider the complete facts and circumstances presented. For the most part, the Reconsideration Petition repeats arguments that were presented in the Reinstatement Petition and addressed in the *MO&O*, wherein we considered the complete

(...continued from previous page)

Telecommunications Service, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd 21027, 21073-74 ¶ 100 (1998) (*ULS Report and Order*).

⁴⁰ See 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*).

⁴¹ *Id.*

⁴² *Id.* See e.g., Peacock's Radio and Wild's Computer Service, Inc., 21st Century Wireless Group, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 15016 (2001); Anderson Communications, *Memorandum Opinion and Order*, 16 FCC Rcd 15,020 (2001).

⁴³ Reconsideration Petition at 10.

⁴⁴ *Id.* at 9.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.* at 11.

⁴⁷ *Id.* at 8-9, 13.

facts and circumstances presented in the record of this proceeding. As an initial matter, the complete facts and circumstances presented in the record of the application before the Branch were that San Francisco filed its renewal application almost two months after its license expired and without a waiver request. Under the Commission's Rules, the Branch may dismiss without prejudice any application that proposes operations not permitted under the Rules and does not properly request a waiver.⁴⁸ Thus, we continue to believe that the Branch's action was consistent with Section 1.934(d)(2) of the Commission's Rules⁴⁹ and that San Francisco has not provided any reason for concluding otherwise.

13. We also reject San Francisco's attempt in the Reconsideration Petition to deflect responsibility for the approximately eighteen-month delay in filing a waiver request. San Francisco attempts to make much of the fact that its previous renewal application remained pending for some fifteen months.⁵⁰ However, the Reconsideration Petition does not discuss the *right* to amend the application, to request a rule waiver (or to simply withdraw the defective application and file anew), that San Francisco failed to exercise during this fifteen-month period.⁵¹ Instead, San Francisco filed a request for waiver thirty days after the Branch dismissed its application. Specifically, San Francisco filed its waiver request, albeit without an accompanying renewal application, on September 6, 2000, which was approximately eighteen months after its license cancelled automatically. For reasons of administrative efficiency, we considered San Francisco's waiver request, assuming September 6, 2000, as the relevant filing date in conducting our analysis of the facts and circumstances presented, although there was not an associated application.⁵² In this connection, San Francisco argues that we erred by not using May 21, 1999, as the filing date. We disagree. First, as noted, the renewal application filed on May 21, 1999, was procedurally defective and San Francisco failed to cure this defect for over fifteen months. Thereafter, the Branch dismissed such application and San Francisco did not file a petition for reconsideration of this action. Thus, the dismissal is final and no longer subject to review.⁵³ Moreover, even if the captioned application was pending on September 6, 2000, the waiver request would have been a major amendment and the May 21, 1999, filing date would have been superseded by the September 6, 2000, filing date of the waiver request.⁵⁴ Thus, September 6, 2000, was the proper date to be used for our analysis of the length of the delay, San Francisco's claims to the contrary notwithstanding.

⁴⁸ See 47 C.F.R. § 1.934(d)(2); *ULS Report and Order*, 13 FCC Rcd 21,027.

⁴⁹ 47 C.F.R. § 1.934(d)(2). See, e.g., *Applications of MCNC, Order on Reconsideration*, 16 FCC Rcd 14,045, 14,047 ¶ 6 (WTB PSPWD 2001) (dismissing as defective renewal application filed late and without waiver request).

⁵⁰ Reconsideration Petition at 10-11.

⁵¹ See 47 C.F.R. § 1.927(a) (provides that "[p]ending applications may be amended as a matter of right if they have not been designated for hearing or listed in a public notice as accepted for filing for competitive bidding").

⁵² See *MO&O*, 16 FCC Rcd at 18,011 ¶ 9 citing *Goosetown Enterprises, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 12,792 ¶ 7 (2001) (citing *JSM Tele-Page, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 19,516, 19,517 ¶ 3 (WTB CWD 1999) (although Commercial Wireless Division (CWD) dismissed JSM's late-filed petition, the CWD considered, on its own motion a waiver request, because JSM could file a new waiver request).

⁵³ See note 24, *supra*.

⁵⁴ The Commission's rules provide that where an amendment to an application constitutes a major change, the amendment shall be treated as a new application for determination of filing date purposes. See 47 C.F.R. § 1.927(h). The waiver request would have cured the procedurally defective application filed on May 21, 1999, thereby resulting in an application for renewal authorization, which is a major filing. See 47 C.F.R. § 1.929(a)(3). See e.g., *ULS R&O*, 13 FCC Rcd at 21,070 ¶ 93 (if an amendment made by the applicant is not a simple correction but constitutes a major amendment to the application, it will be governed by the rules and procedures applicable to major amendments, *i.e.*, it will be treated as a new application with a new filing date).

14. We also find no reason to depart from our findings in the *MO&O* as to several claims restated in the Reconsideration Petition related to San Francisco's failure to timely file for renewal.⁵⁵ As the Commission has held before, and as San Francisco acknowledges,⁵⁶ "[e]ach licensee is solely responsible for knowing the term of its license and submitting a renewal application in a timely manner."⁵⁷ Relocation of offices is not a sufficient reason for failing to timely file a renewal application⁵⁸ and San Francisco had no basis to believe that its license term had been extended,⁵⁹ given that the *Waiver Order* expressly stated that the Commission had not adopted its proposal to extend the license terms.⁶⁰

15. We reject San Francisco's contention that denial of its reinstatement petition is inconsistent with *Self Communications*.⁶¹ In *Self Communications*, the petitioner, a 218-219 MHz Service licensee who was granted a license on March 28, 1994, filed a renewal application approximately two months after its license expired.⁶² The petitioner concurrently filed a request for waiver of the Commission's renewal requirements for acceptance of its untimely renewal application.⁶³ Because the petitioner in *Self Communications* requested a waiver, we were permitted to consider all the facts and circumstances surrounding the petitioner's untimely renewal application.⁶⁴ Based on the record therein, we found the petitioner demonstrated unique circumstances. We based this finding on the fact that the Commission extended the license terms of licensees that had timely filed renewal applications.⁶⁵ We also found it significant that the petitioner in *Self Communications* had indicated its intent to retain its licenses.⁶⁶ In contrast to the petitioner in *Self Communications*, however, San Francisco did not request a waiver seeking acceptance of its untimely renewal application. In this connection, we believe that our treatment of San Francisco's failure to file a waiver request is consistent with our *Transit Mix* decision,

⁵⁵ Reconsideration Petition at 5-7. See *MO&O*, 16 FCC Rcd at 18,011 ¶ 9 (rejecting San Francisco's failure to timely file arguments).

⁵⁶ Reconsideration Petition at 6 n.9.

⁵⁷ See *ULS MO&O*, 14 FCC Rcd at 11,485 ¶ 21. A licensee is not excused from timely filing a renewal application because it has not received materials from the Commission. See, e.g., *Self Communications*, 15 FCC Rcd at 18,663 ¶ 6 citing Daniel Goodman, Receiver, Dr. Robert Chan, Petition for Waiver of Sections 90.633 (c) and 1.1102 of the Commission's Rules, *Memorandum Opinion & Order and Order on Reconsideration*, 13 FCC Rcd 21,944, 21,973 (1998) (*Goodman*). In this connection, we note that the Bureau reminded applicants filing applications in the Wireless Radio services after May 1, 1999 that they should examine their applications carefully prior to filing with the Bureau to prevent undesired results. See *Unified Dismissal Notice*, 14 FCC Rcd 5499. San Francisco must bear the responsibility for its omissions, which resulted in the dismissal of its renewal application and the delay in requesting a waiver.

⁵⁸ See, e.g., *Self Communications*, 15 FCC Rcd at 18,663 ¶ 6 citing *Goodman* 13 FCC Rcd at 21,973.

⁵⁹ Reconsideration Petition at 5-7.

⁶⁰ See note 12 and accompanying text, *supra*. See also *Self Communications*, 15 FCC Rcd at 18,663 ¶¶ 5, 6 (the requirement for renewal is not ambiguous).

⁶¹ Reconsideration Petition at 7-9.

⁶² See *Self Communications*, 15 FCC Rcd at 18,661-62 ¶ 3.

⁶³ *Id.*

⁶⁴ See *MO&O*, 16 FCC Rcd at 18,011-12 ¶ 10.

⁶⁵ See *id.*

⁶⁶ See *Self Communications*, 15 FCC Rcd at 18,663-64 ¶ 7.

which the Commission subsequently affirmed.⁶⁷ The petitioner in *Transit Mix* filed a renewal application more than thirty days after the expiration of its license and without a waiver request.⁶⁸ The petitioner in *Transit Mix* also sought to receive the same relief as licensees in *Andrea Hall*, *i.e.*, acceptance of petitioner's late-filed renewal application.⁶⁹ In *Transit Mix*, we reviewed *Andrea Hall* and found it to be inapposite to the situation in *Transit Mix*.⁷⁰ Unlike the licensees in *Andrea Hall*, we found that the petitioner in *Transit Mix* did not submit a waiver request seeking our acceptance of its late-filed renewal application.⁷¹ In the absence of such waiver request, we concluded that the petitioner's request for renewal of an expired license must be dismissed as defective because it was submitted after the expiration of the license.⁷² As stated in the *MO&O*, the Commission's processes require consideration of all evidence at one time and not in piecemeal fashion⁷³ and these processes operate inefficiently at best when evidence is presented piecemeal.⁷⁴ In this connection, we find that the Reconsideration Petition does not establish a persuasive reason for undermining the public interest goals of promoting orderly adjudicative processes and administrative finality.⁷⁵ We further find that *Transit Mix* rather than *Self Communications* is the controlling precedent for our resolution of San Francisco's request. Accordingly, we continue to believe that San Francisco's request must be denied based on the record in this proceeding.

16. We also reject San Francisco's argument that termination of its license would have potential consequences to the public based on San Francisco's performance record.⁷⁶ San Francisco has not shown any new information that would support its belief that irreparable injury would result to the public if its license is not reinstated. Instead, San Francisco repeats arguments presented in its STA Request, *i.e.*, that its development of a commercially viable application in a major market could make a substantial contribution to the success of the 218-219 MHz Service throughout the country.⁷⁷ In the *MO&O*, we found this claim to be speculative and no indication that serious prejudice would result to the

⁶⁷ See *Transit Mix Concrete and Material Company, Order*, 15 FCC Rcd 20,198 (WTB PSPWD 2000) *aff'd* by *Memorandum Opinion and Order*, 16 FCC Rcd 15,005 (2001).

⁶⁸ *Transit Mix*, 15 FCC Rcd at 20,200 ¶ 7.

⁶⁹ *Id.* citing *Andrea Hall* and *David Fitts, Order*, 15 FCC Rcd 710 (WTB CWD 2000).

⁷⁰ *Id.* at 20,200 ¶ 7.

⁷¹ *Id.*

⁷² *Id.* citing 47 C.F.R. §§ 1.934(d) and (f) (1999).

⁷³ See *MO&O*, 16 FCC Rcd at 18011-12 ¶ 10 citing *Self Communications*, 15 FCC Rcd at 18,662-3 ¶ 5 citing Carolyn S. Hagedorn, *Memorandum Opinion and Order*, 11 FCC Rcd 1695, 1696 (1996). See also *Payne of Virginia, Inc., Memorandum Opinion and Order*, 41 Rad. Reg. 2d (P & F) 1277 (1977) (Payne) (The important public interest in "orderly adjudicative processes and administrative finality ... should not be sacrificed to consider additional evidence which seeks only to offset the party's oversight or lack of diligence ...").

⁷⁴ See *id.* citing *Payne*, 41 Rad. Reg. 2d (P & F) at 1283 ¶ 8; *WTCN Television, Inc., Minneapolis, Memorandum Opinion and Order*, 16 Rad. Reg. 2d 137 ((P & F 1969) (citing *WLIL, Inc. v. FCC*, 352 F.2d 722, 725 (1965) (We cannot allow the appellant to sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.); *Minnie O. Foulk and Renee Ridley Biselli, d/b/a Washoe Shoshone Broadcasting, Memorandum Opinion and Order*, 3 FCC Rcd 5631 (1988)).

⁷⁵ See *MO&O*, 16 FCC Rcd at 18,011-12 ¶ 10

⁷⁶ See *Reconsideration Petition* at 8-9.

⁷⁷ See *id.*; *MO&O*, 16 FCC Rcd at 18,012-13 ¶¶ 11-12; *STA Request* at 2.

public.⁷⁸ The Reconsideration Petition provides no persuasive reason for modifying our earlier finding that San Francisco failed to demonstrate that a waiver is warranted under these circumstances.

17. San Francisco's claims that the renewal requirement for 218-219 MHz Service licensees is arbitrary and capricious are procedurally defective.⁷⁹ As discussed above, the license renewal requirements for the Wireless Radio Services were adopted in the ULS proceeding, and the Commission decided to extend to ten years the license term of certain 218-219 MHz Service licensees in the *218-219 Flex R&O*.⁸⁰ The thirty-day deadlines for petitions for reconsideration of these rule making actions passed well before the November 13, 2001, filing date of the Reconsideration Petition.⁸¹ In this connection, the Reconsideration Petition's attempt to evade these statutory deadlines by challenging the Division's adherence to final Commission decisions is procedurally flawed because it effectively is an impermissible collateral attack on final decisions.⁸²

18. We also reject San Francisco's claim that we cancelled San Francisco's license and that license cancellation is a disproportionate remedy to its alleged rule violations.⁸³ While the Commission's rules and policies extended the license terms of all 218-219 MHz Service licensees that timely filed license renewal applications or had timely waiver requests pending before the Commission this action did not assist San Francisco because, as the Commission noted, licenses of all licensees who failed to file a timely renewal application automatically cancelled as of the expiration date without further action by the Commission.⁸⁴ In this connection, we are not persuaded by San Francisco's attempt to argue that renewal of its license for Station KIVD0012 and imposition of a forfeiture is the appropriate result.⁸⁵ Because San Francisco's failure to timely file a renewal application and failure to file a waiver request stem from its own omissions, we conclude that San Francisco's license for Station KIVD0012 automatically cancelled on March 28, 1999. Finally, we dismiss as moot San Francisco's request to extend the license term for its expired authorization.⁸⁶

⁷⁸ See *MO&O*, 16 FCC Rcd at 18,012-13 ¶ 12.

⁷⁹ San Francisco argued that the "Commission's requirement for the filing of renewal applications by certain 218-219 MHz licensees pursuant to the original five-year term of their licenses was an unlawful and, therefore unenforceable requirement." Reconsideration Petition at 11-12. San Francisco further argued that "[t]he Commission's attempt now to enforce strictly a renewal filing requirement that was void *ab initio* must be regarded as arbitrary and capricious." *Id.* at 12.

⁸⁰ *Supra*, ¶¶ 5, 10, 18 and accompanying footnotes.

⁸¹ See 47 U.S.C. §§ 402(c) and 405(a); 47 C.F.R. § 1.429(d). We also note that petitions for reconsideration of the Commission's decisional orders in WT Docket Nos. 98-20 and 98-169 were addressable only to the full Commission. See 47 C.F.R. §§ 1.44 (requests requiring action by the Commission shall not be combined in a pleading with requests for action by ... any ... persons acting pursuant to delegated authority); 1.106(a)(1) (Petitions requesting reconsideration of a final Commission action will be acted on by the Commission).

⁸² See e.g., *MCI Telecommunications Corp. v. Pacific Northwest Bell Telephone Co.*, *Memorandum Opinion and Order*, 5 FCC Rcd 216 ¶ 41, n.38 (1990), *recon. denied*, 5 FCC Rcd 3463 (1990), *appeal dismissed sub nom. Mountain States Tel. and Tel. Co. v. FCC*, 951 F.2d 1259 (10th Cir. 1991) (per curiam).

⁸³ See Reconsideration Petition at 10-14.

⁸⁴ See note 17, *supra*.

⁸⁵ See Reconsideration Petition at 12-14.

⁸⁶ See *id.* at 1.

IV. CONCLUSION

19. Because we have concluded that circumstances that would warrant grant of a waiver do not exist here, we conclude that it is proper to affirm our decision and deny San Francisco's Reconsideration Petition. San Francisco has failed to demonstrate unique or unusual circumstances for failing to timely file its renewal application or filing its waiver request approximately eighteen months after its license automatically cancelled. Accordingly, we deny San Francisco's Reconsideration Petition and dismiss San Francisco's request for a license extension.

V. ORDERING CLAUSES

20. IT IS ORDERED, 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, that the petition for reconsideration filed by San Francisco IVDS, Inc., on November 13, 2001 is DENIED.

21. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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