

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Application for Renewal of	)	Call Sign WE2XCL
Radio Station License by	)	ELS File No. 0222-EX-RR-2012
ReconRobotics, Inc.	)	Reference No. 17440

To: Office of Engineering and Technology

Petition for Reconsideration

ReconRobotics, Inc., applicant for renewal of the above captioned license, pursuant to Section 1.106 of the Commission’s rules, petitions the Office of Engineering and Technology (OET) to reconsider the action of its Experimental Licensing Branch of July 9, 2012, namely, the issuance of a letter indicating that the captioned application was “Dismissed—without prejudice.” ReconRobotics respectfully requests that OET reconsider its action and grant the renewal application.¹

OET’s July 9, 2012, action fails in three respects. First, by dismissing the application on grounds that the application did not comply with a 60-day filing requirement, OET failed to afford equal protection to similarly situated applicants. Second, OET cannot modify its policy on enforcing the 60-day filing requirement without a reasoned and public analysis of the policy change. Finally, OET’s action in enforcing the 60-day filing requirement conflicts with stated Commission policy that labels the dismissal of certain late-filed renewals as too harsh a result in proportion to the applicant’s actions.

On July 6, 2012, ReconRobotics filed a renewal application for station WE2XCL. At that time, the then-current version of the station’s authorization had an expiration date of July 7, 2012.

¹ As an alternative to addressing the present Petition, OET can reach the same result by considering the “Amendment to Application” submitted today under the same file number.

On July 9, 2012, OET issued a letter indicating that the application was “Dismissed—without prejudice.” OET’s letter referred to Section 5.59(c) of the Commission’s rules, which provides, in part, “Unless otherwise directed by the Commission, each application for renewal of license shall be filed at least 60 days prior to the expiration date of the license to be renewed.”

EQUAL PROTECTION

OET routinely grants renewal applications which are filed less than 60 days prior to the expiration of a license. Indeed, within a few days both before and after the ReconRobotics application, numerous other licensees submitted renewal applications for licenses expiring in less than 60 days—one application was filed three days after its expiration²—and received grants. Inexplicably, OET treated the ReconRobotics application differently.

It is a matter of fundamental law that the Government must afford equal protection to similarly situated parties.³ There is little practical difference among Forms FCC 405 that are submitted to OET. Yet OET did not treat similar applications equally, and so its action must be reversed. ReconRobotics must be afforded the same treatment as other licensees, and cannot be singled out for application of the 60-day rule when that rule is disregarded for others.

² ReconRobotics filed its renewal application on July 6. On July 2, a renewal was filed for WC2XWZ, which expired in less than 30 days, and was **granted**. On July 3, a renewal was filed for WE2XOX, which expired in less than 30 days, and was **granted**. On July 3, a renewal was filed for WF2XUR, which had previously expired, and was **granted *nunc pro tunc***. On July 12, a renewal was filed for WF2XJZ, which expired in less than 30 days, and was **granted**.

³ *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732 (D.C. Cir. 1965) (error in failure to explain different treatment of similarly-situated applicants).

IF OET CHANGES POLICY, IT MUST PROVIDE A REASON.

Notwithstanding the equal protection rights owed to similarly situated applicants, if OET chose to modify its policies regarding the 60-day rule, it was required to have provided a reasoned analysis of the change. The courts have consistently held that an agency must “provide a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.”⁴ The fact of a change is beyond dispute: ReconRobotics had previously submitted a renewal application *for this same license* and had it granted, despite its having been filed less than 60 days prior to expiration (see 0090-EX-RR-2009). In the present instance, OET changed its standard for applying the 60-day rule, yet the requisite analysis for initiating a policy change was absent. Licensees have been made aware of neither the change nor the reason for it.

COMMISSION POLICY REGARDING LATE-FILED RENEWALS

The decision by OET to apply the 60-day rule also conflicts with stated Commission policy. Throughout the Commission’s rules are many varied renewal deadlines. However, the Commission has recognized—and directed certain of its Bureaus—to be lenient in the enforcement of those deadlines. OET should follow the Commission’s directive in this case.

Commission policy balances paperwork filing requirements with the ultimate productivity of a licensee’s operations. The Commission has relaxed its policy on certain renewal deadlines to such an extent that it permits the routine renewal of entire classes of licenses even after they have expired.⁵ In adopting a policy of allowing all Wireless Bureau licenses to be renewed up to 30

⁴ *CBS Corp. v. FCC*, 663 F. 3d 122, 126 (3d Cir. 2011) *citing Ramaprakash v. FAA*, 346 F.3d 1121, 1124 (D.C. Cir. 2003).

⁵ *Biennial Regulatory Review*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, para. 22 (1999) (“If a renewal application is late-filed up to 30 days after the license expiration date in any wireless service, and the application is otherwise sufficient under our rules, we will grant the renewal *nunc pro tunc*.”)

days after their expiration, the Commission acknowledged that “denial of the renewal application and termination of the licensee’s operations would be too harsh a result in proportion to the nature of the violation.”⁶ ReconRobotics, in contrast, submitted its renewal application while its license was still in effect. Terminating the license is far too harsh an action. The conflict between the Commission’s published policies, which recognize late renewals, and OET’s action here should be resolved in favor of the licensee and the renewal should be granted.

CONCLUSION

Considering that OET’s dismissal of the renewal application for WE2XCL (1) violated ReconRobotics’ right to equal protection as similarly situated applicants; (2) was not permissible as a policy change without a reasoned and public analysis; and (3) conflicts with the enunciated policy of the Commission toward leniency in the renewal process, OET should grant reconsideration and grant the captioned renewal application.

Respectfully submitted,



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Id.