

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

In the Matter of)	
)	
COMCAST 38 GHz, INC.)	
)	FCC File Nos. 0000100181, 0000100182,
Petition for Database Correction and Request for)	0000100183, 0000100184, 0000100185,
Reinstatement of 38 GHz Licenses to Operate)	0000100186
Stations WMW543, WMW544, WMW545,)	
WMW546, WPJC701, and WPNA363)	

ORDER

Adopted: May 14, 2001

Released: May 18, 2001

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

I. INTRODUCTION

1. On January 9, 2001, Comcast 38 GHz, Inc. (Comcast 38 GHz) filed a Petition for Database Correction and Request for Reinstatement (Petition).¹ Comcast 38 GHz argues that the Commission erred when it converted Comcast 38 GHz's licenses to operate 38.6-40.0 GHz (39 GHz) Stations WMW543, WMW544, WMW545, WMW546, WPJC701, and WPNA363² to the Universal Licensing System (ULS), and as a direct result of such error, allowed an unauthorized third party to cancel the licenses. For the reasons discussed below, we grant the Petition and reinstate the licenses.

II. BACKGROUND

2. Stations WMW543, WMW544, WMW545, WMW546, WPJC701, and WPNA363 were licensed to American Cellular Network Corp. d/b/a Comcast Cellular (Comcast Cellular) in 1995 and 1996 with a common expiration date of February 1, 2001. On March 4, 1999, Comcast Cellular and SBC Communications, Inc. (SBC) filed applications to transfer control of certain Comcast Cellular licenses and authorizations to SBC.³ Notably, the licenses for the six stations at issue were not included in the

¹ See Comcast 38 GHz, Inc., Petition for Database Correction and Request for Reinstatement, filed January 9, 2001 (Petition).

² The location of these stations are as follows: Allentown, Pennsylvania (WMW543); Long Branch, Pennsylvania (WMW544); West Chester, Pennsylvania (WMW545); Philadelphia, Pennsylvania (WMW546); New Brunswick, New Jersey (WPNA363); and various locations in the area of Delaware and Southern New Jersey (WPJC701).

³ See Applications of Comcast Cellular Holdings, Co., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, 14 FCC Rcd 10604 (1999) (*Comcast-SBC Consent MO&O*). The *Comcast-SBC Consent MO&O* explained that SBC intended to purchase the stock of Comcast Cellular "and thereby assume control over the licenses held by Comcast Cellular and its subsidiaries." *Id.*

Comcast-SBC transaction. Rather, on June 4, 1999, Comcast Cellular and Comcast 38 GHz filed a notification of *pro forma* transfer of control (“notification”) indicating that Comcast Cellular transferred control of the licenses to operate Stations WMW543, WMW544, WMW545, WMW546, WPJC701, and WPNA363 to Comcast 38 GHz on May 31, 1999.⁴ The Commission consented to the proposed Comcast-SBC transfer of control transaction on July 2, 1999.⁵ It consented to the *pro forma* transfer of control of the six subject licenses to Comcast 38 GHz on July 20, 1999, effective May 31, 1999.⁶

3. The Commission converted its licensing records for the subject six authorizations to the ULS on August 14, 1999. This conversion was intended to be an administrative action not involving any change in the information then contained in the Commission’s licensing records. Because Comcast 38 GHz had not yet updated the Taxpayer Identification Number (TIN) associated with the subject licenses, the TIN associated with the licenses continued to be that of Comcast Cellular, which, as noted above, had become a subsidiary of SBC. On March 30, 2000, SBC filed applications via ULS to cancel the licenses for Stations WMW543, WMW544, WMW545, WMW546, WPJC701, and WPNA363.⁷ As a result, the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) cancelled the six licenses on March 31, 2000. The Branch mailed notifications of the license cancellations to Comcast 38 GHz at its present address on March 31, 2000. The license cancellations were also placed on public notice on April 5, 2000.⁸ Subsequently, pursuant to an auction that commenced on April 12, 2000 and concluded on May 8, 2000, the Commission granted licenses for the 39 GHz spectrum for the Economic Areas (EAs) surrounding and including the rectangular service areas for Stations WMW543, WMW544, WMW545, WMW546, WPJC701, and WPNA363 to Advanced Radio Telecom. Corp. (Advanced Radio).⁹ On January 9, 2001, Comcast 38 GHz filed the instant Petition.

III. DISCUSSION

4. The Petition states that Comcast 38 GHz first noticed that the licenses were cancelled in “early November, 2000, when Comcast was conducting its own review of its licenses.”¹⁰ Comcast 38 GHz speculates that the Commission made a clerical error during the ULS conversion process, and mistakenly associated the licenses with SBC.¹¹ Comcast 38 GHz reasons that the licenses should now be reinstated,

⁴ See Petition, Exhibit A. Notification of a forbearance *pro forma* assignment or transfer of control does not require prior Commission approval pursuant to the Commission’s forbearance procedures. See Federal Communications Bar Association’s Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignment of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers, *Memorandum Opinion and Order*, 13 FCC Rcd 6293 (1998).

⁵ See *Comcast-SBC Consent MO&O*, 14 FCC Rcd at 10604-10609.

⁶ See Petition, Exhibit B.

⁷ See FCC File Nos. 0000100181, 0000100182, 0000100183, 0000100184, 0000100185, and 0000100186 (filed Mar. 30, 2000).

⁸ See Wireless Telecommunications Bureau Site-By-Site Action, *Public Notice*, Report No. 496 (rel. Apr. 5, 2000).

⁹ See Auction of Licenses for Fixed Point-to-Point Microwave Services in the 38.6 to 40.0 GHz (39 GHz) Band, *Public Notice*, 15 FCC Rcd 850 (2000).

¹⁰ Petition at 3. In comparison, SBC reviewed its licenses in early 2000 and thereby noticed that the licenses were associated with its “new” subsidiary, Comcast Cellular. See *id.* at 2.

¹¹ See, e.g., *id.* at 2, 3.

because but for the alleged Commission error, SBC could not have cancelled them.

5. By way of background, the Debt Collection Improvement Act of 1996 (DCIA)¹² requires the Commission to collect a TIN from each entity doing business with the Commission.¹³ Since November of 1997, the Commission has required, under authority of the DCIA, that wireless licensees register their TINs in the ULS and associate them with all relevant call signs.¹⁴ ULS uses “the TIN as a unique identifier for each licensee registered in the system. The TIN, along with a user selected password, provides licensees with secure access to their licensing records in order to renew or modify their licenses.”¹⁵

6. As a preliminary matter, we reject the Petition’s insistence that SBC was able to improperly request the cancellation of the licenses for Stations WMW543, WMW544, WMW545, WMW546, WPJC701, and WPNA363 on March 30, 2000 because of a Commission error in converting the licenses to the ULS. Comcast 38 GHz assumes that the Commission staff erroneously associated the licenses with SBC during the conversion process. Rather, SBC, the new parent company of Comcast Cellular, was able to request the cancellation of the licenses because SBC entered the TIN and password previously registered and associated with each call sign by the licensee. Contrary to the Petition’s suggestion, the licensee, and not the Commission staff, is responsible for registering its TIN in the ULS and associating any and all relevant call signs with its TIN in the ULS.¹⁶ Comcast 38 GHz nevertheless failed to register its TIN in the ULS or associate its TIN with these or any other call signs in the ULS.¹⁷

7. The Commission adopted a new policy in 1999 to govern the disposition of late-filed renewal applications.¹⁸ We also have applied this policy to requests in certain other licensing contexts.¹⁹ Under the current policy, renewal applications that are filed within thirty days of the expiration of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission’s

¹² P.L. 104-134, 110 Stat. 1321 (1996) (codified at 31 U.S.C. §§ 3701 *et seq.*).

¹³ *See* 31 U.S.C. § 7701.

¹⁴ *See* Wireless Telecommunications Bureau Universal Licensing System (ULS) Registration Now Available, *Public Notice*, PNWL 7523 (WTB Nov. 4, 1997); *see also* Wireless Telecommunications Bureau Upgrades the Universal Licensing System (ULS) Taxpayer Identification Number (TIN) Registration Process Effective February 1, 1999, *Public Notice*, 14 FCC Rcd 2165 (WTB 1999) (*TIN Public Notice*).

¹⁵ *TIN Public Notice*, 14 FCC Rcd at 2165; *see also* Biennial Regulatory 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, *Report and Order*, Docket No. 98-20, 13 FCC Rcd 21027, 21088 ¶ 136 (1998) (*ULS Report and Order*).

¹⁶ *See, e.g., TIN Public Notice*, 14 FCC Rcd at 2165; *ULS Report and Order*, 13 FCC Rcd at 21090 ¶ 141 (“All applicants for licenses and all licensees must register their TIN with this Commission through ULS.”).

¹⁷ In fact, Comcast 38 GHz only recently registered its TIN in the ULS on November 9, 2000. To date, no call signs have ever been associated with Comcast 38 GHz’s TIN.

¹⁸ Biennial Regulatory 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*, Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS Reconsideration MO&O*).

¹⁹ *See* Medina Electric Cooperative, Inc., *Order on Reconsideration*, DA 99-2314, ¶ 5 (WTB PSPWD rel. Oct. 26, 1999) (*Medina*) (involving unintended voluntary cancellation of license by licensee).

Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.²⁰ Applicants who file renewal applications more than thirty days after the license expiration may also request that the license be renewed *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.²¹ In determining whether to grant a late-filed renewal application, we take into consideration all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee. Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission in the context of late-filed renewal applications, we conclude that Comcast 38 GHz should be granted the requested relief.

8. In particular, we find the circumstances presented by Comcast 38 GHz to be similar to those raised by the licensee in *Medina Electric Cooperative, Inc.* In that case, a fixed microwave service (FMS) licensee successfully negotiated a voluntary relocation agreement with the winning bidder for the spectrum in which it operated, and accordingly modified its license to relocate a 2 GHz path to the 6 GHz band.²² Three weeks after the modification was granted, an employee of the licensee cancelled the license instead of renewing it, in the erroneous belief that the station had acquired a new call sign when the modification application was granted.²³ Four months thereafter, the licensee requested reinstatement of the license.²⁴ We found that the licensee did not intend to cancel its license, given that it had recently negotiated the station's relocation to another frequency band and modified its license.²⁵ We also noted that termination of the license would adversely affect the public because the licensee provided electric service in a rural area where reliable common carrier communications services did not appear to be readily available.²⁶ We therefore reinstated the license with primary status.²⁷

9. Similarly, we are persuaded that Comcast 38 GHz did not intend to cancel its licenses ten months after it implemented the *pro forma* transfer of control. Rather, we find that the filing of the notification indicated Comcast 38 GHz's intent to operate the six stations as a licensee of the Commission. This conclusion is supported by the fact that the cancellation was executed by SBC, rather than by Comcast 38 GHz. Moreover, Comcast 38 GHz demonstrates a greater need for relief because, unlike the licensee in *Medina* that could have been licensed again on a secondary basis, Comcast 38 GHz will lose its licenses completely unless we grant its request. We therefore conclude that reissuance of the six licenses is appropriate under the circumstances presented by Comcast 38 GHz.

²⁰ See *ULS Reconsideration MO&O*, 14 FCC Rcd at 11485 ¶ 22.

²¹ See *id.*

²² *Medina*, ¶ 3.

²³ *Id.*

²⁴ See *id.*

²⁵ See *id.*, ¶ 6.

²⁶ See *id.*

²⁷ See *id.* Ordinarily, new 2 GHz FMS stations are authorized only on a secondary basis. See 47 C.F.R. § 101.81.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the Petition for Database Correction and Request for Reinstatement filed by Comcast 38 GHz, Inc. on January 9, 2001 IS GRANTED to the extent discussed herein and the licenses for Stations WMW543, WMW544, WMW545, WMW546, WPJC701, and WPNA363 will be reissued *nunc pro tunc*.

11. 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, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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