

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

In the Matter of)	
)	
LYNN D. MUSTHALER)	FCC File No. WKK5391
)	
Petition for Reconsideration of Dismissal of a)	
Application for a Amateur License)	
)	

ORDER ON RECONSIDERATION

Adopted: May 17, 2001

Released: May 21, 2001

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

1. *Introduction.* We have before us a petition for reconsideration (*Petition*) submitted by Lynn D. Musthaler on March 26, 2001.¹ Musthaler requests reconsideration of a March 15, 2001 dismissal of her application for renewal of her Amateur Radio Service operator and primary station license. For the reasons discussed below, we dismiss the *Petition*.

2. *Background.* On January 24, 1989, Lynn D. Davis was issued an amateur radio operator license and primary station license with call sign KA3UBM. These licenses were issued for a ten-year term that was scheduled to expire on January 24, 1999. Additionally, Davis had a two-year grace period beyond the expiration of her license in which to renew them.² On January 25, 2001, the license for call sign KA3UBM was cancelled because no renewal application had been submitted. On March 5, 2001, the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (LTAB) received Musthaler's renewal application. On March 15, 2001, the application was dismissed because both her licenses and the two-year grace period for filing a renewal application had expired.³ In the *Dismissal*, Musthaler was advised that she would be required to take and to pass an amateur license examination in order to qualify again for Amateur Radio Service licenses.⁴

3. On March 20, 2001, Musthaler sent to the FCC's Gettysburg, Pennsylvania office a letter requesting reconsideration of the March 15, 2001, *Dismissal*. In that letter, Musthaler stated that she had submitted an application for renewal of her licenses on January 12, 2001, well within the two-year grace period.⁵ Musthaler claims, however, that because the operator license was originally issued in her maiden name of Davis and that the renewal application was under the name of Musthaler that it caused a delay in

¹ Letter from Lynn D. Musthaler to the FCC, Gettysburg, Pennsylvania (dated March 30, 2001) (*Petition*).

² See 47 C.F.R. § 97.21(b).

³ Notice of Immediate Application Dismissal (dated March 15, 2001) (*Dismissal*). See 47 C.F.R. § 97.21(b) (describing two-year grace period).

⁴ *Id.*

⁵ See *Petition*.

processing past the two-year grace period.⁶ There is no record evidence that the Commission ever received Musthaler's January 12, 2001 submission.

4. *Discussion.* We dismiss Musthaler's petition because it was not filed at the correct location. Section 1.106(i) of the Commission's Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.⁷ The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's Rules.⁸ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.⁹ A document is filed with the Commission upon its receipt at the location designated by the Commission.¹⁰ Accordingly, the plain language of the Commission's Rules states that a petition for reconsideration submitted to the Commission's Gettysburg, Pennsylvania, office is not properly filed.¹¹

5. The petition was never filed with the Office of the Secretary. Therefore, we find that the petition was not timely filed in the proper location. Moreover, Musthaler did not request a waiver to file her petition in Gettysburg, as opposed to filing it with the Office of the Secretary. Consequently, absent a waiver, we conclude that Musthaler's petition should be dismissed as improperly filed.¹²

6. 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 submitted by Lynn D. Musthaler on March 26, 2001, IS DISMISSED.¹³

⁶ *Id.*

⁷ 47 C.F.R. § 1.106(i).

⁸ 47 C.F.R. § 0.401.

⁹ *Id.*

¹⁰ 47 C.F.R. § 1.7; First Auction of Interactive Video and Data Service (IVDS) Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 (1996); Complaints Regarding Cable Programming Services Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14 (CSB 1995).

¹¹ *See, e.g.*, Memorandum of Agreement between the Federal Communications Commission and Elkins Institute Inc., *Order on Reconsideration*, 14 FCC Rcd 5080 (WTB 1999) (determining that a facsimile copy to a division office neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782 (WTB PSPWD 1999) (finding that a petition for reconsideration sent to the Commission's lock box at Mellon bank neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office), *aff'd.*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000).

¹³ If we reached the substance of Musthaler's Petition, we would deny the Petition. In 1998, the Commission established a unified policy for dismissing and returning applications, as well as pleadings related to such applications. Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules

7. 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

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to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket 98-20, 13 FCC Rcd 21027 (1998). Under that unified policy, incomplete applications are normally dismissed instead of being returned to the applicant for correction. *Id.*, 13 FCC Rcd at 21069 ¶ 92. Since Musthaler's application for renewal was for an operator license that could not be renewed and for an unassigned call sign, the Branch's decision to dismiss Musthaler's application was correct. The dismissal is without prejudice to Musthaler filing a new application for Amateur Radio Service operator and primary station licenses.