

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

In the Matter of)
)
North Eastern Massachusetts Law Enforcement) FCC File Nos. 0000332620, 0000332628,
Council) 0000332636
)
Request for Reinstatement of Fixed Microwave)
Service (FMS) Stations WEH955, WEH956 and)
WEH957, Wilmington, Massachusetts)

ORDER

Adopted: June 12, 2001

Released: June 14, 2001

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

1. *Introduction.* On January 17, 2001, North Eastern Massachusetts Law Enforcement Council (NEMLEC) filed the above-captioned renewal applications for its licenses for Operational Fixed Microwave Service (FMS) Stations WEH955, WEH956 and WEH957 in Wilmington, Massachusetts, and requested a waiver of Section 1.949 of the Commission's Rules¹ to permit reinstatement of the licenses.² For the reasons discussed below, we deny NEMLEC's waiver requests.

2. *Background.* NEMLEC is a mutual aid organization of twenty-one police agencies, and maintains a radio repeater system for use by its member agencies.³ NEMLEC's licenses to operate Stations WEH955, WEH956 and WEH957, Wilmington, Massachusetts, which provide point-to-point communications for three of these repeaters, expired on December 6, 2000. NEMLEC states that it received renewal reminder notices for the licenses, but no renewal forms.⁴ On December 23, 2000, NEMLEC manually submitted three renewal applications on FCC Form 405A. The Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) dismissed the applications on January 10, 2001, on the grounds that microwave licensees and applicants must use FCC Form 601.⁵ On January 17, 2001, NEMLEC filed the instant applications and waiver requests on Form 601. On February 5, 2001, NEMLEC filed applications for special temporary authority (STA) to operate the stations, which the Branch granted on February 7, 2001 under Call Signs WPRU851, WPRU852 and

¹ 47 C.F.R. § 1.949.

² See FCC File Nos. 0000332620, 0000332628 and 0000332636 (filed Jan. 17, 2001).

³ Waiver Request at 1.

⁴ *Id.*

⁵ See Notice of Immediate Application Dismissal (Jan. 10, 2001) (citing Tips for Applicants Filing Paper Forms for Authorization in the Microwave Radio Services, *Public Notice*, 15 FCC Rcd 7962 (2000) (*Microwave Filing Public Notice*)).

WPRU862.⁶ NEMLEC states that it “cannot stop using the system as it would endanger the lives and safety of the public.”⁷

3. *Discussion.* The Commission adopted a new policy regarding reinstatement procedures in the wireless services in 1999.⁸ Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's 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.⁹ Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *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.¹⁰ In determining whether to reinstate a license, we consider 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.¹¹

4. NEMLEC's waiver request does not address the Commission's policy regarding late-filed renewal applications. Instead, NEMLEC states that it acted in good faith to renew its licenses, and it did not know that it was required to file electronically on Form 601 because there was no notice warning licensees to use Form 601 when it downloaded Form 405A from the Commission's Internet site.¹² NEMLEC argues that its applications should be treated as if they had been filed on December 23, 2000, which was within thirty days of the license expiration date.¹³

5. This argument is unavailing. On May 9, 2000, the Commission released a public notice announcing that, beginning June 1, 2000, microwave licensees and applicants not subject to mandatory electronic filing were required to use Form 601 (August 1999 edition or later),¹⁴ and that applicants whose paper applications were dismissed would have to refile on Form 601.¹⁵ The renewal reminder notices also

⁶ FCC File Nos. 0000357822, 0000357829, and 0000357930. NEMLEC initially filed STA applications on January 22, 2001, but the applications were dismissed because they did not contain an exhibit explaining the nature of the extraordinary circumstance. *See* FCC File Nos. 0000338586, 0000338592, and 0000338575.

⁷ Waiver Request at 1.

⁸ 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*, WT Docket No. 98-20, 14 FCC Rcd 11476 (1999) (*ULS Reconsideration MO&O*).

⁹ *Id.* at 11485 ¶ 22.

¹⁰ *Id.* at 11486 ¶ 22.

¹¹ *Id.* at 11485 ¶ 22.

¹² Waiver Request at 1.

¹³ *Id.*

¹⁴ *See Microwave Filing Public Notice*, 15 FCC Rcd at 7962.

¹⁵ *Id.* at 7964.

informed NEMLEC that its renewal applications should be filed on Form 601. Consequently, NEMLEC's argument that it was without notice of the changes in the filing procedures is without merit. Applicants must stay apprised of the FCC's filing requirements and other rules, and NEMLEC's failure to do so here is not sufficient to excuse it from timely filing its renewal application.¹⁶

6. In addition, NEMLEC's waiver request fails the stricter standard of review required by the Commission's policy for treatment of renewal requests filed more than thirty days after the license expiration date.¹⁷ NEMLEC's licenses expired on December 6, 2000, and it did not file renewal applications on the proper form until January 17, 2001. In determining whether to grant a late-filed renewal application *nunc pro tunc*, we must consider all the facts and circumstances. In the instant case, and for the reasons previously stated, we are not persuaded that NEMLEC's arguments merit renewal of its licenses *nunc pro tunc*. As the Commission has stated, "That a licensee is engaged in public safety activities does not justify a lesser degree of diligence in complying with our renewal procedures."¹⁸ Thus, we deny NEMLEC's request for a waiver to permit late renewal of its licenses.¹⁹

7. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the requests for waiver of Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, filed by North Eastern Massachusetts Law Enforcement Council, on January 17, 2001, IS DENIED, and applications FCC File Nos. 0000332620, 0000332628, and 0000332636 ARE DENIED with prejudice.

8. 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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¹⁶ See, e.g., WLOS Licensee, Inc., *Order on Reconsideration*, 15 FCC Rcd 11047, 11048 ¶ 4 (WTB PSPWD 2000) (WLOS) (rejecting argument that applicant had insufficient notice of change in fee, because change was announced by public notice and other publicly available information) (citing Supercom, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 4604, 4607 ¶ 8 (2000); Empire Broadcasting Corp., *Memorandum Opinion and Order*, 25 FCC 2d 68, 69 ¶ 4 (1970)).

¹⁷ *ULS Reconsideration MO&O*, 15 FCC Rcd at 11486 ¶ 22.

¹⁸ Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 ¶ 20 (1991).

¹⁹ See *WLOS*, 15 FCC Rcd at 11049 ¶ 5 (upholding dismissal of renewal application filed more than thirty days after license expired, even though applicant initially submitted renewal application within thirty days of expiration but with incorrect fee); see also Ameriflight, Inc., *Order*, DA 01-638, ¶ 9 (WTB PSPWD rel. Mar. 13, 2001) (dismissing renewal application filed more than thirty days after license expired, even though applicant initially submitted renewal application before license expired but without required payment remittance form).