

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

In the Matter of)
)
KRAIG VAN GELDEREN) FCC File No. 0000309991
)
Petition for Reconsideration of Dismissal of a)
Application for a Modification and reinstatement)
Conventional Industrial/Business)
Station WNUU239)

ORDER ON RECONSIDERATION

Adopted: July 16, 2001

Released: July 18, 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 submitted by Federal Licensing Inc. (Federal Licensing), on behalf of Kraig Van Gelderen on January 17, 2001.¹ Van Gelderen requests reconsideration of a January 2, 2001, dismissal of Van Gelderen’s application for modification and reinstatement of his Conventional Industrial/Business license for Station WNUU239, Walnut Grove, Minnesota. For the reasons discussed below, we dismiss the Petition.

2. *Background.* On August 3, 1995, Van Gelderen was issued a license for Station WNUU239.² On November 7, 2000 the license for Station WNUU239 expired. On November 22, 2000, the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) received Van Gelderen’s modification application for Station WNUU239. On January 2, 2001, the Commission dismissed the application because Van Gelderen did not file an application to renew the license and because the license had expired prior to receipt of the modification application.³

3. On January 17, 2001, Federal Licensing sent to the FCC’s Gettysburg, Pennsylvania office a letter on behalf of Van Gelderen requesting reconsideration of the *Dismissal Notice*. In that letter, Federal Licensing states that it had submitted an application for modification and reinstatement on November 21, 2000, and requests that the Commission review the matter and reconsider the dismissal of the application.⁴

¹ Letter from Lory Troxell, Federal Licensing, Inc., to the FCC, Gettysburg, Pennsylvania (dated January 17, 2001) (Petition).

² See FCC File No. 9508R78054.

³ Notice of Immediate Application Dismissal (dated January 2, 2001) (*Dismissal Notice*). See 47 C.F.R. § 1.934(f).

⁴ See Petition.

4. *Discussion.* We dismiss the 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. 20554.⁵ 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.⁶ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.⁷ A document is filed with the Commission upon its receipt at the location designated by the Commission.⁸ 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.⁹

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, Van Gelderen did not request a waiver to file the Petition in Gettysburg, as opposed to filing it with the Office of the Secretary. Consequently, absent a waiver, we conclude that the Petition should be dismissed as improperly filed.¹⁰

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

⁵ 47 C.F.R. § 1.106(i).

⁶ 47 C.F.R. § 0.401.

⁷ *Id.*

⁸ 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).

⁹ *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).

¹⁰ If we reached the substance of the Petition, we would deny the Petition. While the Petition claims that the application sought renewal of the license, in response to Question 2 of FCC Form 601, Van Gelderen stated that the sole purpose of the application was to modify the license. Moreover, since Van Gelderen's application was not filed until after the license expired, Van Gelderen would have been required to obtain a waiver of Section 1.949(a) of the Commission's Rules, 47 C.F.R. § 1.949(a), which requires that applications for renewal of license be filed prior to the expiration date of the license. Van Gelderen did not request any waiver of the Commission's Rules. *See* FCC File No. 0000309991, Main Form, Response to Question 5. Accordingly, the application was properly dismissed.

Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration submitted by Federal Licensing, Inc. on behalf of Kraig Van Gelderen on January 17, 2001, IS DISMISSED.

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

John J. Schauble
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