

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

In the Matter of Applications of)
MCNC) File Nos. 0000234563, 0000234564,
) 0000234565, 0000234567, 0000259843,
) 0000259844, 0000259845, and 0000259846
For Renewal of Operational Fixed Microwave)
Stations: WHJ607, Research Triangle Park, North)
Carolina; WNEM506, Barium Springs, North)
Carolina; WNEM509, Hickory, North Carolina and)
WHJ612, Faith, North Carolina)

ORDER ON RECONSIDERATION

Adopted: July 18, 2001

Released: July 20, 2001

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

I. INTRODUCTION

1. On December 14, 2000, MCNC filed a petition¹ requesting reconsideration of the dismissal of the above-referenced renewal applications by the Public Safety and Private Wireless Division's (Division) Licensing and Technical Analysis Branch (Branch).² For the reasons set forth below, MCNC's Petition is dismissed in part and denied in part.

II. BACKGROUND

2. During the 1980's, MCNC was authorized to operate four fixed Microwave stations in North Carolina. The stations are: Station WHJ607, located in the area of Research Triangle, North Carolina, Station WHJ609, located in the area of Faith, North Carolina, Station WNEM506, located in the area of Barium Springs, North Carolina and Station WNEM509, located in the area of Hickory, North Carolina. Each of the subject licenses had an expiration date of October 4, 2000. On September 18, 2000, MCNC filed renewal applications for each of the subject stations.³ On each of the applications, the signature block read "William R. Kress, President of MCNC."⁴ Ms. Becky French signed the applications

¹ See Petition for Reconsideration filed by MCNC (filed December 14, 2000) (Petition).

² See Automated Dismissal Letter for FCC File No. 0000234563 to MCNC (October 10, 2000); Automated Dismissal Letter for FCC File No. 0000234564 to MCNC (October 10, 2000); Automated Dismissal Letter for FCC File No. 0000234565 to MCNC (October 10, 2000); Automated Dismissal Letter for FCC File No. 0000234567 to MCNC (October 10, 2000); Automated Dismissal Letter for FCC File No. 0000259843 to MCNC (November 14, 2000); Automated Dismissal Letter for FCC File No. 0000259844 to MCNC (November 14, 2000); Automated Dismissal Letter for FCC File No. 0000258945 to MCNC (November 14, 2000); and Automated Dismissal Letter for FCC File No. 0000298546 to MCNC (November 14, 2000).

³ See FCC File Nos. 0000234563, 0000234564, 0000234565 and 000023467 (September 18 Renewal Applications).

⁴ Id.

“for” Mr. Kress.⁵ Ms. French is an officer of MCNC and authorized to sign applications before the Commission.⁶ MCNC did not, however, disclose this fact in the applications.

3. In a letter dated October 10, 2000, the Branch dismissed the applications because it determined that they “were submitted to the Commission without an original signature or with an invalid signature.”⁷ MCNC states that on October 24, 2000, it requested a ULS password in order to file its applications electronically, via the Universal Licensing System (ULS).⁸ When MCNC did not receive the password within one week, it manually filed the renewal applications.⁹ MCNC states that it sent the applications via U.S. Mail on October 31, 2000.¹⁰ The thirtieth day after the licenses expired was November 3, 2000. The applications were received at the Commission on November 8, 2000. In a letter dated November 14, 2000, the Branch dismissed the November 8 Renewal Applications as untimely.¹¹

III. DISCUSSION

4. *The September 18 Renewal Applications.* We find that the Petition for Reconsideration is untimely with respect to the renewal applications filed on September 18, 2000. Section 405 of the Communications Act, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner’s pleadings on reconsideration. Section 405, as implemented by Section 1.106(f) of the Commission’s Rules, requires a petition for reconsideration to be filed within thirty days from the date of the public notice of the final Commission action.¹² In this case, the date of public notice of the dismissal of the September 18, 2000 renewal applications was October 10, 2000.¹³ The Petition for Reconsideration was filed on December 14, 2000, more than thirty days beyond the filing deadline. The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only

⁵ *Id.*

⁶ *See* Petition, Exhibit 4 at 1. Ms. French states that she is Secretary and General Counsel of MCNC. *Id.*

⁷ *See* Automated Dismissal Letter for FCC File No. 0000234563 to MCNC (October 10, 2000); Automated Dismissal Letter for FCC File No. 0000234564 to MCNC (October 10, 2000); Automated Dismissal Letter for FCC File No. 0000234565 to MCNC (October 10, 2000); Automated Dismissal Letter for FCC File No. 0000234567 to MCNC (October 10, 2000) (October Dismissal Letters).

⁸ *See* Petition at 5.

⁹ *Id.* We note that the MCNC claims that it mailed the petition on October 31, 2000. The thirty-day grace period did not expire until November 3, 2000.

¹⁰ *Id.*

¹¹ *See* Automated Dismissal Letter for FCC File No. 0000259843 to MCNC (November 14, 2000); Automated Dismissal Letter for FCC File No. 0000259844 to MCNC (November 14, 2000); Automated Dismissal Letter for FCC File No. 0000259845 to MCNC (November 14, 2000); Automated Dismissal Letter for FCC File No. 0000259846 to MCNC (November 14, 2000) (November Dismissal Letters).

¹² 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

¹³ In cases where the document is neither published in the Federal Register nor released, and if the descriptive document entitled “Public Notice” is not released, the date appearing on the document sent to the party affected is the start date for purposes of computing time. 47 C.F.R. § 1.4(b)(5).

one day late.¹⁴ Therefore, the Petition was untimely with respect to the dismissal of the September 18, 2000 renewal applications, and we dismiss the Petition with respect to those applications.

5. *The November 8 Renewal Applications.* We find that the Petition is timely with respect to the November 8 Renewal Applications, and therefore, we will address the merits of the Petition regarding those applications. MCNC concedes that the November 8 Renewal Applications were filed well after the subject licenses expired¹⁵ but asserts that it acted reasonably in filing the renewal applications when it did.¹⁶ MCNC argues that it had no knowledge that the resubmission of the renewal applications was due by a particular time.¹⁷ MCNC states that the September 18 Renewal Applications were dismissed “without prejudice in accordance with Section 1.934 of the Commission’s Rules.”¹⁸ Section 1.934(a) of the Commission’s Rules provides that the Commission may accept from the applicant another application for the same purpose, provided the application is otherwise timely.¹⁹ MCNC contends that “unless an applicant brings extensive experience with the Commission’s procedures to the application process, ‘otherwise timely’ is subject to interpretation.”²⁰ MCNC states that it believed that the Commission would accept resubmitted applications if MCNC tendered them within thirty days of receiving the October 10, 2000 dismissal letters.²¹

6. Under Section 1.949 of the Commission’s Rules, applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization for which renewal is sought.²² As MCNC has recognized, the subject licenses expired on October 4, 2000. Without a waiver of Section 1.949 of the Commission’s Rules, the November 8 Renewal Applications were untimely. MCNC did not request waiver of Section 1.949 with its November 8 Renewal Applications. Therefore, we find that the renewal applications filed by MCNC on November 8, 2000 must be dismissed as defective because they were late-filed and did not request a waiver of that rule.²³

7. Furthermore, we are not persuaded by MCNC’s argument that “the Commission’s Rules did not put MCNC on notice that the applications dismissed by the First Dismissal Notice did not hold its

¹⁴ See e.g., Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975); Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080, 5081 ¶ 3 (1999).

¹⁵ See Petition at 2.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 5.

¹⁸ *Id.* (citing October Dismissal Letters).

¹⁹ 47 C.F.R. § 1.934(a).

²⁰ *Id.* at 6.

²¹ *Id.*

²² 47 C.F.R. § 1.949(a).

²³ See 47 C.F.R. § 1.934(d)(2).

renewal filing date . . .²⁴ Section 1.949 of the Commission's Rules, applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization for which renewal is sought. The October Dismissal Letters stated that if MCNC wanted to be licensed, it must file new applications.²⁵ The letters did not advise MCNC to "resubmit" the same applications, nor did they establish any filing deadline by which MCNC could file a new set of renewal applications.²⁶ While MCNC believed that it had thirty days from the dismissal of the September 18 Renewal Applications to file new renewal applications,²⁷ it has not offered any reasonable basis for that belief. MCNC knew, or should have known, that any subsequently filed renewal applications required a waiver of Section 1.949. Accordingly, we conclude that the November 8 Renewal Applications were properly dismissed.

IV. CONCLUSION

8. For the foregoing reasons, we find that the Petition is untimely with respect to MCNC's September 18, 2000 renewal applications. We also determine that MCNC's November 8, 2000 renewal applications are defective because they were untimely. Therefore, we dismiss the Petition as untimely with respect to MCNC's September 18, 2000 renewal applications and deny the Petition with respect to MCNC's November 8, 2000 renewal applications.

V. ORDERING CLAUSES

9. 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. § 1.925, the petition for reconsideration filed by MCNC on December 14, 2000 **IS DISMISSED AS UNTIMELY** with respect to FCC File Nos. 0000234563, 0000234564, 0000234565 and 0000234567 and **IS DENIED** with respect to FCC File Nos. 0000259843, 0000259844, 0000259845 and 0000259846.

10. 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

Ramona E. Melson
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Wireless Telecommunications Bureau

²⁴ Petition at 6.

²⁵ See October Dismissal Letters.

²⁶ *Id.*

²⁷ Petition at 5.