

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

In the Matter of)	
)	
MIDVALE SAWTOOTH TELEPHONE, INC.)	FCC File No. 9713071
)	
Request for Waiver and Request for Reinstatement)	
of License to Operate Station WCU411, Stanley,)	
Idaho)	

ORDER

Adopted: August 14, 2001

Released: August 16, 2001

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

1. *Introduction.* On January 31, 2001, Midvale Sawtooth Telephone, Inc. (MST) requested correction of the Universal Licensing System (ULS) database to show MST as the licensee of Station WCU411, Stanley, Idaho and reinstatement *nunc pro tunc* its license to operate Station WCU411.¹ MST also requests a waiver of Section 1.913(b) of the Commission's Rules² to allow it to manually file FCC Form 601 to renew its authorization to operate Station WCU411.³ For the reasons stated below, we dismiss the renewal application, and dismiss the request for database correction and reinstatement of the license as moot.

2. *Background.* On January 3, 1997, U.S. West Communications, Inc. (U.S. West) submitted an application to assign its authorization to operate Station WCU411 to MST.⁴ On February 27, 1997, the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) consented to that assignment.⁵ The license retained its expiration date of August 1, 2000. It appears that for reasons that are not clear, the Commission's licensing database either was never revised to reflect MST as the licensee of Station WCU411, or the revision was later negated. In any event, the database showed U.S. West as the licensee when, later in 1997, the Branch reviewed the Fixed Microwave Services licensing database to determine which licenses were not being used. When it was determined that U.S. West was no longer operating Station WCU411, the license was canceled on October 21, 1997.⁶

¹ Letter from Richard D. Rubino, Blooston, Mordkofsky, Dickens, Duffy & Prendergast to Ruth Taylor, Licensing and Technical Analysis Branch, Federal Communications Commission (dated Jan. 31, 2001) (MST Letter).

² 47 C.F.R. § 1.913(b).

³ Midvale Sawtooth Telephone, Inc. FCC Form 601 (filed Jan. 31, 2001) (MST application).

⁴ FCC File No. 9713071.

⁵ *Public Notice*, Report No. 1927 (rel. Mar. 4, 1997).

⁶ Wireless Telecommunications Bureau Weekly Receipts and Disposals, *Public Notice*, Report No. 1959 (rel. Oct. 21, 1997).

3. On January 31, 2001, MST manually submitted FCC Form 601 to renew its authorization to operate Station WCU411.⁷ MST attached a letter indicating that its license to operate Station WCU411 was inadvertently purged from the ULS database and requesting that the ULS database be corrected.⁸ MST then requested a waiver of Section 1.913(b) of the Commission's Rules, which requires that applications for services that have been converted to ULS⁹ must be filed electronically, because ULS would not accept an electronic renewal application for a license that does not appear in the database.¹⁰

4. *Discussion.* MST argues that the Commission erroneously canceled its license for Station WCU411, and requests that the license be reinstated.¹¹ We are unable, however, to determine definitively from our records whether the cancellation was improper, and MST has provided no documentation to that effect. Therefore, on the record before us, we cannot conclude that reinstatement is warranted. Moreover, even assuming *arguendo* that such cancellation was erroneous, we find, based on the information before us, that MST's request for database correction and reinstatement of its license *nunc pro tunc* is moot because the license for Station WCU411 would have expired on its own terms as of August 1, 2000, but for the cancellation. Thus, at the time that MST made its request, assuming an erroneous cancellation, the associated application would most properly be characterized as a late-filed renewal application.

5. In 1999, the Commission revised its policy regarding treatment of late-filed renewal applications in the wireless services.¹² 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 our rules. However, 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.¹³ Applicants who file renewal applications more than thirty days after the license expiration date may also request that the license be renewed *nunc pro tunc*, but such requests will not be routinely granted. These requests will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹⁴ In determining whether to grant a late-filed renewal application, 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.¹⁵ MST submitted its renewal application almost six months after the expiration date of the license for Station WCU411, and it neither requested nor demonstrated that

⁷ MST application.

⁸ MST Letter at 1-2.

⁹ The microwave database was converted to ULS on August 14, 1999.

¹⁰ MTS application, Exhibit 1.

¹¹ MST Letter at 2.

¹² See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476 (1999).

¹³ See *id.* at 11485 ¶ 22.

¹⁴ See *id.* at 11486 ¶ 22.

¹⁵ See *id.* at 11485 ¶ 22.

grant of a waiver of Section 1.949(a) of the Commission's Rules, which requires that renewal applications be filed no later than the expiration date of the authorization for which renewal is sought, is warranted.¹⁶ Therefore, regardless of whether the license was canceled erroneously on October 21, 1997, the renewal application is defective because it was filed untimely. Because MST has failed to offer any explanation as to why it filed the renewal application almost six months after the expiration date for Station WCU411, we conclude that MST's late-filed renewal application should be dismissed.¹⁷ If MST wishes to obtain valid authorization for this station, it must file a new properly coordinated application.¹⁸ If MST wishes to continue operating this facility until it receives a new authorization, it must obtain authorization to do so.¹⁹

6. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.949(a) of the Commission's Rules, 47 C.F.R. § 1.949(a), the application for renewal of the authorization for Station WCU411 submitted by Midvale Sawtooth Telephone, Inc. on January 31, 2001 is DISMISSED.

7. IT IS FURTHER ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the request for database correction and reinstatement *nunc pro tunc* of the authorization to operate Station WCU411 filed by Midvale Sawtooth Telephone, Inc. on January 31, 2001 IS DISMISSED AS MOOT.

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

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

¹⁶ 47 C.F.R. § 1.949(a).

¹⁷ See, e.g., *Ameriflight, Inc., Order*, 16 FCC Rcd 5414, 5417 ¶ 9 (WTB PSPWD 2001); *World Learning, Inc., Order*, 15 FCC Rcd 23871, 23872 ¶¶ 4-5 (WTB PSPWD 2000).

¹⁸ See 47 C.F.R. § 101.103. We note that, because Station WCU411 operated on 2 GHz frequencies, any subsequent authorization for the same spectrum would be on a secondary basis. 47 C.F.R. § 101.81.

¹⁹ See 47 C.F.R. § 1.931.