

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

In the Matter of Application of)
)
ACC NETWORK CORP.) FCC File No. 0000401082
)
For Renewal of Private Operational Fixed)
Microwave Service Station WLL906, Syracuse,)
New York)

ORDER

Adopted: December 18, 2001

Released: December 20, 2001

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

I. INTRODUCTION

1. On March 19, 2001, ACC Network Corp. (ACC) filed an application to renew its license to operate Private Operational Fixed Microwave Service (POFS) Station WLL906, Syracuse, New York.¹ Because the license for the station expired on February 1, 2001, ACC also requests a waiver of the Commission’s Rule² requiring licensees to seek renewal prior to the expiration of their authorizations.³ For the reasons discussed below, we deny the Waiver Request and dismiss ACC’s pending application.

II. BACKGROUND

2. Station WLL906 was licensed to ACC in 1991 with an expiration date of February 1, 2001. ACC failed to renew its license prior to the expiration of the license. On February 12, 2001, ACC interactively filed its first application to renew the license for Station WLL906 in the Commission’s Universal Licensing System (ULS).⁴ However, the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) dismissed the application on March 3, 2001 because ACC failed to submit the requisite filing fee. ACC filed the instant application on March 19, 2001. ACC also requested a waiver of the Commission’s Rules to permit consideration of its late-filed application to renew its prior authorization to operate Station WLL906.

¹ See FCC File Nos. 0000401082 (filed Mar. 19, 2001) (“Application”).

² See 47 C.F.R. § 1.949(a).

³ See Application, Exhibit B (“Waiver Request”).

⁴ See FCC File No. 0000364462 (filed Feb. 12, 2001) (“February Application”).

III. DISCUSSION

3. The Commission adopted its current policy governing the disposition of late-filed renewal applications in 1999.⁵ Pursuant to that reinstatement policy, a renewal application that is filed within thirty days of the expiration of the license will be granted *nunc pro tunc* if the application is otherwise in accordance with the Commission's Rules.⁶ However the license may be subject to enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.⁷ Applicants who file renewal applications more than thirty days after the license expiration may also request that the license be renewed *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 and forfeitures.⁸ In determining whether to grant a late-filed renewal application, we take into consideration 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.⁹ Taking into account all of the facts and circumstances of the instant matter, including the specific facts set forth by the Commission in the context of late-filed renewal applications, we deny ACC's requested relief and dismiss its pending application to renew the license for Station WLL906.

4. ACC argues that the underlying purpose of the Commission's Rule requiring licensees to file timely renewal applications prior to the expiration of their licenses¹⁰ would not be served by strict enforcement in this instance. According to ACC, the purpose of the rule is to permit the Commission to periodically review the qualifications of licensees.¹¹ ACC faults the Commission with its failure to file a timely renewal application for Station WLL906 prior to the license's expiration on February 1, 2001 because it never received a license renewal reminder from the Commission.¹² While ACC concedes that the February Application was dismissed because it neglected to submit the requisite fee, it distinguishes the fault of "ACC's agent (and not ACC itself)" for the "administrative oversight."¹³ ACC concludes, without

⁵ See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 26, 27, 80, 87 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and the Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476, 11485-11486 ¶ 22 (1999).

⁶ See *id.* at 11485 ¶ 22.

⁷ See *id.*

⁸ See *id.*

⁹ *Id.*

¹⁰ 47 C.F.R. § 1.949(a).

¹¹ See Waiver Request at 2.

¹² See *id.* ACC also asserts that it was never notified that its February Application had been dismissed and contends that it only learned of the dismissal upon reviewing the information in the ULS. ACC blames the Commission's staff for its alleged failure to receive the renewal reminder and the dismissal notification because ACC's contact information was supposedly never entered into the ULS during the conversion process of the Commission's microwave licensing system databases. See *id.* at 2-3.

¹³ *Id.* at 2.

elaboration, that granting its Waiver Request would further the public interest because it would allow ACC to continue to provide residents in the Syracuse, New York area with high quality microwave service.¹⁴

5. We find that renewal *nunc pro tunc* of ACC's license to operate Station WLL906 is not warranted. As a matter of record, the Branch mailed a renewal reminder on November 13, 2000 to ACC at the same address subsequently provided by the licensee in the February Application. Notification that the February Application had been dismissed was mailed to ACC at the address that it provided in the application itself. To the extent that ACC nevertheless argues that the address on record in the ULS was incorrect or incomplete, the licensee, and not the Commission staff, bears responsibility for ensuring the accuracy of such information.¹⁵ Regardless, ACC incorrectly assumes that its failure to receive a renewal reminder is a significant factor in reaching a decision in this matter. A licensee's obligation to file a timely renewal application is not dependent upon the Commission sending a renewal reminder to the licensee.¹⁶ Rather, it is the responsibility of each licensee to renew its license prior to expiration.¹⁷ Therefore, even if ACC failed to receive a renewal reminder, it is expected to know its license expiration date and file a timely renewal application.

6. For similar reasons, we reject ACC's attempt to distinguish the actions or inactions of its agent from its own in failing to submit the appropriate fees with the February Application. As noted above, it is the licensee's responsibility to renew its license prior to expiration. We find it significant that ACC failed to file a timely application to renew its license to operate Station WLL906 prior to its expiration, and that the subsequent February Application was deficient under the Commission's Rules because ACC failed to submit the requisite fee. We therefore dismiss ACC's late-filed application.

7. The cases ACC submits in support of its request¹⁸ are distinguishable. In *Self Communications*, the licensee believed it did not have to file a renewal application because there was a pending rulemaking proceeding proposing to extend the license term to ten years. Moreover, the construction benchmarks associated with the license had been waived during the pendency of the rulemaking proceeding. The Commission had also stated its intention to extend the license terms of those licenses (such as held by Self) that had been issued licenses on March 28, 1994 and had timely waiver requests pending at the Commission.¹⁹ Under those circumstances, we found the fact that the license in question expired during the pendency of a rule making addressing the duration of the term of the license to

¹⁴ See *id.* at 3.

¹⁵ See, e.g., Comcast 38 GHz, Inc., *Order* 16 FCC Rcd 10862 (WTB PSPWD 2001) (explaining that it is the responsibility of the licensee to ensure the accuracy of information in the ULS). According to the ULS, ACC failed to verify its licensee information in the ULS prior to the expiration of its license to operate Station WLL906. Rather, ACC only registered or updated its licensee information in the ULS on February 12, 2001.

¹⁶ See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 26, 27, 80, 87 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and the Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21027, 21071 ¶ 96 (1998).

¹⁷ See, e.g., Daniel R. Goodman, Receiver, Dr. Robert Chan, *Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission's Rules, Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 21944 (1998); First National Bank of Berryville, *Order*, 15 FCC Rcd 19693 (WTB PSPWD 2000).

¹⁸ Waiver Request at 3 n.4, *citing* Self Communications, Inc., *Order and Notice of Apparent Liability for Forfeiture*, 15 FCC Rcd 18661 (WTB PSPWD 2000) (*Self Communications*); Telecellular, *Order*, 14 FCC Rcd 21107 (WTB CWD 1999) (*Telecellular*).

¹⁹ *Self Communications*, 15 FCC Rcd at 18663 ¶ 7.

be an unusual circumstance justifying a waiver.²⁰ In *Telecellular*, the construction deadlines for the licenses were changed several times until the deadline was changed to a date eight months beyond the expiration date. The late-filed renewals were accepted for filing because the licensee reasonably (if erroneously) believed that its license term had been extended to coincide with its construction deadline.²¹ In contrast, in this case, there was no ambiguity concerning the expiration date of ACC's license or the date on which ACC was required to file a license application. Accordingly, ACC may not rely on *Self Communications* and *Telecellular* as support for its request for a waiver.

IV. CONCLUSION AND ORDERING CLAUSES

8. Because ACC's stated reasons do not excuse its late filing, we deny its waiver request for acceptance of its late-filed renewal application for Station WLL906. Therefore, we dismiss its pending application to renew the license for Station WLL906 as untimely.

9. 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 of the Commission's Rules, 47 C.F.R. § 1.949, the Request for Waiver of Section 1.949(a) of the Commission's Rules filed by ACC Network Corp. on March 19, 2001 IS DENIED.

10. IT IS FURTHER ORDERED that ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.934 of the Commission's Rules, 47 C.F.R. § 1.934, ACC Network Corp.'s pending application, FCC File No. 0000401082, filed on March 19, 2001, IS DISMISSED.

11. These actions are 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
Deputy Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

²⁰ *Id.* at 18663 ¶ 6.

²¹ *Telecellular*, 14 FCC Rcd at 21108 ¶ 3.