

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

In the Matter of)	
)	
CAYUGA ONONDAGA BOARD OF)	FCC File No. 0000477311
COOPERATIVE EDUCATIONAL SERVICES)	
)	
Request for Reinstatement of License for Private)	
Land Mobile Radio Station KNNN670, Auburn,)	
New York)	

ORDER

Adopted: December 18, 2001

Released: December 26, 2001

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

1. *Introduction.* On May 23, 2001, Cayuga Onondaga Board of Cooperative Educational Services (Cayuga) filed the above-captioned renewal application for its license for Conventional Industrial/Business (I/B) Pool Station KNNN670, Auburn, New York, and requested waiver¹ of Section 1.949 of the Commission’s Rules² to allow the application to be filed late. On the same date, Cayuga also requested reconsideration of the dismissal of a previously filed renewal application for Station KNNN670.³ For the reasons stated below, we deny Cayuga’s waiver request and dismiss Cayuga’s reconsideration petition.

2. *Background.* On December 11, 2000, the Commission sent Cayuga a renewal reminder letter that informed Cayuga that its license to operate Station KNNN670 would expire on March 8, 2001. Cayuga states that its Superintendent of Buildings and Grounds, called the FCC and left a message stating that he did not know which form to submit.⁴ The Commission subsequently sent Cayuga several forms, including FCC Form 605.⁵ On March 8, 2001, Cayuga’s authorization expired. On March 9, 2001, Cayuga filed a license renewal application on FCC Form 605.⁶

3. On March 15, 2001, the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) dismissed Cayuga’s renewal application because it was filed on the wrong application form, and because Cayuga failed to provide its taxpayer identification number (TIN).⁷

¹ FCC File No. 0000477311, Waiver Attachment (filed May 23, 2001) (Waiver Request).

² 47 C.F.R. § 1.949.

³ Letter from William Champlin, Superintendent of Buildings and Grounds, Cayuga, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (filed May 23, 2001) (*Reconsideration Petition*).

⁴ *Id.*

⁵ Cayuga enclosed a “Packing Slip” from the Forms Distribution Center, Federal Communications Commission, to Bill Champlin. The Packing Slip lists Form 605 as among several forms sent to Mr. Champlin. *Id.*

⁶ FCC Form 605 may be used to renew licenses in the Maritime, Aviation, Amateur, Restricted and Commercial Operator, and the General Mobile Radio Services.

⁷ *See* Notice of Immediate Application Dismissal (Mar. 15, 2001).

The dismissal letter instructed Cayuga that renewal applications for land mobile radio service authorizations must be submitted on FCC Form 601.⁸ Cayuga states that it contacted the Branch immediately after the first dismissal letter, and was told by an unidentified Commission employee that Cayuga could simply make the corrections on the application it previously submitted.⁹ Cayuga added the TIN and resubmitted the FCC Form 605. On March 29, 2001, the Branch again dismissed Cayuga's application because it was filed on the wrong application form.¹⁰ The dismissal letter again instructed Cayuga that only FCC Form 601 would be accepted for renewal of land mobile radio service authorizations.¹¹

4. By letter to the Branch dated April 16, 2001, and received May 23, 2001, Cayuga requested reconsideration of the dismissal of its renewal application.¹² Also on May 23, 2001, Cayuga filed the above-captioned application on FCC Form 601 to renew and modify its license for Station KNNN670 and requested acceptance of the late-filed application.¹³ Cayuga states that it needs the license because it is a public school and it uses the radios during school emergencies and fire drills.¹⁴

5. *Discussion. Reconsideration Petition.* We dismiss Cayuga's reconsideration 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. 20554.¹⁵ 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.¹⁶ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.¹⁷ A document is filed with the Commission upon its receipt at the location designated by the Commission.¹⁸ 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.¹⁹

⁸ *Id.* (citing Wireless Telecommunications Bureau (WTB) Implements Phase III of Three-Phased Deployment of the Universal Licensing System (ULS) for Land Mobile Radio Services on December 4, 2000, *Public Notice*, 15 FCC Rcd 22013 (WTB 2000) (*Public Notice*)).

⁹ Reconsideration Petition at 1.

¹⁰ *See* Notice of Immediate Application Dismissal (Mar. 29, 2001).

¹¹ *Id.* (citing *Public Notice*).

¹² Reconsideration Petition at 1.

¹³ Waiver Request.

¹⁴ *Id.* Cayuga also requested Special Temporary Authority (STA) to operate Station KNNN670 during the pendency of its application. Letter from Bill Champlin to Joan Howery, Analyst, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (filed May 23, 2001). The STA request was granted on May 30, 2001, with a November 30, 2001 expiration date. The STA has not been renewed.

¹⁵ 47 C.F.R. § 1.106(i).

¹⁶ 47 C.F.R. § 0.401.

¹⁷ *Id.*

¹⁸ 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).

¹⁹ *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);

(continued....)

6. 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, Cayuga did not request a waiver to file its petition at a location other than the Office of the Secretary. Consequently, absent a waiver, we conclude that Cayuga's petition should be dismissed as improperly filed.

7. *Late-Filed Renewal.* The Commission adopted a new policy regarding reinstatement procedures in the wireless services in 1999.²⁰ 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.²¹ 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.²² 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.²³

8. Cayuga does not address the Commission's policy regarding late-filed renewal applications. Nor does it offer any explanation for why it failed to file any renewal application until after the license expired. Instead, it indicates that it acted in good faith to renew its license, that it did not receive FCC Form 601 or correct information from Commission staff. This argument is unavailing. On November 9, 2000, the Commission released a Public Notice announcing that, beginning on December 4, 2000, certain land mobile radio licensees, including I/B Pool licensees such as Cayuga, would be required to use FCC Form 601 (June 2000 edition or later) to file for license renewal.²⁴ Moreover, the initial dismissal letter informed Cayuga that Form 601 must be used to renew its application. Consequently Cayuga's argument that it did not receive the correct renewal form or information from Commission staff is without merit. As a general matter we note that "failure of a licensee to receive a [renewal form] from the Commission is no excuse for failure to file a renewal application."²⁵ Further, we note, parties doing business before the Commission may not claim reliance on informal staff advice to excuse rule

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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). See also *Petition for Reconsideration Filing Requirements, Public Notice*, 15 FCC Rcd 19473 (WTB 2000).

²⁰ 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*).

²¹ *Id.* at 11485 ¶ 22.

²² *Id.* at 11486 ¶ 22.

²³ *Id.* at 11485 ¶ 22.

²⁴ *Public Notice*, 15 FCC Rcd at 22013.

²⁵ See 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, 21972-73 ¶ 53 (1998) (*Goodman/Chan Order*); accord, e.g., Nevada Power Company, *Order on Reconsideration*, 14 FCC Rcd 17812, 17813 ¶ 5 (WTB PSPWD 1999).

violations.²⁶ Applicants must stay apprised of the Commission's filing requirements and other rules,²⁷ and Cayuga's failure to do so here is not sufficient to excuse it from timely filing its renewal application.²⁸

9. In addition, Cayuga'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.²⁹ Cayuga's license expired on March 8, 2001, and it did not file a valid renewal application until May 23, 2001, close to three months after the expiration of its authorization. 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 Cayuga's arguments merit renewal of its license *nunc pro tunc*. Thus, we deny Cayuga's request for a waiver to permit late renewal of its license and dismiss the application as untimely filed. If Cayuga wishes to obtain a valid authorization for this station, it must file a new, properly coordinated application.³⁰

10. *Ordering Clauses.* 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. § 1.106, the petition for reconsideration filed by Cayuga Onondaga Board of Cooperative Educational Services, on May 23, 2001, IS DISMISSED.

11. IT IS FURTHER 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 request for waiver of Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, filed by Cayuga Onondaga Board of Cooperative Educational Services on May 23, 2001, IS DENIED, and application FCC File No. 0000477311 IS DISMISSED.

²⁶ See, e.g., *Goodman/Chan Order*, 13 FCC Rcd at 21972-73 ¶ 53; Mary Ann Salvatoriello, *Memorandum Opinion and Order*, 6 FCC Rcd 4705, 4708 (1991) ("Erroneous advice received from a government employee is insufficient [to warrant estoppel against the government], particularly when the relief requested would be contrary to an applicable statute or rule."); Texas Media Group, Inc., *Memorandum Opinion and Order*, 5 FCC Rcd 2851, 2852 (1990), *aff'd sub nom.* Malkan FM Associates v. FCC, 935 F.2d 1313 (D.C. Cir. 1991) ("It is the obligation of interested parties to ascertain facts from official Commission records and files and not rely on statements or informal opinions by the staff."); Hinton Telephone Company, *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 11625, 11637 (1995) ("The Commission has specifically held that parties who rely on staff advice or interpretations do so at their own risk.").

²⁷ 47 C.F.R. § 0.406 advises persons having business with the Commission to familiarize themselves with those portions of our rules pertinent to their business, including what information the Commission requires to process applications.

²⁸ See, e.g., North Eastern Massachusetts Law Enforcement Council, *Order*, 16 FCC Rcd 12474, 12475-76 ¶ 5 (WTB PSPWD 2001).

²⁹ *ULS Reconsideration MO&O*, 14 FCC Rcd at 11486 ¶ 22. The leniency afforded late renewal applications filed within 30 days of license expiration is not applicable to Cayuga's March applications because the policy applies only to applications that are otherwise proper. See *id.* at 11485 ¶ 22.

³⁰ See 47 C.F.R. § 90.175.

12. 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, Deputy Chief
Public Safety and Private Wireless Division,
Wireless Telecommunications Bureau