

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

In the Matter of	)	
	)	
AMERIFLIGHT, INC.	)	FCC File No. R481481
	)	
Request for Waiver of the Commission's Rules	)	
to Renew the Authorization to Operate	)	
Station WPGK309, Erlanger, Kentucky	)	

**ORDER**

**Adopted: March 9, 2001**

**Released: March 12, 2001**

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

**I. INTRODUCTION**

1. On July 10, 2000, Ameriflight, Inc. (Ameriflight) filed an application requesting the renewal of Industrial/Business Station WPGK309, Erlanger, Kentucky, forty-five days after its license authorization expired. It also requested waiver of Section 1.949 of the Commission's Rules,<sup>1</sup> relating to the timely filing of an application to renew a license in the Wireless Radio Services.<sup>2</sup> For the reasons discussed below, we deny Ameriflight's Waiver Request.

**II. BACKGROUND**

2. On January 30, 1995, Ameriflight received its original authorization to operate Station WPGK309, on frequency 467.925 MHz, in the Erlanger, Kentucky area. The authorization had a five-year term, with an expiration date of January 30, 2000. On or about November 19, 1999, the FCC received a check from Ameriflight at its Gettysburg, Pennsylvania location.<sup>3</sup> Ameriflight failed to attach a license renewal application or a "Remittance Advice Form" (Form 159) to the check. The Data Management Division of the FCC's Wireless Telecommunications Bureau returned the check to Ameriflight on November 22, 1999, with a letter instructing Ameriflight to submit an application, a Form 159, and proper payment to the appropriate post office box in Pittsburgh, Pennsylvania.<sup>4</sup> A copy of the FCC's Fee Filing Guide was enclosed with the November 22, 1999, letter, to assist Ameriflight with its filing.<sup>5</sup>

<sup>1</sup> See 47 C.F.R. § 1.949.

<sup>2</sup> See Request for Waiver from John W. Hazlet, Jr., Vice President - Maintenance, Ameriflight, to the FCC (dated July 3, 2000, and filed July 10, 2000) (Waiver Request).

<sup>3</sup> Ameriflight's Check #770676 was received on or about November 19, 1999, at the FCC's Gettysburg, Pennsylvania location.

<sup>4</sup> See "Unprocessable Application Return Form," to Ameriflight, Inc. (dated Nov. 22, 1999).

<sup>5</sup> *Id.* A toll-free telephone number was also provided to Ameriflight for information assistance (1-888-CALL FCC).

3. Station WPGK309's license authorization expired on January 30, 2000. Ameriflight filed a renewal application, as well as a Form 159, with the requisite filing fee on March 15, 2000, forty-five days after its license expired.<sup>6</sup> Because the renewal application had been filed after the station license had expired, the FCC returned the renewal application to Ameriflight on March 21, 2000.<sup>7</sup> The return letter accompanying the application stated that because Ameriflight's license had already expired, and because the FCC did not receive the renewal application within the thirty-day reinstatement period,<sup>8</sup> Ameriflight's renewal submission was not in compliance with the Commission's Rules.<sup>9</sup> Ameriflight was instructed to file an application for a new license on FCC Form 600 through a frequency coordinator, if it wished to obtain a station license.<sup>10</sup>

4. On April 26, 2000, Ameriflight requested special temporary authority (STA) to operate Station WPGK309 until its renewal problem "was straightened out."<sup>11</sup> The FCC approved Ameriflight's STA request on April 27, 2000.<sup>12</sup>

5. On July 10, 2000, Ameriflight filed another renewal application relating to Station WPGK309,<sup>13</sup> and concurrently filed the instant request for waiver of Section 1.949 of the Commission's Rules.<sup>14</sup> Ameriflight also filed a request for a refund of the \$80 it submitted on March 15, 2000.<sup>15</sup>

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<sup>6</sup> This renewal application was assigned FCC File No. R456913. It was accompanied by Ameriflight's check #10766, dated February 29, 2000, in the amount of \$80, to cover the \$45 application processing fee and the \$35 regulatory fee.

<sup>7</sup> See Renewal Application Return Notice for the Private Land Mobile and General Mobile Radio Services, from Clara V. Robinson, FCC, to John Hazlet, Ameriflight, Inc. (dated Mar. 21, 2000).

<sup>8</sup> See 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, 11486 ¶ 22 (1999) (*ULS Reconsideration MO&O*).

<sup>9</sup> See Renewal Application Return Notice for the Private Land Mobile and General Mobile Radio Services, from Clara V. Robinson, FCC, to John Hazlet, Ameriflight, Inc. (dated Mar. 21, 2000).

<sup>10</sup> *Id.*

<sup>11</sup> See Request for Special Temporary Authority from John W. Hazlet, Jr., Vice-President – Maintenance, Ameriflight, to the FCC (dated Apr. 26, 2000).

<sup>12</sup> See Grant of Special Temporary Authority from Laurel D. Woods, FCC, to Ameriflight, Inc. (effective Apr. 27, 2000). Ameriflight is currently operating under an STA with an expiration date of May 8, 2001.

<sup>13</sup> This renewal application was assigned FCC File No. R481481. It was accompanied by Ameriflight's check #10920, dated July 3, 2000, in the amount of \$80, to cover the \$45 application processing fee and the \$35 regulatory fee.

<sup>14</sup> The Waiver Request was accompanied by Ameriflight's check #10821, dated July 3, 2000, in the amount of \$135, to cover the waiver request processing fee.

<sup>15</sup> See Request for Refund of Fee, from John W. Hazlet, Jr., Vice-President – Maintenance, Ameriflight, to FCC (dated July 3, 2000 and filed July 10, 2000).

### III. DISCUSSION

6. The Commission adopted a new policy regarding reinstatement procedures in the wireless services in 1999.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

7. Ameriflight's Waiver Request does not address the Commission's policy regarding treatment of late-filed renewal applications. Instead, Ameriflight argues that it had acted in good faith to renew its license in a timely manner, but that it had not been supplied with a Form 159, and did not know that it was required to file the form with the FCC.<sup>20</sup> Ameriflight also argues that "[d]ue to a paperwork foulup (sic) and associated delays, the original renewal was rejected, and the second check did not reach your offices until after the license had expired."<sup>21</sup> Ameriflight finally argues that it would not be in the public interest to require it to go through the entire application process, including frequency coordination, to obtain a new license.<sup>22</sup>

8. Ameriflight's argument that it did not receive a Form 159, and that it did not know that it was required to file the form is unavailing. On September 2, 1999, the Commission released a *Public Notice* announcing that changes in the fee requirements would be effective on September 13, 1999.<sup>23</sup> The *Public Notice* directed the public to the Wireless Telecommunications Bureau Fee Filing Guide and the FCC Form 1070 series of fee information, and provided the Internet site for these documents.<sup>24</sup> Both documents notified the public that a Form 159 is required at the time of renewal. The November 22, 1999 letter

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<sup>16</sup> *ULS Reconsideration MO&O*, 14 FCC Rcd 11476 (1999).

<sup>17</sup> *Id.* at 11485 ¶ 22.

<sup>18</sup> *Id.* at 11486 ¶ 22.

<sup>19</sup> *Id.* at 11485 ¶ 22.

<sup>20</sup> Waiver Request at 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1-2.

<sup>23</sup> See Wireless Telecommunications Bureau's Announces Changes to Fee Requirements Effective with Receipts of September 13, 1999, *Public Notice* (WTB rel. Sept. 2, 1999).

<sup>24</sup> *Id.*

accompanying the return of Ameriflight's check #770676 also informed Ameriflight that its check should be accompanied by an application and a Form 159, and was sent to Ameriflight thirty-eight days prior to the expiration of its license.<sup>25</sup> Ameriflight's argument that it was unaware of the Commission's filing requirements is without merit. Applicants must stay apprised of the FCC's filing requirements and other FCC Rules, and Ameriflight's failure to do so here is not sufficient to excuse it from timely filing its renewal application.<sup>26</sup> Moreover, Section 1.934(d) of the Commission's Rules clearly states that applications will be dismissed as defective if they are incomplete.<sup>27</sup>

9. In addition, Ameriflight'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.<sup>28</sup> Ameriflight's license expired on January 30, 2000, and it did not file a renewal application with the appropriate fee and Form 159 until March 15, 2000. 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 Ameriflight's arguments warrant renewal of its license *nunc pro tunc*. Ameriflight has failed to state its reasons for not filing its renewal application in a timely manner, other than to state that there was a paperwork foul up. In the absence of such showing, we conclude that Ameriflight has not made the requisite showing to support renewal of the subject license *nunc pro tunc*. Thus, we deny its request for a waiver to permit late renewal of its license.<sup>29</sup>

10. With respect to its refund request, Ameriflight argues that check #10766 had been issued to replace check #770676, because check #770676 had been returned to Ameriflight at the end of 1999. Ameriflight argues that because the FCC had deposited check #10766, but returned its renewal application, Ameriflight was due a refund from the FCC in the amount of \$80.<sup>30</sup> We agree in part. According to our records, Ameriflight submitted an \$80 check to the FCC on March 15, 2000, to cover the \$45 application processing fee, and the \$35 regulatory fee for a five-year renewal period. Ameriflight also submitted an \$80 check to the FCC on July 10, 2000. Because these applications were processed prior to their return, Ameriflight is not entitled to a refund of the \$45 processing fees. Because the applications were returned and the license was not renewed, we will refund Ameriflight the \$35 regulatory fees. A check in the amount of \$70 (\$35 associated with FCC File No. R456913 and \$35 associated with FCC File No. R481481) will be forwarded to Ameriflight as a regulatory fee refund.

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<sup>25</sup> See "Unprocessable Application Return Form," to Ameriflight, Inc. (dated Nov. 22, 1999).

<sup>26</sup> See, e.g., Supercom, Inc., *Memorandum Opinion and Order*, 15 FDD Rcd 4604, 4607 ¶ 8 (2000) (ignorance of the Commission's Rules is no excuse for noncompliance); Empire Broadcasting Corp., *Memorandum Opinion and Order*, 25 FCC 2d 68, 69 ¶ 4 (1970) (mere oversight or failure to be aware of the Commission's requirements will not excuse licensee from its obligation to operate in compliance with the Commission's Rules).

<sup>27</sup> 47 C.F.R. § 1.934(d).

<sup>28</sup> *ULS Reconsideration MO&O*, 14 FCC Rcd at 11485-86.

<sup>29</sup> See, e.g., WLOS Licensee, Inc., *Order on Reconsideration*, 15 FCC Rcd 11047, 11049 ¶ 5 (WTB PSPWD 2000).

<sup>30</sup> See Request for Refund of Fee, from John W. Hazlet, Jr., Vice-President – Maintenance, Ameriflight, to FCC (dated July 3, 2000 and filed July 10, 2000).

**IV. ORDERING CLAUSES**

11. Accordingly, IT IS ORDERED 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(b)(3) of the Commission's Rules, 47 C.F.R. § 1.925(b)(3), that the request to waive Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, filed by Ameriflight, Inc. on July 10, 2000 IS DENIED, and application FCC File No. R481481 IS DISMISSED with prejudice.

12. IT IS FURTHER ORDERED that the request for refund filed by Ameriflight, Inc. on July 10, 2000 IS GRANTED IN PART and DENIED IN PART. As set forth above, a check in the amount of \$70 will be forwarded to Ameriflight, Inc. within ninety days.

13. 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