

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

In the Matter of Application of)
)
GEC PARTNERS LLP) File No. 0004106053
)
For Renewal of License of Common Carrier Fixed)
Point-to-Point Station WPOM239)
)

ORDER ON RECONSIDERATION

Adopted: October 17, 2012

Released: October 18, 2012

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Order on Reconsideration*, we grant GEC Partners LLP’s (“GEC”) petition for reconsideration of the Wireless Telecommunications Bureau’s (“Bureau”) dismissal of GEC’s application to renew its license to operate Station WPOM239 because GEC failed to timely respond to a Notice of Return asking GEC to provide additional information in its associated Construction Notification. While the original dismissal was correct, we find that it is in the public interest to reinstate GEC’s application to renew Station WPOM239 and thus allow GEC to continue to provide fixed wireless services.

II. BACKGROUND

2. GEC operates 39 GHz Common Carrier Fixed Point-to-Point Station WPOM239 in a Rectangular Service Area in the San Antonio, Texas area.¹ On January 27, 2010, GEC timely filed an application to renew Station WPOM239² and its associated substantial service showing as required under Section 101.17 of the Commission’s Rules, which requires licensees to demonstrate substantial service at license renewal.³

3. On May 18, 2012, the Bureau sent a Notice of Return to GEC and to the licensee’s contact, Russell H. Ritchie, at 1010 West University Drive, Suite 4, Mesa, AZ 85201, which is the address of record on file for both GEC and Mr. Ritchie.⁴ The Notice of Return asked GEC to provide more detailed information on the number and lengths of links and the coordinates of both transmit and receive sites within 60 days (July 17, 2012) or GEC’s Renewal Application would be dismissed. GEC did not respond to the Notice of Return.

¹ GEC Partners LLP, Petition for Reconsideration (filed Sept. 7, 2012) (“Petition”).

² File No. 0004106053 (filed Jan. 27, 2010) (“Renewal Application”).

³ 47 C.F.R § 101.17(a).

⁴ Notice of Return, Ref. 5374343 (May 18, 2012) (“Notice of Return”).

4. On August 7, 2012, the Bureau sent a Notice of Dismissal to GEC and Mr. Ritchie at the address of record informing them that the Bureau dismissed GEC's application without prejudice because GEC had not responded to the Notice of Return by July 17, 2012.⁵

5. On September 7, 2012, GEC asked the Bureau to reconsider its decision dismissing GEC's application to renew Station WPOM239. GEC stated that the 1010 West University Drive address is not the current address for GEC and the Notice of Return was never received.⁶ It indicated that it became aware that its license to operate Station WPOM239 was cancelled when GEC staff, working on Station WPOM239's facilities, reviewed the Commission's database, and discovered that the Bureau had dismissed the Renewal Application.⁷ GEC admits that it neglected to keep its contact information up-to-date, but argues that in over a quarter of a century of interacting with the Commission, a lapse of this kind had never occurred.⁸ In addition, Mr. Ritchie, the principal primarily responsible for Station WPOM239, was out of the country when a routine review would have revealed a problem.⁹ GEC further argues that cancellation and forfeiture of the license is disproportional to the underlying facts regarding status of the links and the public interest in using the spectrum for broadband supported service.¹⁰ GEC attached to its Petition the information requested in the Notice of Return.¹¹

6. On October 10, 2012, GEC asked leave to supplement its Petition with new information explaining how it had failed to update its contact information.¹² GEC stated that before Mr. Ritchie left the country on a two-year mission for his church, he relocated GEC's office.¹³ Then on May 11, 2010, he and his partner, Mr. Kipp, updated the contact information for the licenses held by GEC.¹⁴ According to GEC, Mr. Ritchie and Mr. Kipp updated 20 of the 23 licenses held by GEC, which appeared on two pages of the Commission's Universal Licensing System ("ULS") database.¹⁵ Neither Mr. Ritchie nor Mr. Kipp noticed the three additional licenses on the third page of the ULS, which included the license for Station WPOM239.¹⁶ The contact information for the other two licenses listed on page three was updated on September 7, 2012.¹⁷

III. DISCUSSION

7. Under Section 1.106(f) of the Commission's Rules, a "petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final

⁵ Notice of Dismissal, Ref. No. 5422739 (Aug. 7, 2012). The Bureau gave public notice of the dismissal of the Renewal Application on August 8, 2012. *See* Wireless Telecommunications Bureau Site-by-Site Action, Report No. 7974, *Public Notice* (Aug. 8, 2012) at 10.

⁶ Petition at 1.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at Attachment.

¹² GEC Partners LLP, Petition for Leave to File Supplement to Petition for Reconsideration (filed Oct. 10, 2012).

¹³ GEC Partners LLP, Supplement to Petition for Reconsideration (filed Oct. 10, 2012) ("Supplement") at 2.

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See* File Nos. 0005383568, 0005383569 (filed Sep. 7, 2012).

Commission action . . .”¹⁸ Section 1.106(f), however, also gives us discretion to consider a late-filed supplement to a timely filed petition if a petitioner presents sufficient justification to do so.¹⁹ In this case, we grant GEC’s request because it shows GEC’s failure to update its contact information for Station WPOM239 resulted from an inadvertent error. Moreover, the information in the Commission’s ULS database confirms GEC’s statements that it updated the 20 licenses on the first two pages of the ULS database on May 11, 2010 and overlooked the last three licenses on the third, and last page, of the database, which included the license for Station WPOM239.²⁰

8. Although GEC timely filed its application to renew Station WPOM239, we conclude that the dismissal of GEC’s Renewal Application was proper. Under Section 1.934(c) of the Commission’s rules, we may dismiss GEC’s Renewal Application because GEC failed to respond to our Notice of Return on or before July 17, 2012, the date indicated in the Notice of Return.²¹ Generally, the Bureau sends a Notice of Return to applicants when additional information is necessary for the Bureau to process the application. Moreover, Notices of Return plainly state that “[i]f you do not file an amendment to your application within 60 days of the date on the top of this letter, your application will be dismissed.”²² In this case, the Notice of Return requested that GEC provide more detailed information on the number and lengths of links and the coordinates of both transmit and receive sites on or before July 17, 2012. GEC did not do so and thus its Renewal Application was properly dismissed.

9. The pertinent question before us, however, is whether to reinstate GEC’s Renewal Application on reconsideration. While there is precedent for refusing to reinstate renewal applications when an applicant fails to offer a justification for failing to respond to a return letter,²³ based upon the totality of the circumstances involved in this case, we believe the public interest would best be served by granting the GEC’s Petition and reinstating its Renewal Application. Although GEC did not timely respond to the Notice of Return, it has otherwise been diligent in complying with the Commission’s rules.²⁴ It timely filed its Renewal Application with construction information. Moreover, by showing that it had updated the contact information of 20 of its 23 licenses, it showed that its failure to update the contact information for Station WPOM239 was an inadvertent error. Under these specific circumstances, while we expect GEC to exercise greater care in the future, we do not believe that GEC should lose its license for this isolated failure. Moreover, because GEC is using Station WPOM239 to provide wireless service, we find that it is in the public interest to grant its Petition.

IV. CONCLUSION AND ORDERING CLAUSES

10. The decision to dismiss GEC’s Renewal Application was correct. However, based upon the information provided in the Petition for Reconsideration, we have decided to reinstate GEC’s Renewal Application. Accordingly, we grant GEC’s Petition for Reconsideration.

¹⁸ 47 C.F.R. § 1.106(f).

¹⁹ 47 C.F.R. § 1.106(f).

²⁰ See File Nos. 0005383568, 0005383569 (filed Sep. 7, 2012).

²¹ 47 C.F.R. § 1.934(c). Under Section 1.934(c) of the Commission’s Rules, an application may be dismissed when the applicant fails “to respond substantially within a specified time period to official correspondence or requests for additional information.”

²² See Notice of Return.

²³ See RAM Technologies, Inc., *Order on Reconsideration*, 16 FCC Rcd 10919 (WTB PS&PWD 2001).

²⁴ See Somerville Independent School District, *Order on Reconsideration*, 27 FCC Rcd 6063 (WTB BD 2012) (renewal application reinstated despite failure to respond to notice of return where two notices of return had been sent around the same time and licensee had otherwise been diligent in complying with the Commission’s rules).

11. 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 Sections 1.106 of the Commission's rules, 47 C.F.R. §§ 1.106 the Petition for Reconsideration filed by GEC Partners LLP, on September 7, 2012 IS GRANTED.

12. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309, and Section 1.949 of the Commission's rules, 47 C.F.R. § 1.949, that the Broadband Division SHALL REINSTATE AND PROCESS the application filed by GEC Partners LLP (File No. 0004106053) in accordance with this *Order on Reconsideration* and the Commission's rules and policies.

13. These actions are taken under designated 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

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau