

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

In the Matter of Applications	)	
	)	
PACIFIC BELL WIRELESS LLC	)	FCC File Nos. 0000338283, 0000338284,
	)	0000338287
Petition for License Renewal and Request for	)	
Reinstatement of 39 GHz Band Licenses for	)	
Stations WMT596 (San Diego, CA), WMT597	)	
(Las Vegas, Nev), and WMT600 (Monterey, CA)	)	

**ORDER ON RECONSIDERATION**

**Adopted: March 19, 2002**

**Released: March 25, 2002**

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

1. On September 17, 2001, Cingular Wireless LLC (Cingular), on behalf of its affiliate, Pacific Bell Wireless LLC (PBW), filed a petition for reconsideration<sup>1</sup> of the dismissal of PBW's license renewal applications for the above-captioned stations.<sup>2</sup> For the reasons stated below, we grant Cingular's petition for reconsideration and reinstate PBW's renewal applications.

2. In 1998, the Commission established a unified policy for dismissing and returning applications, as well as pleadings related to such applications (Unified Policy).<sup>3</sup> On June 28, 1999, the Commission modified such policy,<sup>4</sup> and on July 1, 1999, the Wireless Telecommunications Bureau (Bureau) began implementing the policy as modified.<sup>5</sup> The Unified Policy applies to each Wireless Radio Service six months after the licensing information for that service is implemented in the Bureau's Universal Licensing System (ULS).<sup>6</sup> In this case, licensing information for the point-to-point microwave

<sup>1</sup> Cingular Wireless LLC Petition for Reconsideration (filed Sept. 17, 2001) (Reconsideration Petition). In the Reconsideration Petition, Cingular requested reconsideration with respect to its renewal applications for Stations WMT591, WMT596, WMT597, WMT600, and WMT601. On October 1, 2001, Cingular amended its petition, limiting its reconsideration request to Stations WMT596, WMT597, and WMT600. Amendment to Petition of Reconsideration of License Renewal and Request for Reinstatement of 38 GHz Licenses Held by Pacific Bell Wireless, LLC (filed Oct. 1, 2001) (Amended Petition).

<sup>2</sup> Universal Licensing System Automated Dismissal Letters, Reference Nos. 1060909, 1060910, 1060913 (dated Sep. 6, 2001) (Dismissal Letters).

<sup>3</sup> 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, *Report and Order*, WT Docket 98-20, 13 FCC Rcd 21027 (1998) (*ULS Report and Order*).

<sup>4</sup> 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*, 14 FCC Rcd 11476 (1999) (*ULS Memorandum Opinion & Order*).

<sup>5</sup> Wireless Telecommunications Bureau Revises and Begins Phased Implementation of Its Unified Policy for Reviewing License Applications and Pleadings, *Public Notice*, 14 FCC Rcd 11182 (WTB 1999) (*Unified Policy Public Notice*).

<sup>6</sup> *Id.*, 14 FCC Rcd at 11191.

service was implemented in the ULS on August 30, 1999.<sup>7</sup> As a result, the effective date of the unified policy with regards to the point-to-point microwave service was March 1, 2000. The Unified Policy, therefore, applied to PBW's license renewal applications, which were filed on January 22, 2001.

3. Under the Unified Policy, applications or pleadings that are defective, as a general matter, are subject to dismissal, rather than being returned to the applicant for correction. As an exception, however, the Commission noted that it retained "the discretion to return an application if circumstances warrant."<sup>8</sup> In the *Unified Policy Public Notice*, the Bureau determined that it would return for correction, rather than dismiss, timely filed renewal applications and timely filed notifications of construction (*i.e.*, where dismissal could result in expiration or termination of a license).<sup>9</sup> The Bureau decided to return (rather than dismiss) timely filed renewal applications and timely filed notifications of construction for two reasons.<sup>10</sup> First, renewals and construction notifications are simple filings where it is unlikely that applicants will make a large number of errors.<sup>11</sup> Second, the Bureau noted that because dismissal will lead to expiration or termination of the license, the Bureau would likely have to review Special Temporary Authority (STA) requests, waiver requests, and/or petitions for reconsideration filed by the applicant in an effort to continue operation and regain the license.<sup>12</sup>

4. With respect to returns, the Commission previously has noted that "if the applicant fails to submit an amended application within the period specified in the notification, the application will be subject to dismissal for failure to prosecute."<sup>13</sup> The Bureau reiterated this notion in the *Unified Policy Public Notice* by stating that:

Returns will be done by letter and will clearly state that failure to respond within 60 days will result in dismissal of the subject application. If at the end of the 60-day period the Bureau is still unable to process the application (whether or not it has been amended), the Bureau may dismiss the application pursuant to Section 1.934(c) for failure to prosecute. As noted above, applications dismissed and later refiled will lose their original place in the processing line and be treated as newly-filed applications.<sup>14</sup>

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<sup>7</sup> Wireless Telecommunications Bureau to Begin Use of Universal Licensing System (ULS) for Microwave Services on August 30, 1999, *Public Notice*, 14 FCC Rcd 12393 (WTB 1999).

<sup>8</sup> *ULS Report and Order*, 13 FCC Rcd at 21069 ¶ 92.

<sup>9</sup> *Unified Policy Public Notice*, 14 FCC Rcd at 11182. This return policy only affects timely filed renewal applications and timely filed notifications of construction on license applications. *Id.* at n.1. The return policy does not apply to notifications for antenna structures (FCC Forms 854 and 854R). *Id.* On December 26, 2001, the Bureau clarified further our return policy by stating that renewal applications and construction notifications that fail to comply with the applicable fee and signature requirements will be dismissed by the Bureau as defective, rather than returned to the applicants for correction, even if timely filed. Wireless Telecommunications Bureau Clarifies Unified Policy for Dismissing and Returning Applications, *Public Notice*, DA 01-3004, at 2-3 (WTB PSPWD rel. Dec. 26, 2001). This clarification is based on the Commission decision that it would automatically dismiss any application that was defective because the applicant failed to sign the application, failed to pay the required filing fee, or filed outside of the applicable filing window. *Id.* at 3 (citing *ULS Report and Order*, 13 FCC Rcd at 21068 ¶ 90). The Commission determined that such defects were fatal to the consideration of the application. *Id.*

<sup>10</sup> *Unified Policy Public Notice*, 14 FCC Rcd. at 11186.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *ULS Report and Order*, 13 FCC Rcd at 21069-70 ¶ 93. See also Ram Technologies, *Order on Reconsideration*, 16 FCC Rcd 10919 (WTB PSPWD 2001).

<sup>14</sup> *Unified Policy Public Notice*, 14 FCC Rcd at 11186-87.

5. On January 22, 2001, PBW timely filed license renewal applications for the above captioned stations.<sup>15</sup> PBW failed, however, to include substantial service showings with the applications, as required by Section 101.17<sup>16</sup> of the Commission's Rules.<sup>17</sup> As a result of this failure, on September 5, 2001, we dismissed PBW's license renewal applications.<sup>18</sup> On September 17, 2001, Cingular filed a reconsideration petition seeking reinstatement of the licenses to PBW to operate the above captioned stations.<sup>19</sup> Cingular asserts that PBW does provide substantial service in the operation of the three subject stations, and provided data to support its assertion.<sup>20</sup> On October 1, 2001, Cingular amended the Reconsideration Petition, removing from its reconsideration request Stations WMT591 and WMT601, and limiting it to Stations WMT596, WMT597, and WMT600.<sup>21</sup> In light of PBW's petition, we must determine whether PBW's filing complied with the Unified Policy and whether PBW has satisfied the 39 GHz substantial service requirement.

6. We conclude that return of PBW's license renewal applications to PBW was appropriate in this instance. As noted above, Section 101.17 states that all 39 GHz band licensees must demonstrate substantial service at the time of license renewal.<sup>22</sup> As also previously noted, PBW timely filed its January 22, 2001, license renewal applications.<sup>23</sup> However, PBW, by failing to provide the substantial service information with the applications, nonetheless filed defective applications. Yet, our subsequent dismissal of the defective applications was inappropriate because we did not give PBW the opportunity to correct its omission pursuant to the Unified Policy.<sup>24</sup> We, therefore, reinstate PBW's renewal applications and direct the Licensing and Technical Analysis Branch to return them to PBW in accordance with the Unified Policy.

7. For the reasons stated above, we conclude that it was not appropriate to dismiss PBW's license renewal applications without providing PBW an opportunity to correct the defective filings pursuant to the Bureau's Unified Policy.

8. **ACCORDINGLY, IT IS ORDERED** that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules,

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<sup>15</sup> See FCC File Nos. 0000338283, 0000338284, 0000338287. As common carrier fixed point-to-point microwave services licenses, the licenses of all three stations were scheduled to expire on February 1, 2001. See *supra* at 3 ¶¶ 5-6; see also *Microwave Renewal MO&O*, DA 02-551, at 1-2 ¶¶ 2-3; *39 GHz R&O*, 12 FCC Rcd at 18620-21 ¶ 36.

<sup>16</sup> All 38.60-40.0 GHz (39 GHz) band licensees must demonstrate substantial service at the time of license renewal. 47 C.F.R. § 101.17. A showing that service is "substantial" requires: 1) A description of the 39 GHz band licensee's current service in terms of geographic coverage; 2) A description of the 39 GHz band licensee's current service in terms of population served, as well as any additional service provided during the licensee term; and 3) A description of the 38.6-40.0 GHz band licensee's investments in its system(s) (type of facilities constructed and their operational status is required). *Id.*

<sup>17</sup> See FCC File Nos. 0000338283, 0000338284, 0000338287.

<sup>18</sup> See Dismissal Letters.

<sup>19</sup> Reconsideration Petition.

<sup>20</sup> *Id.* at Exhibit 1.

<sup>21</sup> Amended Petition.

<sup>22</sup> 47 C.F.R. § 101.17.

<sup>23</sup> *Supra* at 4 ¶ 9.

<sup>24</sup> *Unified Policy Public Notice*, 14 FCC Rcd at 11182. See also *Ram Technologies, Inc.*, 16 FCC Rcd 10919, 10920 ¶¶ 3-4 (2001).

47 C.F.R. § 1.106, the Reconsideration Petition, filed on September 17, 2001, by Cingular **IS GRANTED.**

9. **IT IS FURTHER ORDERED** that the applications filed by Pacific Bell Wireless, LLC for renewal of Stations WMT596 (San Diego, CA), WMT597 (Las Vegas, NV), and WMT600 (Monterey, CA) (FCC File Nos. 0000338283, 0000338284, 0000338287) on January 22, 2001 **ARE REINSTATED.**

10. This action is 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

Ramona E. Melson  
Deputy Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau