

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

In the Matter of Application of)
)
HUNTSMAN CORPORATION) FCC File No. 0000388992
)
For Renewal of Industrial/Business Pool)
Conventional Station KNNF936, Conroe, Texas)

ORDER ON RECONSIDERATION

Adopted: March 11, 2003

Released: March 12, 2003

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

1. *Introduction.* We have before us a petition for reconsideration (Petition) submitted by the Huntsman Corporation (Huntsman) on September 30, 2002.¹ Huntsman seeks reconsideration of an August 28, 2002, action by the Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Branch) denying its request for reconsideration of the dismissal of the above-captioned application for renewal of Conventional Industrial/Business Pool Station KNNF936, Conroe, Texas.² For the reasons set forth below, we dismiss the Petition.

2. *Background.* On January 16, 1996, Huntsman was issued a license to operate Station KNNF936. On October 17, 2000, a renewal reminder notice was sent to Huntsman.³ On November 14, 2000, Huntsman mailed an application for renewal, with a fee payment in the amount of \$85.00,⁴ which was received at Commission's Mellon Bank lock box on November 16, 2000. On November 17, 2000, Mellon returned the submission, because the correct fee was \$120.00.⁵ On January 16, 2001, Huntsman's authorization for Station KNNF936 expired.

¹ See Letter dated Sept. 4, 2002, from Ray Viada, Huntsman Corporation, to Federal Communications Commission, Public Safety and Private Wireless Division, 1270 Fairfield Road, Gettysburg, PA 17325-7245, Attn: Mary Schultz, Chief, Licensing and Technical Analysis Branch (Petition).

² See Letter dated Aug. 28, 2002, from Mary Schultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Ray Viada, Huntsman Corporation (Denial Letter).

³ See Application for Renewal of Private Station License, FCC 574R, sent Oct. 17, 2000. In addition to the filing instructions, the licensee was advised that "FCC 00-235 released 7/12/2000, adopted a 10 year license term for Part 90, effective 30 days after publication in the Federal Register. This will change the fee due for Fee Type Codes PALR to \$120. You may wish to call 1-888-225-5322 to verify fee prior to filing." The fee change took effect November 13, 2000. See Wireless Telecommunications Bureau Announces Changes to Fee Requirements for Part 90 and Part 95 Applicants, *Public Notice* (rel. Oct. 27, 2000).

⁴ Petition at 3. Huntsman indicates that it relied on the fee amount set forth in the renewal application form, and did not contact the Commission to verify the fee prior to filing. See *id.*

⁵ Huntsman states that it did not receive the returned application until January 23, 2001. Petition at 3. However, the return notice is dated November 17, 2000.

3. On March 2, 2001, Huntsman filed a second renewal application (with the correct fee),⁶ which the Branch dismissed on March 7, 2001⁷ because it was as untimely filed.⁸ On May 31, 2002, the Commission received a letter from Huntsman stating that it had not received a renewed license, despite that fact that its check had been deposited, and requested that the license be issued as soon as possible.⁹ In response, on August 28, 2002, the Branch issued a letter to Huntsman advising that according to Commission records, that (a) although Huntsman attempted to timely renew Station KNNF936, it failed to submit the required fee payment; (b) following the return of the unprocessable application, Huntsman filed a renewal application on March 2, 2001, which was dismissed as untimely filed on March 7, 2001; and (c) because the license for Station KNNF936 expired on January 16, 2001, if Huntsman wished to continue to operate the station, it had to file a new, properly coordinated application.¹⁰ In a letter to the Branch, received September 30, 2002, Huntsman requested review and reconsideration of its renewal application.¹¹

4. *Discussion.* Section 405 of the Communications Act (Act), as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on reconsideration.¹² Section 405, as implemented by Section 1.106(f) of the Commission's Rules, requires a petition for reconsideration to be filed within thirty days from the date of public notice the Commission's action.¹³ In addition, 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. 20554.¹⁴

5. As noted above, the Petition was received by the Branch on September 30, 2002. Thus, whether the date of public notice in this case is March 7, 2002 (the date the second renewal application was dismissed) or August 28, 2002 (the date of the Branch's letter responding to Huntsman's May 31, 2002 letter), the Petition was filed more than thirty days later.¹⁵ The filing requirement of Section 405(a)

⁶ See Application FCC File number 0000388992 (filed Mar. 2, 2001). Huntsman states that it mailed the second application on January 31, 2001. Petition at 3. However, the Commission's records indicate that it was received on March 2, 2001. In addition, as Huntsman notes, Mellon Bank deposited the check on March 5, 2001 (which was the first business day after Friday, March 2, 2001). *Id.*

⁷ Ref. No. 830086, Dismissal Letter sent Mar. 7, 2001. The letter was sent to Huntsman Corporation, Conroe, TX 77305, Attn: Plant Manager. This was the contact information listed on Huntsman's license for Station KNNF936.

⁸ See 47 C.F.R. § 1.949(a) (renewal applications must be filed no later than the expiration date of the authorization for which renewal is sought).

⁹ See Letter dated May 10, 2002, from Ray L. Viada, Contracts Coordinator, Huntsman Corporation, to Federal Communications Commission (received May 31, 2002).

¹⁰ Denial Letter at 1.

¹¹ Petition at 1.

¹² 47 U.S.C. § 405.

¹³ 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

¹⁴ 47 C.F.R. § 1.106(i).

¹⁵ See 47 C.F.R. § 1.4(b)(5).

of the Act applies even if the petition for reconsideration is filed only one day late.¹⁶ Consequently, we conclude that the Petition must be dismissed as untimely.

6. In addition, 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. 20554.¹⁷ 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.¹⁸ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.¹⁹ A document is filed with the Commission upon its receipt at the location designated by the Commission.²⁰ 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.²¹ 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, Huntsman did not request a waiver to file its Petition in Gettysburg, as opposed to filing it with the Office of the Secretary. Accordingly, even if Huntman's petition had been timely, we would dismiss it as improperly filed.

7. Should Huntsman wish to obtain a valid authorization for this station, it must file a new, properly coordinated application.²² If Huntsman desires to continue operating this facility until it receives a new authorization, it must obtain authorization to do so.²³

8. Accordingly, IT IS ORDERED 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, that the petition for reconsideration submitted by the Huntsman Corporation on September 30, 2002 IS DISMISSED.²⁴

¹⁶ See, e.g., Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975).

¹⁷ 47 C.F.R. § 1.106(i).

¹⁸ 47 C.F.R. § 0.401.

¹⁹ *Id.*

²⁰ 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).

²¹ See, e.g., 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).

²² See 47 C.F.R. § 90.175.

²³ See 47 C.F.R. § 1.931.

²⁴ If we were to reach the substance of Huntsman's Petition, we would deny it. Huntsman asserts that Mellon Bank took ten weeks to return its November 2000 renewal application and fee of \$85. We note that our records indicate that Mellon Bank processed Huntsman's submission in a timely manner by returning the application and fee on November 17, 2000. Huntsman further argues that in response it resubmitted its application and issued a check in the amount of \$120 on January 31, 2001. However, this submission was not received at the Commission until

9. 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

Scot Stone
Deputy Chief, Policy and Rules Branch
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

March 2, 2001. The Commission's policy regarding the treatment of late-filed renewal applications in the Wireless Radio Services provides that applications 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 our 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. *See* Biennial Regulatory Review – Amendment of Parts, 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95 and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999). Huntsman's second renewal application was filed more than thirty days after the license for Station KNNF936 expired, and the fact that its earlier, timely renewal application was dismissed for failure to submit the correct fee does not constitute grounds for granting a waiver. *See, e.g.*, WLOS Licensee, Inc., *Order on Reconsideration*, 15 FCC Rcd 11047, 11048 ¶ 4 (WTB PSPWD 2000) (citing Supercom, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 4604, 4607 ¶ 8 (2000); Empire Broadcasting Corp., *Memorandum Opinion and Order*, 25 FCC 2d 68, 69 ¶ 4 (1970)).