

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

In the Matter of Application of)
)
FRANK R. MICHALAK)
)
For Renewal of Amateur Radio License)
Station KA9EMU)

ORDER ON RECONSIDERATION

Adopted: January 30, 2004

Released: February 3, 2004

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a petition for reconsideration (Petition) submitted by Frank R. Michalak (Michalak) on December 4, 2002.¹ Michalak seeks reconsideration of a December 20, 1999 action by the former Public Safety and Private Wireless Division,² Licensing and Technical Analysis Branch (Branch) dismissing his application for renewal of Amateur Radio Service Station KA9EMU, Griffith, Indiana.³ For the reasons stated below, we dismiss the Petition as untimely. For administrative efficiency, we nonetheless give *de novo* review to his request, using all of the information currently before us in the record of this proceeding.⁴ Based on such review, we conclude that Michalak should be granted a waiver to permit the filing of a late-filed renewal application.

2. *Background.* On January 30, 1990, the Commission granted Michalak's application to operate Station KA9EMU, which provided for an expiration date of January 30, 2000. On December 12, 1999, Michalak submitted a renewal application for Station KA9EMU. On December 20, 1999, Commission staff dismissed Michalak's application because it did not include a taxpayer identification number (TIN).⁵ In the dismissal notice, the Branch cited a FCC *Public Notice* stating that, beginning August 16, 1999, the Commission would require all applicants in the Amateur Radio Service to provide a TIN with their applications.⁶ On January 30, 2000, Michalak's license for Station KA9EMU **expired by**

¹ See Letter dated December 4, 2002, from Frank R. Michalak to Federal Communications Commission, Wireless Telecommunications Bureau, Washington, D.C. (Petition).

² The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

³ See FCC Reference No. LLP1734, Notice of Immediate Application Dismissal, dated Dec. 20, 1999, sent to Frank R. Michalak, 9400 Wildwood Dr., Highland, IN 46322 (*Dismissal Letter*).

⁴ See Goosetown Enterprises, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 12792, 12794-95 ¶ 7 (2001) (*Goosetown*). In this regard we note that Michalak could file a waiver request to submit a late-filed renewal and renewal application.

⁵ *Dismissal Letter* at 1.

⁶ See Wireless Telecommunications Bureau to Begin Use of Universal Licensing System (ULS) for Licensing in the Amateur Radio Services Beginning August 16, 1999, *Public Notice*, 15 FCC Rcd 21379 (WTB 1999).

its own terms due to the absence of a timely-filed renewal application. On July 19, 2000, the Branch sent Michalak a letter announcing the implementation of the Commission Registration System (CORES), and provided an FCC Registration Number (FRN) based on his existing licensing data, to allow him to access the Universal Licensing System (ULS).

3. On December 4, 2002, Michalak requested reconsideration of the license dismissal in a letter to the Commission's Wireless Telecommunications Bureau (Bureau). He states that he attempted to access ULS after he received his FRN and password, but he encountered difficulty in filing a renewal application.⁷ He also states that he was unable to follow up in a timely manner because he subsequently was hospitalized a number of times for different health problems.⁸

4. *Discussion.* Section 405 of the Communications Act, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on reconsideration.⁹ 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.¹⁰ 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. 20554.¹¹

5. In this case, the date of public notice of the dismissal of Michalak's renewal application was December 20, 1999, the date appearing on the *Dismissal Letter*.¹² The deadline for filing petitions for reconsideration of that action was January 20, 2000. Thus, Michalak's Petition, which was received by the Bureau in December 2002, was untimely. The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹³ Consequently, we conclude that the Petition for Reconsideration submitted by Michalak 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. 20554.¹⁴ 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.¹⁵ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.¹⁶ A

⁷ See *Petition* at 1.

⁸ *Id.*

⁹ 47 U.S.C. § 405.

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

¹¹ 47 C.F.R. § 1.106(i).

¹² See 47 C.F.R. § 1.4(b)(5).

¹³ 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).

¹⁴ 47 C.F.R. § 1.106(i).

¹⁵ 47 C.F.R. § 0.401; see also *Petition for Reconsideration Requirements, Public Notice*, 15 FCC Rcd 19473 (WTB 2000).

¹⁶ *Id.*

document is filed with the Commission upon its receipt at the location designated by the Commission.¹⁷ Accordingly, the plain language of the Commission's Rules states that a petition for reconsideration submitted to the Commission's Wireless Telecommunications Bureau is not properly filed.¹⁸ 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, Michalak did not request a waiver to file the Petition with the Bureau's office, as opposed to filing it with the Office of the Secretary. Accordingly, even if Michalak's reconsideration petition had been timely, the Petition would be subject to dismissal as improperly filed.¹⁹

7. Nonetheless, we note that under Section 1.934(a) of our Rules, when an application has been dismissed with prejudice, an applicant may not file another application for the same purpose for a period of one year.²⁰ In this instance, the dismissal was without prejudice. Thus, Michalak could file another renewal application and waiver request setting forth the additional information presented in his Petition.²¹ Accordingly, for reasons of administrative efficiency, we will consider the merits of Michalak's request on our own motion.²²

8. The Commission's policy regarding treatment of late-filed renewal applications in the Wireless Radio Services is as follows: 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 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.²³ Applicants who file renewal applications more than thirty days after the license expiration date may also request that the license be renewed *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.²⁴ In determining whether to grant a late-filed application, we take into consideration 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.²⁵

¹⁷ 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).

¹⁸ 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).

²⁰ 47 C.F.R. § 1.934(a).

²¹ See Amendment of Section 1.937 of the Commission's Rules Concerning Repetitious or Conflicting Applications, *Notice of Proposed Rule Making*, WT Docket No. 02-57, 17 FCC Rcd 5628, 5630 ¶ 5 (2002).

²² See *Goosetown*, 16 FCC Rcd at 12794-95 ¶ 7 (2001).

²³ 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, 11486 ¶ 22 (1999).

²⁴ See *id.* at 11486 ¶ 22.

²⁵ See *id.* at 11485 ¶ 22.

9. A request for rule waiver in the Wireless Telecommunications Services may be granted if it is shown that (a) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (b) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest or the application has no reasonable alternative.²⁶

10. We agree with Michalak that the circumstances surrounding his license are sufficiently unique as to warrant a renewal *nunc pro tunc*. Here, Michalak's license expired on January 30, 2000, and he attempted to renew it well before the expiration date. We note that, upon encountering difficulty, Michalak obtained a TIN and received a FRN through CORES, which is required for every entity doing business with the Commission. However, due to series of hospitalizations, he was unable to complete the renewal process in a timely manner. In addition, under our Rules, a person whose amateur station license grant has expired may apply to the Commission for renewal for another term during a two-year filing grace period.²⁷ Thus, even at the time he submitted his Petition, had he filed a renewal application requesting the same relief, it would have been granted (assuming it contained all of the required information). Accordingly, we grant Michalak a waiver to submit a late-filed renewal application.

11. *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 submitted by the Frank R. Michalak on December 4, 2002, IS DISMISSED.

12. IT IS FURTHER ORDERED that if Frank R. Michalak is still interested in renewing his license for Amateur Radio Service Station KA9EMU, he is hereby directed to file a renewal application within sixty days of release of this *Order on Reconsideration*, and that such application SHALL BE PROCESSED in accordance with the waiver granted in this *Order on Reconsideration* and the Commission's Rules. If Mr. Michalak fails to submit the renewal application within such timeframe, he must file an application for a new license if he wishes to be an amateur radio service licensee.

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

D'wana R. Terry
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

²⁶ 47 C.F.R. § 1.925(b)(3).

²⁷ 47 C.F.R. § 97.21(b).