



Federal Communications Commission
Washington, D.C. 20554

August 22, 2012

DA 12-1383

Ms. Sonya R. Dutton
RCC Minnesota, Inc.
1120 Sanctuary Pkwy, #150 GASA5REG
Alpharetta, GA 30009-7630
ATTN Regulatory

Dear Ms. Dutton:

On our own motion, the Broadband Division of the Wireless Telecommunications Bureau (Division) is setting aside the grants of applications filed by RCC Minnesota, Inc. (RCC) for renewal of Common Carrier Fixed Point to Point Microwave licenses. The renewal applications were duplicate applications that should not have been allowed to be filed. The applications in question shall also be dismissed.

This letter involves forty Common Carrier Fixed Point to Point Microwave licenses held by RCC.¹ On November 30, 2010, RCC filed timely applications for renewal of those licenses (First Renewal Applications).² On December 21, 2010, while the First Renewal Applications were still pending, RCC filed a second set of renewal applications for the same licenses (Second Renewal Applications).³ Although the Universal Licensing System (ULS) should not have allowed RCC to file a second set of renewal applications for the same licenses, a system error allowed RCC to file the Second Renewal Applications.

The First Renewal Applications were granted on January 25, 2011.⁴ At that time, the licenses had an expiration date of February 1, 2021.⁵ The Second Renewal Applications were granted on February 15, 2011.⁶ After the grant of the Second Renewal Applications, each of the licenses had an expiration date of February 1, 2031.⁷

On our own motion, we are setting aside the grant of the Second Renewal Applications. Because RCC had the timely filed First Renewal Applications on file, ULS should not have allowed RCC to file a repetitive second set of renewal applications. Because of a system error, RCC was allowed to file the Second Renewal Applications. Once the First Renewal Applications were granted, the Second Renewal

¹ A list of the relevant licenses is contained in the Appendix to this letter.

² A list of the file numbers for the First Renewal Applications is contained in the Appendix.

³ A list of the file numbers for the Second Renewal Applications is contained in the Appendix.

⁴ See Wireless Telecommunications Bureau Site-By-Site Action, Report No. 6585, *Public Notice* (Feb. 2, 2011) at 21-22.

⁵ See Archived License Information in ULS (record dated Jan. 25, 2012).

⁶ See Wireless Telecommunications Bureau Site-By-Site Action, Report No. 6637, *Public Notice* (Feb. 23, 2011) at 12-13.

⁷ See ULS.

Applications should have been dismissed as defective because they were premature for licenses that had been renewed until 2021.⁸

We conclude that the consideration and grant of the Second Renewal Applications was an administrative error that can be reviewed and set aside at this time. It is well settled that an agency has the authority to correct inadvertent ministerial errors, even after the agency has taken final action.⁹ The Commission has noted, however, that the authority to revisit final actions is limited.¹⁰ In *San Mateo*, the Commission explained that this authority extends only to the correction of clerical or administrative errors that underlie or occur in the process of taking an action.¹¹ In this case, we find that the error in ULS that allowed RCC to file the Second Renewal Applications falls within the category of ministerial error that can be reviewed at this time. If ULS had been working properly, RCC would not have been allowed to file the Second Renewal Applications. While the decision to grant a license application generally is a discretionary, rather than ministerial, action, the erroneous grant of an application can be corrected *sua sponte* more than thirty days after it becomes final where the grant was premised upon or contains a ministerial error.¹² Here, action on the Second Renewal Applications was premised on the system error that allowed the applications to be filed in the first place.

Accordingly, we will set aside the grant of the Second Renewal Applications and return them to pending status. That action will result in RCC's licenses having an expiration date of February 1, 2021. We will then dismiss the Second Renewal Applications as defective because they are premature with respect to the 2021 expiration date on RCC's licenses.¹³ Our action is without prejudice to RCC's ability to refile renewal applications within 90 days of the February 1, 2021 expiration date of the licenses. We also emphasize that RCC's licenses remain valid and in full force and effect.

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, that the grant of the applications for renewal of license filed by RCC Minnesota, Inc. on December 21, 2010 and granted on February 15, 2011, as listed in the Appendix, ARE SET ASIDE.

⁸ See 47 C.F.R. § 1.949(a) (renewal applications shall be filed no earlier than 90 days prior to license expiration).

⁹ See *American Trucking Ass'n v. Frisco Transportation Co.*, 358 U.S. 133, 145-146 (1958); *Chlorine Institute v. OSHA*, 613 F.2d 120, 123 (5th Cir. 1990). In *American Trucking*, the court acknowledged an agency's ability to correct administrative errors, stating that "[t]o hold otherwise would be to say that once an error has been done the agency is powerless to take remedial steps."

¹⁰ See *Applications of County of San Mateo, California, Memorandum Opinion and Order*, 16 FCC Rcd 16501, 16503 ¶ 8 (2001) (*San Mateo*).

¹¹ *Id.*

¹² *Id.* at 16504 ¶ 10.

¹³ See 47 C.F.R. § 1.934(f) (Commission may dismiss premature applications without prejudice).

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 Sections 1.934(f) and 1.949(a) of the Commission's rules, 47 C.F.R. §§ 1.934(f), 1.949(a), that the applications for renewal of license filed by RCC Minnesota, Inc. on December 21, 2010, as listed in the Appendix, ARE DISMISSED without prejudice.

These actions are 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

John J. Schauble
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Wireless Telecommunications Bureau