



# PUBLIC NOTICE

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## **WIRELESS TELECOMMUNICATIONS BUREAU REVISES AND BEGINS PHASED IMPLEMENTATION OF ITS UNIFIED POLICY FOR REVIEWING LICENSE APPLICATIONS AND PLEADINGS**

*Revised policy to take effect July 1, 1999, for Cellular, PCS, WCS, Part 22 Paging, Offshore, and Auctioned Licenses; Antenna Structure Registrations also affected*

Beginning July 1, 1999, the Wireless Telecommunications Bureau (Bureau) will begin implementing its unified policy for dismissing and returning applications, as well as pleadings related to such applications (unified policy). The unified policy will take effect for Cellular, Personal Communications Services (PCS), Wireless Communications Services (WCS), Part 22 Paging, Offshore, and Auctioned Licenses (*i.e.*, those radio services for which electronic filing via the Bureau's Universal Licensing System (ULS) has been available for more than 6 months). Under the unified policy, applications or pleadings that are defective will be dismissed, rather than returned to the applicant for correction, except as described below. As a result of discussions with the Federal Communications Bar Association (FCBA) and others, the Bureau has determined that it will 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>1</sup> The Bureau is taking this approach to promote (1) the filing of applications (and pleadings associated with such applications) in good order, (2) the expedited processing of all wireless applications, and (3) consistency in the treatment of all applications received by the Bureau. The unified policy and its potential effects on licensees are described in detail herein.

### **BACKGROUND**

Currently the Wireless Telecommunications Bureau (Bureau) receives hundreds of thousands of applications annually involving wireless radio services under Parts 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101, as well as Commercial Radio Operators under Part 13 and Antenna Structure Registration under Part 17 of the Commission's Rules (collectively referred to herein as "applications"). Most of these applications when submitted are generally "in good order" (*i.e.*, can be processed without correction by the applicant). Applications filed in good order

<sup>1</sup> This return policy only affects timely filed renewal applications and timely filed notifications of construction on license applications. The return policy does not apply to notifications for antenna structures (FCC Forms 854 and 854R). See Changes Concerning Antenna Structure Registration Applications, *infra*.

significantly assist the Bureau in its efforts to provide timely, efficient public service. Many wireless applications, however, are not filed in good order (*e.g.*, are incomplete or contain inaccurate information) and, consequently, cannot be processed without obtaining additional information from the applicant.

Prior to adoption of the *ULS Report and Order*,<sup>2</sup> the Commission's Rules contained a variety of service-specific rules for dismissal or return of incomplete or facially defective applications. Under these rules, such applications could be subject to dismissal, but the Bureau staff also had discretion to return applications providing the applicant an opportunity to correct deficiencies without losing its fee and/or place in the processing line. As a result, different procedures and practices evolved with respect to the return of applications.

In the *ULS Report and Order*, the Commission adopted a new uniform rule with respect to dismissal and return of defective applications in all wireless services, and eliminated previously inconsistent service-specific rules.<sup>3</sup> In accordance with the *ULS Report and Order*, and in an effort to conform our procedures for processing applications in all wireless services, the Bureau released a Public Notice on February 24, 1999, announcing a new unified policy for reviewing applications and pleadings related to applications.<sup>4</sup> In sum, the Bureau stated that, effective May 1, 1999, it would begin dismissing defective applications and pleadings rather than returning them to the applicant for correction. On April 7, 1999, the Bureau held a public forum in order to address the industry's concerns with the policy.<sup>5</sup> Subsequently, Bureau staff had discussions with the FCBA regarding the group's concerns about how renewal applications and notifications of construction, and ultimately a licensee's authority to continue operation, would be negatively affected by the unified policy.

On April 29, 1999, the Bureau released a Public Notice delaying and revising implementation of the unified policy.<sup>6</sup> The Bureau stated that the unified policy would take effect

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<sup>2</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 Service, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd. 21027 (1998) (*ULS Report and Order*). See also *Memorandum Opinion and Order on Reconsideration*, FCC 99-139 at paras. 18-19, adopted June 10, 1999 (*ULS Memorandum Opinion and Order*). In brief, the ULS is a new, interactive licensing system developed by the Bureau to consolidate and replace eleven existing licensing systems used to process applications and grant licenses in the wireless services. Complete information on the ULS may be found on the Internet at <http://www.fcc.gov/wtb/uls>.

<sup>3</sup> See 47 C.F.R. Section 1.934.

<sup>4</sup> See Wireless Telecommunications Bureau Announces Unified Policy for Dismissing and Returning Applications and Dismissing Pleadings Associated with Applications, *Public Notice*, DA 99-385 (February 24, 1999).

<sup>5</sup> See Wireless Telecommunications Bureau to Hold a Public Forum on New Policy Regarding Dismissing and Returning Applications and Dismissing Pleadings Associated with Applications, *Public Notice*, DA 99-574 (March 24, 1999).

<sup>6</sup> See Wireless Telecommunications Bureau Postpones Effective Date of Unified

for each radio service either July 1, 1999, or 6 months after conversion of the radio service to the ULS, whichever is later. Under this phased approach, the unified policy would take effect for Cellular, PCS, WCS, Part 22 Paging, Offshore, and Auctioned Licenses on July 1, 1999. Appendix A to this Public Notice lists the implementation dates for other services that were converted to ULS less than 6 months ago. Although the Bureau did not specifically mention Antenna Structure Registration applications in its April 29, 1999, Public Notice, it has delayed implementation of the dismissal policy until July 1, 1999, for these applications as well.

### **REVISED POLICY ON DISMISSALS**

Section 1.934(d) of the Rules, as recently amended, states that the Commission may dismiss as defective, applications that: (1) are unsigned or incomplete with respect to answers to questions, informational showings, or other matters of a formal character; (2) request an authorization that would not comply with one or more of the Commission's Rules, and do not contain a waiver request (or in cases where the waiver is denied contain an alternative proposal); or (3) do not contain an adequate fee.<sup>7</sup> As under prior rules, the Bureau also retains discretion to return a defective application in lieu of dismissing it. Our goals here are to facilitate the timely processing of wireless applications and unify our processes under the ULS. We believe the unified policy outlined below will promote consistency and increase the number of applications that are submitted to the Bureau in good order. Further, the policy will decrease the number of applications processed by the staff that require additional information to be submitted.

As a result, the Bureau may dismiss without prejudice any application that:

- Is not signed;
- Does not contain an adequate fee (including waiver requests and requests for fee exemption);
- Requires a specific FCC Form or Schedule to be submitted and the Form or Schedule is missing;
- Requires a specific showing under the Rules (e.g., frequency coordination, an engineering study, a certificate of service to other licensees) and the showing is missing, invalid, or inconsistent with other information provided in the application and renders it unprocessable;
- Proposes operations not permitted under the Rules and does not properly request a waiver;
- Proposes use of a radio antenna structure that requires FCC Antenna Structure Registration and the Registration Number of the structure is not provided by the applicant (see Policy on Antenna Structure Registration *infra*); or
- Is missing information or contains information inconsistent with the Bureau's licensing records and renders the application unprocessable (excluding cases where the applicant

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Dismissal Policy for Applications in the Wireless Services, *Public Notice*, DA 99-811 (April 29, 1999).

<sup>7</sup> See 47 C.F.R. § 1.934(d), adopted in the *ULS Report and Order*.

provides in its application evidence that the Bureau's records are inaccurate).

Applications dismissed and later refiled will lose their original place in the processing line and be treated as newly-filed applications. As newly filed applications, they could be deemed untimely filed with respect to a filing window or other competing applications and be dismissed for these reasons. In addition, these refiled applications must be accompanied by a new filing fee.<sup>8</sup>

*Revised Applicability.* As a result of staff discussions with the FCBA and others, the Bureau will return for correction, rather than dismiss, timely filed renewal applications and timely filed construction notifications that contain errors. The revised policy on returns is described in detail later in this Public Notice. The following application purposes remain subject to dismissal under the unified policy: New, Modification, Amendment (where the original purpose was not Renewal Only, Renewal/Modification, or Notification of Construction), Assignment of Authorization, Transfer of Control, Withdraw, Notification of Consummation, Extension of Time, Cancel, and Call sign consolidation.

*Revised Implementation.* The unified policy becomes effective for a radio service either July 1, 1999, or 6 months after conversion of that service to ULS, whichever is later. For each radio service, this approach aligns the effective dates for: (1) mandatory electronic filing where applicable, (2) the unified policy, and (3) the sunset on use of pre-ULS forms. The unified policy is effective July 1, 1999, for Cellular, PCS, WCS, Part 22 Paging, Offshore, and Auctioned Licenses. A complete list of effective dates is included as Appendix A to this Public Notice.

*Practical effect on licensees using the ULS.* Many of the filing errors routinely made by applicants involve missing signatures, missing or invalid answers to mandatory questions, missing or incorrect fees, and technical information inconsistent with the applicant's authorization. Using the ULS, however, will nearly eliminate the filing of applications with these types of errors because the applicant receives real-time feedback online and is prompted to correct errors prior to submitting the application. For example, the ULS will not allow an application to be filed without a signature or answers to mandatory questions. Further, the ULS allows the applicant to select from drop-down lists of call signs and tower sites, and pre-fills technical information so that typos and inconsistent technical parameters will hopefully be a thing of the past. With regard to fees, the ULS helps to eliminate errors by calculating the fee due and prompting the applicant to print FCC Form 159 directly from the ULS. This does not, however, ensure that the applicant will remit the proper payment in a timely manner.

In some radio services, electronic filing via ULS will be an option, but will not be mandatory. In such cases we urge licensees to file electronically in order to take advantage of the real-time feedback and online prompts available via ULS. Licensees who continue to file

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<sup>8</sup> In certain instances, applicants may request a refund of their original filing fees pursuant to 47 C.F.R. § 1.1113.

applications manually will risk dismissal of their applications for the reasons stated above.

## **REVISED POLICY ON RETURNS**

In discussions with Bureau staff, the FCBA and others have contended that the unified policy is inappropriate in the context of renewal applications and notifications of construction (*i.e.*, where dismissal results in expiration or termination of a license) for two reasons. First, renewals and construction notifications are very simple filings where it is unlikely that applicants will make a large number of errors. Second, because dismissal will lead to expiration or termination of the license, the Bureau will likely have to subsequently 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. Therefore, because renewals and construction notifications would likely represent only a small percentage of applications filed with errors, and dismissal would result in a much greater processing burden for the Bureau, we will return for correction, rather than dismiss, timely filed renewals and timely filed notifications of construction.

Under our unified policy on dismissals, we anticipate that the number of applications returned to the applicant for amendment will be greatly reduced. Even so, there will be limited circumstances where the Bureau will return an application to the applicant for correction. In addition to timely filed renewals and timely filed construction notifications, an application containing an engineering study or legal showing as required by the Rules may be in good order, but staff may require clarification of some matters or more detailed information than initially submitted by the applicant but not explicitly required by the rules. In cases where the application is returned, the applicant must respond by amending its application to provide the requested information within 60 days.<sup>9</sup> An additional fee will be required only in cases where the amendment is feeable under Part 1 of the Commission's Rules.

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, all applications dismissed and later refiled will lose their original place in the processing line and be treated as newly-filed applications.

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<sup>9</sup> *Memorandum Opinion and Order on Reconsideration*, FCC 99-139 at paras. 18-19, adopted June 10, 1999. The Bureau will normally provide 60 days for the applicant to amend its application, but this period may be shortened if conditions warrant. Prior to the *ULS Report and Order*, the rules for private wireless services specified 60 days for returning applications involving frequencies below 470 MHz and 30 days (with 45 days involving areas outside the continental United States) for applications involving frequencies above 470 MHz. See former Section 1.959 of the Commission's Rules. This section, however, was amended in the *ULS Report and Order* and moved to Section 1.934(c) of the Rules in order to unify procedural rules for all wireless services.

**NOTE:** Applicants should note that mandatory electronic filing will be in effect for certain radio services beginning **July 1, 1999**, and that amendments must be filed electronically, rather than by informal means the Bureau has accepted in the past (*e.g.*, letter, fax, email, phone.)

## **POLICY ON PLEADINGS**

We also take this opportunity to clarify our policy regarding pleadings associated with applications filed before the Bureau. The rules provide for interested parties to file petitions to deny applications pending before the Bureau as well as petitions for reconsideration of actions taken by the Bureau under delegated authority. Pursuant to Section 1.939 of the Commission's Rules, petitions to deny may be dismissed as procedurally defective unless they meet the minimum criteria set forth below.<sup>10</sup> Each petition to deny must:

- be filed manually at the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554, or electronically via the ULS (when capability becomes available);
- be timely filed (pleading cycles are set forth in the Public Notices listing the applications or major amendments as acceptable for filing);
- contain proof that a copy has been served on all interested parties;
- reference the file number of the subject application; and,
- include allegations of fact sufficient to make a prima facie showing that the Petitioner is a party in interest and that a grant would be inconsistent with the public interest, convenience and necessity (allegations of fact must be supported by affidavit of a person or persons with personal knowledge thereof).

Likewise, pursuant to Section 1.106 of the Commission's Rules, petitions for reconsideration of delegated authority actions taken by the Bureau regarding license applications may be dismissed as procedurally defective unless they meet the minimum criteria set forth below. Each petition for reconsideration must:

- be filed manually at the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554, or electronically via the ULS (when capability becomes available);
- be filed no later than 30 days from the date of final action or in cases where final actions are put on Public Notice, 30 days from the date of the Public Notice as that date is defined in 47 C.F.R. § 1.4(b);
- set forth how the action taken should be changed, and specify the type of relief sought; and,
- where the petition is based upon a claim of electrical interference to an authorized station,

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<sup>10</sup> See also 47 C.F.R. § 1.2108 concerning petitions to deny auction long form applications. Nothing in this Public Notice is intended to alter our procedures with respect to auctions.

be accompanied by an affidavit of a qualified radio engineer showing that electrical interference will be caused within the station's protected contour; this showing must utilize either actual measurements or the methods described in the appropriate rule part for determining interference.

## **POLICY ON ANTENNA STRUCTURE REGISTRATION**

In November of 1995, the Commission adopted rules requiring tower owners (not tenant licensees) to register with the Commission each antenna structure for which Federal Aviation Administration (FAA) notification is required. Generally, this includes all structures more than 60.96 meters (200 feet) above ground or located near or on a public use airport. The specific registration criteria is contained in Part 17 of the Commission's Rules, and summarized in WTB Fact Sheet #15. The registration rules required preexisting structures to be registered between July 1996 and June 1998. At this point, all existing structures meeting the registration criteria are required to have been registered and proposed structures must be registered prior to construction. Parties unfamiliar with the Commission's Rules concerning antenna structure registration should consult the Bureau's Antenna Homepage on the Internet at <http://www.fcc.gov/wtb/antenna>, or obtain a copy of WTB Fact Sheet #15 by calling the FCC's Forms Distribution Center at 1-800-418-FORM (3676).

### **Changes Concerning Antenna Structure Registration Applications (FCC Form 854).**

Beginning July 1, 1999, all Antenna Structure Registration applications that are defective or incomplete are subject to dismissal. This policy applies to all applications, regardless of purpose, and was described in a Public Notice released June 21, 1999.<sup>11</sup> Owners of antenna structures required to be registered pursuant to Section 17.4 of the Commission's rules must first file FAA Form 7460-1 with the FAA and obtain a final determination of "no hazard" for the structure. Second, owners must file FCC Form 854 with the Commission either manually or electronically to register the antenna structure. Under the dismissal policy that takes effect on July 1, 1999, the Bureau will begin dismissing as defective those registration applications where data on the final FAA determination does not agree with data submitted on FCC Form 854. Specifically, site coordinates must be within one second of latitude and one second of longitude and heights must be within one foot.

### **Changes Concerning License Applications**

Today we are clarifying the policies that will be used to process radio station license

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<sup>11</sup> Commission Announces New Procedures for Antenna Structure Registration, *Public Notice*, DA 99-1186 (June 21, 1999).

applications expeditiously with regard to Antenna Structure Registration in the wake of the ULS. The following policy takes effect July 1, 1999, for Cellular, PCS, WCS, Part 22 Paging, Offshore, and Auctioned Licenses, and 6 months after conversion to ULS for all other radio services. *See* Appendix A. Applications proposing new operations or modifications to existing operations on antenna structures must contain the FCC Antenna Registration Number if registration is required for the site under Part 17. In these cases, if the Registration Number is not present, the application will be dismissed without prejudice. In certain instances registration is not required pursuant to Section 17.14 of the Commission's Rules if a structure is shielded, if the "20 foot rule" applies, or if the antenna structure is fixed by function at an airport. In lieu of a registration number, **applicants who claim registration is not required must so state on their application or it will be dismissed.**

Structure owners are required to provide a copy of the Registration (FCC Form 854R which includes the Registration Number) to all tenant licensees in cases where registration is required. Accordingly, tenant licensees should obtain a copy of the Registration from the owner in order to provide the Registration Number on each application submitted to the Bureau.

In determining whether registration is needed for a site, the Bureau will first determine whether the overall height is more than 60.96 meters (200 feet) above ground. Second, the Bureau will use its TOWAIR software to determine whether structures near public use airports require registration. A link to the TOWAIR software is provided from the Bureau's Antenna Homepage on the Internet (<http://www.fcc.gov/wtb/antenna>).

As we originally described in our February 24, 1999, Public Notice,<sup>12</sup> we realize this policy will require operational changes in the way licensees and structure owners perform regulatory work for newly-built structures. For example, some licensee/owners are accustomed to notifying the FAA of proposed construction at the same time they file an FCC license application, and then registering the structure while their license application is pending before the Bureau. In the future, however, applicants must notify the FAA well in advance and obtain a Registration Number from the Bureau prior to submitting a license application. Therefore, the Bureau urges licensees and antenna structure owners to initiate changes in their internal regulatory processes immediately in order to avoid dismissal and/or processing delays.

We also realize that there may be situations where the Commission establishes filing windows without enough lead time for the applicant to notify the FAA, obtain a Registration Number, and file a timely application within the window. Applicants under these circumstances should file timely within the applicable window and simultaneously request a waiver of the instant policy.

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<sup>12</sup> *See* Wireless Telecommunications Bureau Announces Unified Policy for Dismissing and Returning Applications and Dismissing Pleadings Associated with Applications, *Public Notice*, DA 99-385 (February 24, 1999).

## **FOR FURTHER INFORMATION**

For Commercial Wireless Service information contact Charlene Lagerwerff at (202) 418-1349 or via email at [clagerwe@fcc.gov](mailto:clagerwe@fcc.gov).

For Public Safety and Private Wireless Service contact the Licensing and Technical Analysis Branch at (717) 338-2646, or via email at [gvillalobos@fcc.gov](mailto:gvillalobos@fcc.gov).

For Antenna Registration information contact Barb Sibert at (717) 388-2522, or via email at [bsibert@fcc.gov](mailto:bsibert@fcc.gov).

**APPENDIX A  
IMPLEMENTATION SCHEDULE FOR THE UNIFIED POLICY**

<b>Radio Service</b>	<b>Implementation Date</b>
Cellular	July 1, 1999
Personal Communications Services (PCS)	July 1, 1999
Wireless Communications Services (WCS)	July 1, 1999
Part 22 Paging	July 1, 1999
Offshore	July 1, 1999
Auctioned Licenses:	
Auction 16 - SMR, 806-821/851-866 MHz	July 1, 1999
Auction 17 - Local Multipoint Distribution Service	July 1, 1999
Auction 18 - 220 MHz Radio Service	July 1, 1999
Auction 20 - VHF Public Coast Service	July 1, 1999
Aircraft	July 19, 1999
GMRS	October 19, 1999
Auctioned 900 MHz SMR	October 19, 1999
All other radio services	6 months after conversion to ULS