

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

In the Matter of)	
)	
First National Bank of Berryville)	File Nos. 0000092903 and 0000092904
)	
Applications for Renewal of Private Operational)	
Fixed Microwave Station WNTB446, Eureka)	
Springs, Arkansas, and Station WNTB447,)	
Berryville, Arkansas and Request for Waiver of)	
Section 1.949(a) of the Commission's Rules)	

ORDER

Adopted: October 10, 2000

Released: October 13, 2000

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

I. INTRODUCTION

1. On April 13, 2000, First National Bank of Berryville (FNB) filed a petition¹ requesting reconsideration of the dismissal of the above-referenced renewal applications,² and requesting a waiver of Section 1.949 of the Commission's Rules³ to permit reinstatement and processing of its renewal applications. For the reasons discussed below, we deny FNB's Petition.

II. BACKGROUND

2. On December 28, 1989, FNB received authorization to operate two Private Operational Fixed Microwave Stations under the Call Signs WNTB446, Eureka Springs, Arkansas, and WNTB447, Berryville, Arkansas. FNB uses the stations to provide inter-branch communications⁴ and leases the excess capacity to the Carroll County Sheriff's Department.⁵ On January 20, 1995, FNB's licenses were renewed for a five-year term that was scheduled to expire on January 20, 2000.⁶ On October 23, 1999, the Public Safety and Private Wireless Division's (Division) Licensing and Technical Analysis Branch (Branch)

¹ See Petition for Reconsideration filed by First National Bank of Berryville (filed Apr. 13, 2000) (Petition).

² See Automated Dismissal Letter for FCC File No. 0000092903 to First National Bank of Berryville (March 14, 2000); Automated Dismissal Letter for FCC File No. 0000092904 to First National Bank of Berryville (March 14, 2000).

³ 47 C.F.R. §§ 1.949(a).

⁴ See Petition at 2.

⁵ See *id.* at 4.

⁶ *Id.*

generated and mailed two letters to FNB to notify it of its stations' expiration dates.⁷ FNB states, however, that it did not receive the renewal notices until March 21, 2000.⁸

3. Because FNB failed to timely renew its licenses, the licenses expired on January 20, 2000. On March 8, 2000, FNB filed the above-referenced renewal applications⁹ for Call Signs WNTB446 and WNTB447. The Branch dismissed the applications as untimely pursuant to Section 1.949 of the Commission's Rules on March 14, 2000. On April 13, 2000, FNB filed the subject Petition.

III. DISCUSSION

4. FNB has requested reconsideration of the Branch's decision to dismiss its renewal applications and a waiver of Section 1.949 of the Commission's Rules, which requires that renewal applications be filed before the license expiration date.¹⁰ First, FNB contends that the public interest would be served by renewal of the subject licenses because the communications are used for the day-to-day efficiency of the banking services and discontinuation of the service would adversely affect FNB and its customers.¹¹ Moreover, FNB asserts that any discontinuation of service would adversely affect the Carroll County Sheriff's Department, which also relies on the service.¹²

5. Second, FNB states that its failure to file the renewal applications in a timely manner was inadvertent.¹³ FNB contends that it would have properly filed the renewal applications, but it did not receive the October 13, 1999 renewal reminder letters from the Commission until March 21, 2000. FNB admits that it is the licensee's duty to comply with the Commission's rules, including the rules regarding requests for renewal of licenses.¹⁴ However, FNB argues that if it had received its renewal reminder in advance of the expiration date, it would have filed timely renewal applications.¹⁵ Further, FNB contends that as soon as it became aware that the expiration date had passed, it took immediate steps to prepare the renewal applications.¹⁶

6. In addition, FNB argues that the instant Petition and accompanying waiver will not undermine the underlying purpose of the Section 1.949 of the Commission's Rules. FNB states that the

⁷ See Automated Renewal Letter for FCC File No. 0000092903 to First National Bank of Berryville (October 23, 1999); Automated Renewal Letter for FCC File No. 0000092904 to First National Bank of Berryville (October 23, 1999).

⁸ Petition at 2, Ex. A.

⁹ FCC File Nos. 0000092903 and 0000092904.

¹⁰ 47 C.F.R. §§ 1.949(a).

¹¹ See Petition at 4.

¹² *Id.*

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

purpose of the rule is to ensure renewal applications are filed on a timely basis. It further states that grant of the subject Petition and accompanying waiver would not cause other “reasonable” entities to file a late renewal application purposely. Moreover, FNB argues that grant of its Petition and accompanying waiver would serve the underlying purpose of the renewal rule. In support, FNB states that the Commission affords licensees a renewal expectancy to provide incentive for licensees to make the necessary investments in the system. FNB contends that it has made such investments to provide a greater service to the public.

7. We find that the FNB’s renewal applications were properly dismissed as untimely. Under Section 1.949 of the Commission’s Rules, applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization for which renewal is sought.¹⁷ Further, under Section 1.955 of the Commission’s Rules, authorizations automatically expire upon the scheduled expiration date unless a timely application for renewal is filed.¹⁸ In 1999, the Commission adopted a policy regarding the treatment of late-filed renewal applications in the wireless services. Renewal applications that are filed up to thirty days after the expiration date of the license will generally be granted *nunc pro tunc*, although 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.¹⁹ Applicants who file renewal applications more than thirty days after the expiration date of the license 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 may be accompanied by more significant enforcement action, including forfeiture.²⁰ The untimely renewal applications are reviewed in light of the complete facts and circumstances involved, including the length of the delay in filing, the licensee’s performance record, the reasons for the failure to timely file, and the potential consequences to the public were the license to terminate.²¹

8. Based on the complete facts and circumstances involved here, we find that renewal *nunc pro tunc* of FNB’s licenses is not warranted. First, FNB’s renewal applications were filed forty-eight days after both of the subject licenses expired. Second, we find that the stated reason for FNB’s failure to timely file its renewal applications - *i.e.*, inadvertence - does not provide a sufficient basis for the requested relief. Moreover, we are not persuaded that FNB’s contention that it did not receive a reminder notice to file its renewal application in a timely manner prior to the licensees’ expiration is a significant factor in reaching our decision in this matter. In this regard, we note that a licensee’s obligation to timely file a renewal application is not dependent upon the Commission sending a renewal notice to the licensee; rather, it is the responsibility of each licensee to renew its application prior to the expiration date of the license.²² Even if

¹⁷ 47 C.F.R. § 1.949(a).

¹⁸ 47 C.F.R. § 1.955(a)(1).

¹⁹ See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission’s Rules to Facilitate Development and the Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476, 11485 ¶ 22 (1999).

²⁰ *Id.*

²¹ *Id.*

²² *Id.* The renewal notice is a convenience to licensees and in no way absolves licensees from timely filing their renewal applications. See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission’s Rules to Facilitate Development and the Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21027, 21071 ¶ 96 (1998). Thus, (continued....)

the renewal notices were not received, each licensee is expected to know the expiration date of its licenses.²³ Accordingly, “failure of a licensee to receive a [renewal form] from the Commission is no excuse for failure to file a renewal application.”²⁴

IV. CONCLUSION

9. Because FNB’s reasons do not excuse the late filing, we deny its waiver request for acceptance of its late-filed renewal applications for Call Signs WNTB446 and WNTB447. Therefore, we find that FNB’s renewal applications were properly dismissed as untimely. Accordingly, we deny FNB’s petition for reconsideration and request for waiver of Section 1.949 of the Commission’s Rules. If FNB wishes to obtain valid authorization for these stations, it must file new, properly coordinated applications.²⁵ If FNB desires to continue operating these facilities until it files new license applications,²⁶ it must obtain authorization to do so.²⁷

V. ORDERING CLAUSES

10. 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 Sections 1.106 and 1.925 of the Commission’s Rules, 47 C.F.R. §§ 1.106, 1.925, the petition for reconsideration and waiver request filed by First National Bank of Berryville on April 13, 2000, is DENIED.

11. 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 Private Wireless Division
Wireless Telecommunications Bureau

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contrary to FNB’s contention, the renewal application deadline does not “presume the receipt of a renewal notice.” See Petition at 5.

²³ See, e.g., Tampa Electric Company, *Order*, 14 FCC Rcd 21344, 21348 ¶ 9 (WTB PSPWD 1999).

²⁴ See Daniel R. Goodman, Receiver, Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission’s Rules, *Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 21944, 21972-73 ¶ 53 (1998); accord, e.g., WSYX Licensee, Inc., *Order*, DA 00-2091, ¶ 5 (WTB PSPWD rel. Sept. 22, 2000); Nevada Power Company, *Order on Reconsideration*, 14 FCC Rcd 17812, 17814 ¶ 5 (WTB PSPWD 1999).

²⁵ See 47 C.F.R. § 101.103.

²⁶ See 47 C.F.R. § 101.31(b) (providing conditional authorization while the application is pending).

²⁷ See 47 C.F.R. § 1.931.