

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

In the Matter of Applications of)	
)	
MONROE COUNTY)	FCC File Nos. 0000214726; 0000214734;
)	0000214743; 0000214746; 0000214749;
and Request for Waiver to Operate)	0000214756; 0000214757
Microwave Public Safety Pool Stations)	
WNTX234, WNTX235, WNTX236,)	
WNTX237, WNTX239,)	
WNTX240 and WNTX481,)	
Rochester, New York)	

ORDER ON RECONSIDERATION

Adopted: September 4, 2001

Released: September 14, 2001

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

1. *Introduction.* On March 26, 2001, Monroe County, New York (Monroe) filed a petition for reconsideration¹ of a decision by the Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Division),² regarding the denial of its waiver request and dismissal of its late-filed renewal application. For the reasons set forth below, we grant Monroe's petition.

2. *Background.* Monroe operates a mobile data terminal system that is used for police, fire and emergency medical services using ten 850 MHz frequencies at sites located in Monroe County, New York.³ On August 3, 1995, the Commission granted Monroe licenses to operate Stations WNTX234, WNTX235, WNTX236, WNTX237, WNTX239, WNTX240 and WNTX481, Rochester, New York. On May 7, 2000, the Commission issued renewal reminder notices for Stations WNTX234, WNTX235, WNTX236, WNTX237, WNTX239, WNTX240 and WNTX481.⁴ The authorizations expired on August 3, 2000.

3. On September 6, 2000, Monroe submitted the above-captioned applications and a request for waiver of Section 1.949 of the Commission's Rules⁵ seeking renewal of its license to operate Stations

¹ See Petition for Reconsideration dated Mar. 22, 2001, filed by Gary E. Perkins on behalf of Monroe County on Mar. 26, 2001 (Petition).

² Letter from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division, to Gary E. Perkins, Monroe County (Mar. 13, 2001) (Dismissal Letter).

³ Petition at 1.

⁴ See Renewal Reminders sent to County of Monroe, Emergency Communications Office, 321 W. Main Street, Rochester, New York 14608-1902, FCC Reference Nos. 187220, 187221, 187222, 18723, 187225, 187226 and 187227, on May 7, 2000.

⁵ 47 C.F.R. § 1.949.

WNTX234, WNTX235, WNTX236, WNTX237, WNTX239, WNTX240 and WNTX481.⁶ On March 13, 2001, the Division denied Monroe's waiver request and dismissed the applications because Monroe did not describe any efforts it made to file the renewal applications until thirty-three days after the licenses expired.⁷ The Division found that Monroe did not act with the required diligence by initiating the electronic filing of the subject eight applications so close to the scheduled expiration of the licenses, only to experience unexpected technical difficulties with equipment and software.⁸ Accordingly, the Division stated that Monroe did not provide sufficient reasoning upon which to warrant grant of a waiver of Section 1.949 of the Commission's Rules to allow submission of the renewal applications after the licenses had expired.⁹

4. On March 26, 2001, Monroe requested reconsideration of the Division's decision.¹⁰ Also on March 26, 2001, Monroe filed applications for Special Temporary Authority (STA) to operate Stations WNTX234, WNTX235, WNTX236, WNTX237, WNTX239, WNTX240 and WNTX481, which the Division's Licensing and Technical Analysis Branch granted on April 9, 2001, under Call Signs WPSF689, WPSF690, WPSF692, WPSF693, WPSF695, WPSF697 and WPSF699.¹¹

5. *Discussion.* In 1999, the Commission adopted a new policy regarding treatment of late-filed renewal applications in the wireless services.¹² 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.¹³ 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.¹⁴ In determining whether to grant a late-filed renewal 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

⁶ See Monroe Request for Waiver of Section 1.949 (filed Sept. 6, 2000). Monroe stated that it attempted to file the renewals on the thirtieth day after the licenses expired (September 4, 2000), a federal holiday, but experienced technical difficulty and was unable to consult the Universal Licensing staff until the next business day.

⁷ See Dismissal Letter at 1.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ Petition at 1.

¹¹ See FCC File Numbers 0000410354, 0000410380, 0000410403, 0000410825, 0000410841, 0000410857, and 0000410902, Applications for Special Temporary Authority (STA) filed on Mar. 26, 2001, granted on Apr. 9, 2001. The STAs are scheduled to expire on October 4, 2001.

¹² 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 (1999) (*ULS MO&O*).

¹³ See *id.* at 11485 ¶ 22.

¹⁴ See *id.* at 11486 ¶ 22.

license should terminate, and the performance record of the licensee.¹⁵

6. In the instant petition, Monroe reiterates the reason for its late-filed renewal was due to technical difficulties.¹⁶ It also repeats that it relied on Commission notice of renewal, claiming that it did not receive the Commission's computer-generated renewal notice.¹⁷ However, Monroe now explains for first time that the oversight occurred as a result of an unanticipated change in staffing when the Superintendent of Communications retired to attend to his gravely ill spouse.¹⁸ Monroe also reports that it has provided radio dispatch services since 1935, and has never allowed any radio license to expire that was part of a Monroe County system. Monroe further advises that it has taken the following steps to prevent a recurrence of such an incidence: (1) the Superintendent of Communications will no longer be solely responsible for monitoring the status of Monroe's FCC authorizations; (2) the frequency advisor will also track the authorizations; and (3) Monroe will conduct a quarterly review of all its FCC licenses.¹⁹

7. Taking into account all of the facts and circumstances, including the additional information and unique circumstances articulated in Monroe's petition, we conclude that Monroe's petition should be granted. In this particular case, we conclude that dismissal of Monroe's applications would be unduly harsh and contrary to public interest. In particular, we believe that two of the specific factors set forth by the Commission – the potential consequences to the public if the licensee should terminate, and the performance record of the licensee – militate in favor of reinstating Monroe's licenses. Given the adverse impact to public safety that a disruption of emergency radio communications could create,²⁰ Monroe's long history of compliance with Commission licensing rules, the limited amount of the instant delinquency (thirty-three days) and Monroe's newly devised plan to track FCC authorizations to avoid future occurrences, we believe that the late-filed renewal applications for the subject stations should be granted.

8. Notwithstanding our decision in this case, we reiterate that a licensee will not be afforded special consideration when it fails to file a timely renewal application simply because it engages in public safety activities.²¹ The Commission also has stated that turnover in recordkeeping personnel, failure to check computer records, or simple forgetfulness are not valid excuses for failure to file a timely renewal application.²² Furthermore, the failure to receive a renewal notice is not a unique circumstance that

¹⁵ See *id.* at 11485 ¶ 22.

¹⁶ Petition at 2-3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 5.

²⁰ These licenses are for frequencies (channels) that link Monroe's Mobile Data Terminal (MDT) system's computer switch with its Computer Aided Dispatch (CAD) system at the 911 Center. Without the links, the MDT would become unusable and thereby severely impede delivery of emergency services and jeopardize the lives and safety of Monroe's citizens, police officers and other emergency responders. *Id.* at 3-4.

²¹ See Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 ¶ 20 (1991).

²² See *ULS Reconsideration MO&O*, 14 FCC Rcd at 11485 & n.21.

justifies a waiver.²³ We admonish Monroe to conform to this requirement in the future, and we expect Monroe, as well as other applicants, to strictly adhere to such standards and comply with the Commission's licensing requirements.

9. 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 Monroe County on March 26, 2001, IS GRANTED.

10. IT IS FURTHER ORDERED that the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch SHALL PROCESS the renewal applications filed by Monroe County Public Safety on September 6, 2000 in accordance with this *Order on Reconsideration*.

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

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, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027, 21073 ¶ 98 (1998) (“not receiving a renewal reminder notice does not excuse the licensee's failure to seek a timely renewal”).