

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

In the Matter of)	
)	
CITY OF DARDANELLE FIRE DEPARTMENT)	FCC File No. 0000759170
)	
Application to Renew License for)	
Station WNHQ335, Dardanelle, Arkansas)	

ORDER

Adopted: June 3, 2002

Released: June 13, 2002

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

1. *Introduction.* The City of Dardanelle Fire Department, Dardanelle, Arizona (Dardanelle) requests a waiver of Section 1.949 of the Commission's Rules to allow grant of its late-filed application to renew its license for Station WNHQ335, Dardanelle, Arkansas.¹ For the reasons set forth below, we grant Dardanelle's request.

2. *Background.* Dardanelle has been the licensee of Station WNHQ335 since October 3, 1996. Station WNHQ335 is a private land mobile radio service station used by Dardanelle's Fire Department. Dardanelle's license was set to expire on November 25, 2001. On August 20, 2001, Dardanelle filed an application to renew its license.² Inasmuch as renewal applications are only accepted beginning ninety days prior to the expiration of the license,³ Dardanelle's application was dismissed by the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch). Dardanelle was sent a renewal reminder notice on September 4, 2001. Dardanelle then made a second attempt to renew its license.⁴ That application was returned by the Branch in October 2001, because it contained an incorrect Taxpayer Identification Number (TIN).⁵ Dardanelle re-filed the application with the proper information on November 19, 2001,⁶ but in its haste to return the application in a timely manner, Dardanelle failed to sign the form.⁷ The Branch therefore dismissed the application as defective on January 2, 2002. On January 23, 2002, Dardanelle submitted the instant application, along with a request for a waiver of the filing deadline for the application.

¹ Dardanelle Application for Wireless Telecommunications Bureau Radio Service Authorization (filed Jan. 28, 2002) (Dardanelle Application); Request for Waiver of Commission's Rules from Carl E. Cross, Chief, Dardanelle Fire Department, Dardanelle, Arkansas (dated January 23, 2002) (Dardanelle Waiver Request).

² FCC File No. 0000569150 (filed Aug. 20, 2001).

³ See 47 C.F.R. §1.949(a).

⁴ See Dardanelle Waiver Request at 1.

⁵ *Id.*

⁶ FCC File No. 0000716516 (filed Nov. 19, 2001).

⁷ Dardanelle Waiver Request at 1.

3. *Discussion.* Pursuant to the Commission's Rules, renewal applications for all of the Wireless Radio Services must be filed no sooner than ninety days prior to expiration of the license and no later than the expiration date of the authorization for which renewal is sought.⁸ Late-filed 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.⁹ Applicants who file renewal applications more than thirty days after the license expiration 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.¹⁰ 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 performance record of the licensee, and the potential consequences to the public if the license should terminate.¹¹

4. After reviewing the facts and circumstances, including the specific factors set forth above, we conclude that Dardanelle's license should be reinstated *nunc pro tunc*. With regard to the first two factors, -- length of the delay and the reasons for failing to timely file -- we note that Dardanelle's application is untimely only because prior good faith efforts to renew its license were defective.¹² Furthermore, Dardanelle promptly filed the latest application upon notification that the prior application was rejected. While such facts do not excuse Dardanelle from timely filing a proper renewal application, they do reflect good faith efforts on Dardanelle's behalf to retain the license for Station WNHQ335. Moreover, Dardanelle's record does not reflect any prior violations. Finally, with regard to the last factor, we find that there would be adverse consequences to the public if the license were to lapse. The record reflects that Dardanelle utilizes the subject license for fire department operations. We conclude, therefore, that allowing the license for Station WNHQ335 to be reinstated *nunc pro tunc* would serve the public interest.

5. ACCORDINGLY, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, the request for waiver of Section 1.949 of the Commission's Rules filed by the City of Dardanelle Fire Department on January 28, 2002 IS GRANTED.

6. IT IS FURTHER ORDERED that the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch SHALL PROCESS the renewal application filed by the City of Dardanelle Fire Department on January 28, 2002, File No. 0000759170, in accordance with this *Order*.

⁸ 47 C.F.R. § 1.949(a); *see also* 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 the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027 (1998).

⁹ *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 the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485-86 ¶ 22 (1999).

¹⁰ *Id.*

¹¹ *Id.*

¹² *See, e.g.*, Florida Power and Light Company, *Order*, FCC Rcd 13607 (WTB PSPWD 2000) (permitting waiver and reinstatement where licensee timely filed a renewal application that was dismissed for reasons unrelated to the licensee's actual operation of the station).

7. 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

Ramona E. Melson
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