

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

In the Matter of)
)
Billy Williford d/b/a Jasper Mobil Phone) File No. 0000207534
)
Request for Waiver of Rule Section 1.949 to)
Reinstatement License for Part 22 Public Land)
Mobile Radio Service on 152.78 MHz)
At Station KNKI515, Jasper, Texas)

ORDER

Adopted: January 7, 2002

Released: January 8, 2002

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On December 12, 2000, the Commercial Wireless Division's Licensing and Technical Analysis Branch (Branch) dismissed the application that Billy Williford d/b/a Jasper Mobil Phone (Mobil Phone) filed for renewal of the above-captioned license (Letter Decision).1 On January 10, 2001, Mobil Phone filed a petition seeking reconsideration (Petition) of that action.2 For the reasons discussed below, we grant the Petition. In granting the Petition, we further grant Mobil Phone's request for waiver of the filing deadline for renewal applications. Any license granted to Mobil Phone pursuant to this renewal application, however, will be subject to the condition that Mobil Phone operates the license on a secondary basis.

II. BACKGROUND

2. Mobil Phone's license for KNKI515 expired on April 1, 1999, because Mobil Phone failed to file a timely license renewal application.3 More than sixteen months later, on August 18, 2000, Mobil Phone filed a renewal application, together with a request for waiver of Section 1.949(a) of the Commission's rules, which requires licensees to file renewal applications no later than the expiration date of the license.4 The application was accepted for filing on August 23, 2000.5 In its August 18, 2000

1 Letter from Roger S. Noel, Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, to Christopher D. Imlay, Booth, Freret, Imlay & Tepper, P.C. dated December 12, 2000 (Letter Decision).

2 Petition of Billy Williford, d/b/a Jasper Mobil Phone for Reconsideration, File No. 0000207534 (Jan. 10, 2001) (Petition).

3 Mobil Phone is currently operating pursuant to a special temporary authorization (STA) granted July 12, 2001 (File No. 0000518721). Mobil Phone's initial STA was granted January 22, 2001 (File No. 0000315955) and a request for an additional STA was filed December 18, 2001 (File No. 0000703039).

4 47 C.F.R. § 1.949(a).

5 Wireless Telecommunications Bureau Site-By-Site Accepted for Filing, Public Notice, Report No. 619 (Aug. 23, 2000).

waiver request, Mobil Phone stated that it had “inadvertently failed” to file a timely application.⁶ In the *Letter Decision*, the Branch denied Mobil Phone’s waiver request stating that the renewal application was filed over one year from the date of license expiration, and the delay “was not the result of any extenuating facts or circumstances.”⁷ Having denied the waiver request, the Branch dismissed Mobil Phone’s renewal application.⁸ In its Petition, Mobil Phone again requests a waiver of Section 1.949(a) of the Commission’s rules and reinstatement of its license. Since Mobil Phone filed its Petition, upper and lower band paging spectrum has been auctioned, including 152.78 MHz in the Jasper, Texas area.⁹

III. DISCUSSION

3. Under the Commission’s rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.¹⁰ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹¹ Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. A waiver of the Commission’s rules may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹²

4. Where a renewal application is filed up to thirty days after the license expiration date, a waiver of the filing deadline and the renewal application will be granted as long as the application is otherwise sufficient under Commission rules.¹³ A request for waiver of the filing deadline, where the renewal application is filed more than thirty days after the license expiration date, will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action. In determining whether to grant a waiver request for a renewal application filed more than thirty days after expiration, the Commission takes into consideration all of the facts and circumstances involved, including the length in delay of filing, the licensee’s performance record, the reasons for the failure to timely file, and the potential consequences to the public if the license were terminated.¹⁴ Because Mobil Phone filed its renewal application more than sixteen months after the license expired, its request for a waiver is subject to this strict level of review.

5. We find that the Branch correctly decided to deny Mobil Phone’s initial August 8, 2000 waiver request based on the information provided at that time. That request simply stated that the

⁶ FCC Application of Billy Williford d/b/a Jasper Mobil Phone for Wireless Telecommunications Bureau Radio Service Authorization, Request for Waiver (Aug. 18, 2000).

⁷ *Letter Decision* at 1.

⁸ *Id.*

⁹ Auction 40 closed December 5, 2001.

¹⁰ 47 C.F.R. § 1.949(a).

¹¹ *Id.* § 1.955(a) (1).

¹² *Id.* § 1.925(b)(3).

¹³ In the Matter of Biennial Regulatory Review-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 Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

¹⁴ *ULS MO&O*, 14 FCC Rcd at 11485-86, ¶ 22.

licensee had inadvertently failed to file a renewal application in a timely manner. In its Petition, Mobil Phone elaborates on why it inadvertently failed to file a timely renewal application. Mobil Phone explains in its Petition that it failed to renew its license in a timely manner because its business principal, Billy Williford, was “under the mistaken impression” that the license had a ten-year license term and thus, would not expire until January 2001. Moreover, Mobil Phone states that Mr. Williford was “under the impression” that the Commission would send him a license renewal application or notification before the license expired.¹⁵ We agree with the Branch that inadvertent oversight or mistaken belief on the part of Mobil Phone is an insufficient basis for granting a waiver. Inadvertent failure to renew a license in a timely manner is clearly not so unique and unusual in itself as to warrant a waiver of the Commission’s rules. As the Commission has previously explained, reminder letters are a convenience to licensees and do not in any way absolve licensees from timely filing renewal applications.¹⁶ Moreover, the license expiration date was clearly printed on the face of Mobil Phone’s license. Each licensee is solely responsible for knowing the terms of its license and submitting a renewal application to the Commission in a timely manner.¹⁷

6. Although we do not find persuasive the additional explanation that Mobil Phone provides in its Petition regarding the reasons for inadvertently failing to file a timely renewal application, we find it in the public interest to consider other new facts and additional information Mobil Phone has provided in its Petition.¹⁸ First, Mobil Phone demonstrates that it provides critical service to public safety and emergency service entities. Mobil Phone has provided paging service under its license in the Jasper, Texas area, a rural county and community in Eastern Texas, since 1991.¹⁹ Mobil Phone provides a unique service to its community by operating its business in a non-profit manner, and by providing free service to emergency service entities. In addition to serving various small businesses and individual entrepreneurs, Mobil Phone provides paging communications to local emergency and disaster relief services.²⁰ Mobil Phone states in its Petition that its public safety customers include Jasper Memorial Hospital, the volunteer fire departments of Toledo Bend, Newton, Tri-Community, Roganville, Ora, Rayburn, Pineland and several other volunteer fire departments. Other customers include the City of Jasper, the County of Jasper, the County of Newton and the City of Woodville.²¹ While Mobil Phone provides service at lowest-cost to several entities, it provides service at no cost to the local chapter of the American Red Cross and Jasper Emergency Services.²² We believe Mobil Phone provides a vital service to public safety and emergency service professionals, who meet critical rural community needs. Termination of Mobil Phone’s service to these customers would result in the loss of critical services to several communities and

¹⁵ Petition at 2.

¹⁶ In the Matter of Biennial Regulatory Review-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 Services, *Report and Order*, 13 FCC Rcd 21027, 21070, ¶ 96 (1998).

¹⁷ *Id.*; In the Matter of Peacock’s Radio and Wild’s Computer Service, Inc. 21st Century Wireless Group, Inc. Request for Reinstatement of Specialized Mobile Radio System Call Sign WNWK964 Wabash, Arkansas, *Memorandum Opinion and Order*, FCC 01-213 at ¶ 4 (rel. Aug. 1, 2001) (*Peacock*); In the Matter of Anderson Communications Request for Reinstatement of Specialized Mobile Radio System Call Sign WNQC571 Oxford, Mississippi, *Memorandum Opinion and Order*, FCC 01-214 at ¶ 5 (rel. Aug. 1, 2001) (*Anderson*).

¹⁸ 47 C.F.R. § 1.106(c). Section 1.106(c) provides in relevant part that “[a] petition for reconsideration which relies on facts not previously presented to ... the designated authority may be granted [if] ... (b) ... the designated authority determines that consideration of the facts relied on is required in the public interest.” *Id.*

¹⁹ Petition at 1.

²⁰ Petition at 2.

²¹ Petition at 3-4.

²² Petition at 3-4.

would leave them, for the present, without service alternatives.²³ As Mobil Phone states in its Petition, no other entity is or has been willing to provide this low or no-cost service to public safety entities, hospitals, or other emergency service entities in the area.²⁴

7. Second, Mobil Phone has also shown that it provides service to predominantly rural areas.²⁵ The rural character of the area served, and the resulting distances between residents and emergency service personnel relying on Mobil Phone's service increases the need for allowing Mobil Phone to continue providing that service in the absence of an available alternative. A geographic area licensee is likely to commence service less quickly in rural than in more urbanized areas. Thus, the rural nature of the area that Mobil Phone serves is an additional factor in favor of permitting Mobil Phone to continue service until a geographic area licensee is available and elects to provide paging services in the Jasper, Texas area.

8. Taking together the unique facts and circumstances of this case, including the rural nature of the area served by Mobil Phone and its use of its license to provide service for public safety and emergency service entities at low or no-cost, we conclude that failure to grant a limited waiver would be contrary to the public interest. To ensure that granting Mobil Phone's waiver request is consistent with the public interest, however, we impose the following conditions: (1) any license granted to Mobil Phone pursuant to this waiver will have secondary status to the ultimate geographic area licensee for the basic economic area (BEA) of which any of Mobil Phone's current interference contour is a part; and (2) upon receiving notice from the geographic area licensee that the geographic area licensee intends, within ninety days, to initiate operation of a facility, where the facility's service contour will overlap with the interference contour of any transmitter licensed pursuant to this waiver, Mobil Phone shall, within ninety days of receiving notice, either cease operation of the transmitter in question or change its technical parameters to eliminate its overlapping interference contour.²⁶

9. We find that these conditions are in the public interest based on the Commission's goals of establishing new rules for a transition from site-by-site to geographic area licensing for all paging services authorized on an exclusive, non-nationwide basis. Specifically, the new geographic area licensing rules were intended to establish a comprehensive and consistent regulatory scheme that would simplify and streamline licensing procedures and provide a flexible operating environment for all paging services.²⁷ The 152.78 MHz frequency in the Jasper, Texas area was auctionable spectrum under the Commission's geographic area and competitive bidding rules. The new rules expressly protected incumbent (non-geographic area) licensees by allowing them to continue to operate under their existing

²³ See *Peacock*, FCC 01-213 at ¶ 7 (denying a reinstatement request, in part, because the applicant failed to show that "termination of service to ... customers would leave them without service alternatives or result in loss of a unique service"); *Anderson*, FCC 01-214 at ¶ 7 (same); In the Matter of Western Communications, Inc., *Order*, DA 01-2197 at ¶ 5 (CWD Aug. 10, 2001) (same).

²⁴ Petition at 4 (Mobil Phone declares that "no other entity can step into Mobil Phone's place in providing this service (nor has any other entity offered this same service in Jasper)"); see In the Matter of RAM Technologies, Inc., *Order on Reconsideration*, 16 FCC Rcd 10919, 10922, ¶ 8 (PSPWD 2001) (denying a reinstatement request because the applicant did not demonstrate, in part, that its customers, which included public safety entities and hospitals, would suffer any specific harm).

²⁵ Petition at 3.

²⁶ See In the Matter of Acadian Ambulance Services, Inc. Request for Waiver, *Order*, 14 FCC Rcd 19310 (1999) (waiving the freeze on paging applications and imposing these same conditions on any license granted based on the waiver).

²⁷ Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Notice of Proposed Rulemaking*, 11 FCC Rcd 3108, 3109, ¶ 1, 3113, ¶ 21 (1996).

authorizations with full protection from co-channel interference from geographic area licensees.²⁸ If Mobil Phone had filed its renewal application in a timely fashion and that application had been granted, its service area would have been afforded protection from co-channel interference from any geographic area licensee to the extent provided under Commission rules. Mobil Phone, however, filed its renewal application sixteen months after expiration of its license. That extreme delay in filing its renewal application and the possibility of an alternative service provider in the area support conditioning the waiver and any license granted to Mobil Phone based on its renewal application.²⁹

10. We further believe these specific conditions appropriately balance the importance of allowing Mobil Phone to continue providing a vital public service against the importance of preserving sanctions that could result in termination of its license based on Mobil Phone's carelessness in failing to file a timely renewal application. In particular, we believe that this plan will provide Mobil Phone with both the incentive and a reasonable amount of time to negotiate an arrangement, such as partitioning, with the ultimate geographic area licensee, if warranted, and at the same time will protect both Mobil Phone and the public from the consequences of unnecessarily forcing Mobil Phone to discontinue its service. We note that it is incumbent on Mobil Phone to make arrangements that will permit it to continue to offer the services discussed in this Order.

11. The Branch shall return Mobil Phone's application, File Number 0000207534, to pending status as of the release date of this Order. Within thirty days of that date, if the conditions set forth in this Order are acceptable to Mobil Phone, it shall electronically file an amendment to its application indicating that it will accept these conditions. Upon receipt of this submission, the Branch will process the application in accordance with this Order and Commission rules and procedures, notwithstanding the deadline for filing renewal applications.

12. We emphasize that, even though we grant Mobil Phone's waiver request and subject any license to the conditions stated in this Order, we do not suggest that all paging licensees that fail to renew their licenses in a timely manner will necessarily be permitted to continue service subject to similar conditions. Noting that the auction for the BEA that incorporates Jasper, Texas recently closed, we believe that in most cases, the geographic area licensing process will be sufficient to meet the needs of Jasper, Texas and the surrounding areas. We conclude only that, under the unique circumstances of this case that denial of a waiver, as conditioned in this Order, would be contrary to the public interest.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition for Reconsideration filed by Billy Williford d/b/a Jasper Mobile Phone on January 10, 2001, IS GRANTED, subject to the conditions described in this Order.

14. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 0.331 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.925, the Request for Waiver filed by Billy Williford d/b/a Jasper Mobile Phone IS GRANTED, subject to the conditions described in this Order.

15. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the

²⁸ Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732, 2764, ¶ 57 (1997).

²⁹ We note that, in this case, another entity has successfully bid on the 152.78 MHz frequency in the Jasper area in the recent auction.

Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Commercial Wireless Division's Licensing and Technical Analysis Branch shall return Mobil Phone's application, File Number 0000207534, to pending status as of the release date of this Order, and process Mobil Phone's application for renewal of the license for Station KNKI515, subject to the conditions described in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari,
Chief, Policy and Rules Branch
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Wireless Telecommunications Bureau