

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

In the Matter of)	
)	
DISNEYLAND RESORT)	
)	
Request for Waiver of Section 1.949 of the Commission's Rules to Reinstate License Trunked Business Category 900 MHz Station WNYX856)	FCC File No. 0002018531
)	
Request for Waiver of the Application Freeze in the 900 MHz Band)	FCC File No. 0002018534
)	
Petition for Reconsideration of the Termination of Private Land Mobile Radio Station License WNYX856)	
)	
Motion for Stay of Termination of Private Land Mobile Radio Station License WNYX856)	
)	

ORDER

Adopted: January 25, 2006

Released: January 27, 2006

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

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In this *Order*, we address the requests for waivers of Section 1.949(a) of the Commission's Rules¹ and the 900 MHz application freeze² filed by Disneyland Resort (Disney) on January 24, 2005. Disney requests a waiver of Section 1.949(a) of the Commission's Rules for leave to file a renewal application³ for 900 MHz Trunked Business Category Station WNYX856, Anaheim, California, the license for which expired on October 21, 2004.⁴ Disney also filed a petition for

¹ 47 C.F.R. § 1.949(a) (applications for renewal licenses to be filed no later than the expiration date of the authorization for which renewal is sought, and no sooner than ninety days prior to expiration).

² See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC 18277 (WTB 2004) (*900 MHz Freeze PN*); see also Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pools, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 05-62, 20 FCC Rcd 3814 (2005) (*900 MHz NPRM*).

³ FCC File No. 0002018531 (filed Jan. 24, 2005).

⁴ Request for Waiver of Section 1.949(a) of the Commission's Rules, filed January 24, 2005 by Disneyland Resort (Renewal Waiver Request).

reconsideration (Petition)⁵ and a motion for stay (Motion)⁶ of the license termination. In the event that Disney's efforts to retain its license for Station WNYX856 are not successful, Disney also requests⁷ a waiver of the current freeze on 900 MHz application processing to permit Disney to file a new license application for the 900 MHz frequencies previously licensed to Disney under Station WNYX856.⁸ For the reasons stated below, we deny the request for waiver of Section 1.949, grant the waiver request with respect to the 900 MHz freeze, and dismiss Disney's Petition and Motion as moot.

II. BACKGROUND

2. The Commission originally issued Disney a license to operate Station WNYX856 on October 21, 1994.⁹ Disney renewed the license in 1999 for a five year period. On July 26, 2004, a renewal reminder letter was sent to Disney.¹⁰

3. On September 17, 2004, the Wireless Telecommunications Bureau (Bureau) instituted a freeze on new 900 MHz applications because it feared that the exceptionally large number of applications it had received could compromise its ability to accommodate displaced systems during the 800 MHz band reconfiguration process designed to resolve interference to public safety communications.¹¹ The Bureau stated that it would continue to accept applications for license modification and would entertain requests for waiver of the 900 MHz application freeze.¹² More recently, the Commission released a *Notice of Proposed Rulemaking* seeking comment on geographic licensing in the 900 MHz band, which reaffirmed the freeze and reiterated that it would consider requests for waiver of the freeze.¹³

4. On October 21, 2004, the license for Station WNYX856 expired by its own terms.¹⁴ On January 24, 2005, Disney submitted the instant applications and requests for relief. Presently, Disney is operating on the subject 900 MHz frequencies under Station WQCB749 pursuant to Special Temporary

⁵ Petition for Reconsideration of Cancellation of Private Mobile Radio Station WNYX856, filed January 24, 2005 by Disneyland Resort.

⁶ Motion for Stay of Cancellation of Private Land Radio Station License WNYX856, filed January 24, 2005 by Disneyland Resort.

⁷ Request for Waiver of the 900 MHz License Application Freeze, filed January 24, 2005 by Disneyland Resort.

⁸ See FCC File No. 0002018534 (filed Jan. 24, 2005).

⁹ See Renewal Waiver Request at 1.

¹⁰ See FCC Ref. No. 2929647, Renewal Reminder Letter sent on July 26, 2004. The letter was addressed to Disneyland Resort, 1313 Harbor Blvd., Anaheim, California 92803.

¹¹ See *900 MHz Freeze PN*, 19 FCC Rcd at 18277-78.

¹² *Id.* at 18278 n.7.

¹³ *900 MHz NPRM*, 20 FCC Rcd at 3857 ¶ 67.

¹⁴ See 47 C.F.R. § 1.955(a)(1) (authorizations automatically terminate without specific Commission action on the expiration date specified on the license, unless a timely renewal application is filed).

Authority (STA).¹⁵

III. DISCUSSION

5. *Waiver of Section 1.949 of the Rules.* The Commission will grant a waiver of its rules if (a) it is in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case, or (b) in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁶ The Commission's policy regarding treatment of late-filed renewal applications in the Wireless Radio Services is as follows: we will grant renewal applications that are filed up to thirty days after the expiration date of the license *nunc pro tunc*¹⁷ 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.¹⁸ Applicants who file renewal applications more than thirty days after the license expiration date may also request that the Commission renew the license *nunc pro tunc*, but such request 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.¹⁹ In determining whether to grant a late-filed application, the Commission takes 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 license should terminate, and the performance record of the licensee.²⁰

6. Disneyland states that the license for Station WNYX856 expired because its contact person for FCC licensing left Disney without advising the remaining employees to process the renewal application, and failed to transfer the necessary station files and associated documentation to his replacement.²¹ This is an insufficient showing to warrant a waiver of Section 1.949. We note that turnover in recordkeeping personnel is not a valid excuse for failure to timely renew a license.²² Further, the Commission has held that each licensee is fully responsible for knowing the terms and duration of its

¹⁵ See FCC File No. 0002018576 (filed Jan. 24, 2005). The STA was renewed most recently on November 22, 2005, with an expiration date of May 21, 2006. See FCC File No. 0002387404 (filed Nov. 21, 2005).

¹⁶ See 47 C.F.R. § 1.925(b)(3).

¹⁷ *Nunc pro tunc* is a phrase that applies to acts legally allowed to be done after the time when they should be done, with a retroactive effect, *i.e.*, with the same effect as if regularly done.

¹⁸ 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, 11486 ¶ 22 (1999) (*ULS MO&O*).

¹⁹ *Id.*

²⁰ *Id.* at 11485 ¶ 22.

²¹ See, *e.g.*, Renewal Waiver Request at 2.

²² See *ULS MO&O*, 14 FCC Rcd at 11486 ¶ 21.

license and for filing a timely renewal application.²³

7. Disney also argues that the 900 MHz system the license for Station WNYX856 is integral to the safe operation of the resort because Disney uses the system on a daily basis to coordinate the safe operation of its theme park rides, report and react to emergencies (including fire and medical), and monitor suspicious or dangerous activity by guests.²⁴ Disney is not a public safety licensee. Even if it were, the Commission has determined that even public safety licensees will not be afforded special consideration when they fail to file a timely renewal application and argue that their late-filed renewal application should be granted because the licensee engages in activities relating to public health or safety.²⁵ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that Disney's request for waiver of Section 1.949(a) should be denied.

8. *Waiver of 900 MHz Application Freeze.* In the alternative, Disney requests a waiver of the 900 MHz freeze to file a new application for the frequencies previously licensed under Station WNYX856. As noted above, the application freeze does not foreclose license modifications or requests for waiver. The purpose of the application freeze is to preserve adequate spectrum resources during band reconfiguration as well as to preserve the spectrum landscape until the Commission resolves the geographic licensing issues raised in its *900 MHz NPRM*.²⁶

9. We do not believe the underlying purpose of the 900 MHz application freeze would be frustrated if a waiver is granted in this case, because Disney only seeks to regain the licensing it formerly held.²⁷ As noted above, Disney was licensed on Station WNYX856 for ten years until its license expired. Thus, Disney was authorized to operate Station WNYX856 prior to the decision to institute the application freeze. Disney does not seek to modify any of its formerly licensed operating activities. Waiver will not interfere with the spectrum needs associated with the 800 MHz proceeding because Disney was an established 900 MHz licensee before the 800 MHz reconfiguration decision and, had it filed a timely renewal application, would not have been affected by the application freeze or the *900 MHz NPRM*. Thus, grant of the waiver will not interfere with the purpose of the 900 MHz freeze.

²³ See *id.* See also, e.g., Sierra Pacific Power Company, *Order*, 16 FCC Rcd 188, 191 ¶ 6 (WTB PSPWD 2001) (holding that "each licensee bears the exclusive responsibility of filing a timely renewal application"); Alameda-Contra Costa Transit District Private Land Mobile Stations KBY746, WFS916, and KM8643, *Order*, 15 FCC Rcd 24547, 24551 ¶ 10 (WTB PSPWD 2000) (holding that "each licensee is responsible for knowing the expiration date of its licenses and submitting a renewal of license application in a timely manner"); World Learning, *Order*, 15 FCC Rcd 23871, 23872 ¶ 4 (WTB PSPWD 2000) (holding that licensee "is solely responsible for filing a timely renewal application"); First National Bank of Berryville, *Order*, 15 FCC Rcd 19693, 19696 ¶ 8 (WTB PSPWD 2000) (holding that "it is the responsibility of each licensee to renew its application prior to the expiration date of the license"); Montana Power Company, *Order*, 14 FCC Rcd 21114, 21115 ¶ 7 (WTB PSPWD 1999) (holding that "it is the responsibility of each licensee to apply to renew its license prior to the license's expiration date").

²⁴ See, e.g., Renewal Waiver Request at 4-6.

²⁵ 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).

²⁶ See n.14, *supra*.

10. We also agree with Disney that grant of the instant waiver request is in the public interest. Disneyland hosts large crowds daily with its hotels, theme park rides, and other amusements.²⁸ Radios are used daily to coordinate safe operation of amusement rides and respond to fire, medical, and other emergencies.²⁹ Accordingly, we believe that grant of a waiver of the 900 MHz application freeze is important for the safe operation of Disney's resort. For the aforementioned reasons, we grant Disney's request for waiver of the 900 MHz application freeze. Because we grant Disney leave to file a 900 MHz application for the frequencies formerly licensed under Station WNYX856, we dismiss as moot its Petition and Motion.

11. Notwithstanding our decision in this particular case, we caution that a licensee must abide by the Commission's filing deadlines. All licensees are responsible for filing renewal applications and related petitions in a timely manner. Thus, we admonish Disney to conform to this requirement in the future and to take any necessary steps to avoid future occurrences, because the Commission does not routinely grant such waiver requests. In this connection, we note that Disneyland indicates that it has implemented procedures to ensure timely filings in the future.³⁰

IV. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the waiver request filed January 24, 2005 by the Disneyland Resort in connection with application FCC File No. 0002018531 IS DENIED, and application FCC File No. 0002018531, filed January 24, 2005, by the Disneyland Resort to renew the license for Station WNYX856 SHALL BE DISMISSED.

13. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the Request for Waiver of the Application Freeze in the 900 MHz Band, filed by Disneyland Resort on January 2005 IS GRANTED, and application FCC File No. 0002018534 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

14. IT IS FURTHER ORDERED that, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration and the Motion for Stay of Cancellation filed January 24, 2005 by the Disneyland Resort ARE DISMISSED AS MOOT.

15. 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

Michael Wilhelm

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²⁷ Cf. Columbia Communications Corporation, *Order and Authorization*, 14 FCC Rcd 3318, 3326 ¶ 21 (IB 1999).

²⁸ See, e.g., Renewal Waiver Request at 4.

²⁹ *Id.*

³⁰ *Id.* at 2.

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