



Federal Communications Commission  
Washington, D.C. 20554

August 28, 2009

DA 09-1965

Mr. David W. Reams  
Duke Energy Carolinas, LLC  
PO Box 1008  
401 South College Street  
Charlotte, NC 28201-1008  
ATTN Telecommunications Div., CS03A

Dear Mr. Reams:

On August 5, 2008, Duke Energy Carolinas, LLC (Duke) filed the above-captioned renewal application for Microwave Industrial/Business Pool Station WCE961, Greensburg, IN.<sup>1</sup> Duke requests that we waive Section 1.949 of the Commission's Rules to allow its application to be accepted even though it was filed late.<sup>2</sup> For the reasons stated below, we deny Duke's Waiver Request and dismiss its Renewal Application.

On June 8, 1998, the Commission granted an application for the facilities licensed under Station WCE961 to PSI Energy Inc. (PSI).<sup>3</sup> PSI assigned the station's license to Duke on November 29, 2005.<sup>4</sup> On March 13, 2008, we sent a renewal notice to Duke.<sup>5</sup> On June 8, 2008, Duke's authorization for Station WCE961 expired. On August 5, 2008, Duke filed the above-captioned application requesting a renewal of its license for the subject station, 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.<sup>6</sup> On October 13, 2008, Duke amended its application and submitted an amended waiver request.<sup>7</sup>

Duke states that the subject facility is an important component of its Supervisory Control and Data Acquisition (SCADA) circuits and backhaul for Duke's Integrated Digital Enhanced Network (iDEN) system, and that without it Duke would find it difficult, if not completely impossible, to provide electricity safely and reliably to consumers throughout the Midwest.<sup>8</sup> Duke further states that its internal process to monitor its many upcoming license expiration dates failed to alert the company that the license

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<sup>1</sup> File No. 0003530927 (filed Aug. 5, 2008) (Renewal Application).

<sup>2</sup> Renewal Application, Waiver Request Attachment (Waiver Request).

<sup>3</sup> See File No. 738715 (granted Jun. 8, 1998).

<sup>4</sup> See File No. 0002358099 (consummated Nov. 29, 2005).

<sup>5</sup> See Ref. No. 4721482 (Mar. 17, 2008). The letter was addressed to Attn: Telecommunications Div., CS03A, Duke Energy Carolinas, LLC, 401 South College Street, P.O. Box 1008, Charlotte, NC 28201-1008.

<sup>6</sup> See 47 C.F.R. § 1.949.

<sup>7</sup> Amendment to Waiver Request (filed Oct. 13, 2008) (Amended Waiver Request).

<sup>8</sup> *Id.*

for the subject station was about to expire, but that it has since enhanced that process in a way that makes it unlikely that Duke will fail to file renewal applications on time in the future.<sup>9</sup>

The Commission's policy regarding reinstatement procedures in the Wireless Radio Services is as follows: 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 the Commission's 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.<sup>10</sup> Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *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.<sup>11</sup> In determining whether to reinstate a license, we consider 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.<sup>12</sup> Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that Duke's late-filed renewal application should be dismissed.<sup>13</sup>

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.<sup>14</sup> In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.<sup>15</sup> 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 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.<sup>16</sup>

Significantly, Duke does not address the Commission's policy regarding late-filed renewal applications. Duke also fails to provide any reason concerning why a waiver grant is warranted under the circumstances presented. Rather, Duke merely states that it failed to file its renewal application on time because its internal processes failed to alert it that the license for Station WCE961 was about to expire.<sup>17</sup> Thus, Duke concedes that its failure to file its license renewal application in a timely manner was due to its own administrative oversight. As has been previously held, an inadvertent failure to renew a license in

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<sup>9</sup> *Id.*

<sup>10</sup> 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*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

<sup>11</sup> *Id.* at 11486 ¶ 22.

<sup>12</sup> *Id.* at 11485 ¶ 22.

<sup>13</sup> *See, e.g.*, WSYX Licensee, Inc., *Order*, 15 FCC Rcd 19084 (WTB PSPWD 2000) (denying a request for waiver of Section 1.949 of the Commission's Rules to allow submission of late-filed renewal applications after the licenses expired, and dismissing the subject applications).

<sup>14</sup> 47 C.F.R. § 1.949(a).

<sup>15</sup> 47 C.F.R. § 1.955(a)(1).

<sup>16</sup> 47 C.F.R. § 1.925(b)(3).

<sup>17</sup> Waiver Request at 1.

a timely manner is not so unique and unusual in itself as to warrant a waiver of the Commission's Rules.<sup>18</sup> As noted above, the Commission sent Duke a renewal reminder letter three months before its license expired, although, 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.<sup>19</sup> Further, each licensee is solely responsible for knowing the terms of its license and submitting a renewal application to the Commission in a timely manner.<sup>20</sup> Thus, we deny Duke's request for a waiver to permit the late renewal of its license and dismiss the Renewal Application as untimely filed.

We conclude that the role of the facilities in maintaining a safe and efficient operation of Duke's electric utility system, by itself, is insufficient to justify a waiver. Duke has received special temporary authority to operate the facilities formerly licensed under Station WCE961.<sup>21</sup> If Duke wishes to obtain a new regular authorization for this station, it may file a new, properly coordinated application.<sup>22</sup>

Accordingly, IT IS 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 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver of Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, filed by Duke Energy Carolinas, LLC, IS DENIED, and application File No. 0003530927 SHALL BE DISMISSED.

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

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

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<sup>18</sup> See *Fresno City and County Housing Authorities, Order on Reconsideration*, 15 FCC Rcd 10998 (WTB PSPWD 2000) (citing *Plumas-Sierra Rural Electric Cooperative, Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

<sup>19</sup> *First National Bank of Berryville, Order*, 15 FCC Rcd 19693, 19696 ¶ 8 (WTB PSPWD 2000) (citing 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, 21071 ¶ 96 (1998)).

<sup>20</sup> *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; 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 n.41 (1991).

<sup>21</sup> See File No. 0003597625, Call Sign WQJJ798 (granted Oct. 3, 2008).

<sup>22</sup> See 47 C.F.R. § 101.103.