



Federal Communications Commission
Washington, D.C. 20554

September 4, 2009

DA 09-2019

Ms. Janet Tucker
ConocoPhillips Communications Inc.
PO Box 3338
Bartlesville, OK 74005-3338

Dear Ms. Tucker:

On January 13, 2009, ConocoPhillips Communications Inc. (ConocoPhillips) filed renewal applications for Microwave Industrial/Business Pool Stations WPOR344 and WPOR345 (the Stations).¹ ConocoPhillips requests that we waive Section 1.949 of the Commission's Rules to allow its applications to be accepted even though they were filed late.² For the reasons stated below, we deny ConocoPhillips's Waiver Requests and dismiss its Renewal Applications.

On December 2, 1998, the Commission granted licenses for the Stations to Burlington Resources Oil & Gas Co. (Burlington).³ On March 31, 2006, Burlington assigned those licenses to ConocoPhillips.⁴ On September 8, 2008, the Wireless Telecommunications Bureau sent renewal reminders to ConocoPhillips.⁵ On December 2, 2008, ConocoPhillips's authorization for the Stations expired. On January 13, 2009, ConocoPhillips filed the Renewal Applications, 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.⁶

In its Waiver Request, ConocoPhillips states that it maintains an internal process to monitor license expiration dates and constructions deadlines, and that, an overwhelming majority of the time, this process alerts ConocoPhillips of upcoming expirations and enables it to file timely renewal applications.⁷ ConocoPhillips acknowledges that it missed the December 2, 2008, renewal deadline for the Stations but states that it has since added an enhanced feature to its internal processes that alerts the company 90 days prior to the expiration of every license. It says that this extra layer of security makes it unlikely that ConocoPhillips will fail to file renewal applications on time in the future.⁸

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

¹ File Nos. 0003701795 and 0003701796 (filed Jan. 13, 2009) (Renewal Applications).

² Renewal Applications, Request for Waiver of Section 1.949 of the Commission's Rules (Waiver Requests).

³ Files Nos. 744963 and 744964 (granted Dec. 2, 1998).

⁴ Files Nos. 0002465375 (consummated Mar. 31, 2006).

⁵ See Ref. Nos. 4779054 and 4779055 (Sep. 8, 2008). Those letters were addressed to the attention of Janet Tucker, ConocoPhillips Communications, Inc., PO Box 3338, Bartlesville, OK 74005-3338.

⁶ See 47 C.F.R. § 1.949.

⁷ Waiver Requests at 1.

⁸ *Id.*

Ms. Janet Tucker

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.⁹ 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.¹⁰ 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.¹¹ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that ConocoPhillips's late-filed renewal applications should be dismissed.¹²

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.¹³ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹⁴ 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.¹⁵

Significantly, ConocoPhillips fails to provide any reason concerning why a waiver grant is warranted under the circumstances presented. Rather, ConocoPhillips merely states that it failed to file its renewal applications on time because its internal processes failed to alert it.¹⁶ Thus, ConocoPhillips concedes that its failure to file its license renewal applications in a timely manner was due to its own administrative oversight. As has been previously held, an inadvertent failure to renew a license in a timely manner is not so unique and unusual in itself as to warrant a waiver of the Commission's Rules.¹⁷ Further, each licensee is solely responsible for knowing terms of its license and submitting a renewal

⁹ 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*).

¹⁰ *Id.* at 11486 ¶ 22.

¹¹ *Id.* at 11485 ¶ 22.

¹² *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).

¹³ 47 C.F.R. § 1.949(a).

¹⁴ 47 C.F.R. § 1.955(a)(1).

¹⁵ 47 C.F.R. § 1.925(b)(3).

¹⁶ Waiver Request at 1.

¹⁷ *See* Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998, 11002 ¶ 11 (WTB PSPWD 2000) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

Ms. Janet Tucker

application to the Commission in a timely manner.¹⁸ Thus, we deny ConocoPhillips's request for a waiver to permit the late renewal of its licenses and dismiss the applications as untimely filed.

We recognize that the Stations might play an important role in maintaining the safe and efficient operation for ConocoPhillips's, but that, by itself, is insufficient to justify a waiver. ConocoPhillips has availed itself of the opportunity to obtain special temporary authorizations when time was of the essence in other circumstances, and it is at liberty to seek such special temporary authority now if it needs to continue operating the facilities that were formerly licensed to it under call signs WPOR344 and WPOR345.¹⁹ If ConocoPhillips wishes to obtain new regular authorizations for those stations, it may file new, properly coordinated applications.²⁰

Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the requests for waiver of Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, filed by ConocoPhillips Communications Inc. on January 13, 2009, ARE DENIED, and application File Nos. 0003701795 and 0003701796 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

¹⁸ *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).

¹⁹ *See, e.g.*, File No. 0003684896, Call Sign WQJT787 (granted Dec. 30, 2008).

²⁰ *See* 47 C.F.R. § 101.103.