



Federal Communications Commission  
Washington, D.C. 20554

September 4, 2009

DA 09-2020

Ms. Christina Fox  
Administrative Coordinator  
City of Billings Public Works Dept.  
2251 Belknap Avenue  
Billings, MT 59101

Dear Ms. Fox:

On January 7, 2009, the City of Billings (Billings) filed an application to reinstate Microwave Industrial/Business Pool Station license WNTT334, Billings, MT.<sup>1</sup> Billings requests that we waive 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 Billings' Waiver Request and dismiss its Renewal Application.

On July 23, 1998, the Commission granted Billings' application for renewal of Station WNTT334.<sup>3</sup> On August 11, 2008, the Wireless Telecommunications Bureau sent a renewal reminder to Billings.<sup>4</sup> On November 4, 2008, Billings' authorization for Station WNTT334 expired. On January 7, 2009, Billings filed the Renewal Application, together with a request for waiver. Billings did not specify which of the Commission's Rules it wants to be waived, but we interpret its request as seeking waiver of Section 1.949(a), which requires licensees to file renewal applications no later than the expiration dates of licenses.<sup>5</sup>

In its Waiver Request, Billings states that it has been using the radio frequency that was authorized under WNTT334 to operate the Supervisory Control and Data Acquisition (SCADA) system for the City of Billings.<sup>6</sup> Billings states that the SCADA system provides real-time monitoring and control for the entire city's drinking water system.<sup>7</sup> Billings states that, under normal circumstances, all of its radio licenses are monitored regularly to avoid missing the expiration date of any given license, but this particular license fell under the city's "public safety blanket," responsibility for which was transferred recently to the department that handles all public safety issues.<sup>8</sup> The city acknowledges that it did not follow up with that department to ensure that the license would be renewed before it expired.<sup>9</sup>

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<sup>1</sup> File No. 0003695501 (filed Jan. 7, 2009) (Renewal Application).

<sup>2</sup> Renewal Application, Request for Waiver. (Waiver Request). In order for us to grant that request, we would need to waive Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949.

<sup>3</sup> File No. R980723053 (granted Jul. 23, 1998).

<sup>4</sup> See Ref. No. 4771758 (Aug. 11, 2008). The letter was addressed to Attn: Public Utilities Dept., Billings, City of, PO Box 30958, Billings, MT 59111.

<sup>5</sup> See 47 C.F.R. § 1.949.

<sup>6</sup> Waiver Request at 1.

<sup>7</sup> *Id.*

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

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

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 Billings' 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, Billings does not address the Commission's policy regarding late-filed renewal applications. Billings also fails to provide any reason concerning why a waiver grant is warranted under the circumstances presented. Rather, Billings merely states that responsibility for the license was transferred to a different city department and the city administration did not follow up with that department.<sup>17</sup> Thus, Billings 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 a timely manner is not so unique and unusual in itself as to warrant a waiver of the

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<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.

Commission's Rules.<sup>18</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>19</sup> Thus, we deny Billings' request for a waiver to permit the late renewal of its license and dismiss the application as untimely filed.

We conclude that the role of the facilities in maintaining safe and efficient operation of Billings' water SCADA system, by itself, is insufficient to justify a waiver. Billings has applied for and received special temporary authority to continue operating the facilities formerly licensed under call sign WNTT334.<sup>20</sup> If Billings wishes to obtain a new regular authorization for this station, it may file a new, properly coordinated application.<sup>21</sup>

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 request for waiver of Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, filed by the City of Billings, Montana, on January 7, 2009, IS DENIED, and application File No. 0003695501 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, 11002 ¶ 11 (WTB PSPWD 2000) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

<sup>19</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>20</sup> File No. 0003775620 (granted Apr. XX, 2009).

<sup>21</sup> See 47 C.F.R. § 101.103.