



Federal Communications Commission
Washington, D.C. 20554

September 8, 2009

DA 09-2023

Ms. Elaine Piccolo
AlarmNet Inc.
2 Corporate Center Drive, Suite 100
Melville, NY 11747

Dear Ms. Piccolo:

On February 23, 2009, AlarmNet Inc. (AlarmNet) filed an application to reinstate Microwave Industrial/Business Pool Station license WPOR356, Clayton, Mo.¹ AlarmNet requests that we waive the Commission's Rules to allow its application to be accepted even though it was filed late.² For the reasons stated below, we deny AlarmNet's Waiver Request and dismiss its Renewal Application.

On December 10, 1998, the Commission granted a license for Station WPOR356 to Radscan of St. Louis, Inc. (Radscan).³ On December 31, 2001, Radscan assigned its license to its parent company, AlarmNet.⁴ On September 15, 2008, the Wireless Telecommunications Bureau sent a renewal reminder to AlarmNet.⁵ On December 10, 2008, AlarmNet's authorization for Station WPOR356 expired. On February 23, 2009, AlarmNet filed the Renewal Application, together with a request for waiver. AlarmNet 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.⁶

In its Waiver Request, AlarmNet states that the unit of AlarmNet's parent company that handles its license renewals has moved, that the Commission's notification went to its old address, that it never received the notification, and that it relies upon Commission notices to assist it with its renewals because they are so many and the renewal dates vary.⁷

The Commission's policy regarding renewal 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

¹ File No. 0003746916 (filed Feb. 23, 2009) (Renewal Application).

² 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.

³ File No. 745097 (granted Dec. 10, 1998).

⁴ File No. 0000735765 (granted Jan. 17, 2002).

⁵ See Ref. No. 4780979 (Sept. 15, 2008). The letter was addressed to Attn: Victor P. Patrick, AlarmNet, Inc., 160 Eileen Way, Syosset, NY 11719.

⁶ See 47 C.F.R. § 1.949.

⁷ Waiver Request at 1. AlarmNet's parent company is Honeywell International Inc. See File No. 0001206794.

the time between the expiration of the license and the untimely renewal filing.⁸ 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.⁹ 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 file on time, the potential consequences to the public if the license should terminate, and the performance record of the licensee.¹⁰ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that AlarmNet's late-filed Renewal Application should be dismissed.¹¹

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.¹² In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹³ 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.¹⁴

Significantly, AlarmNet does not address the Commission's policy regarding late-filed renewal applications. AlarmNet also fails to provide any reason concerning why a waiver grant is warranted under the circumstances presented. Rather, AlarmNet merely states that the unit of its parent company that handles its license renewals moved and did not receive a notification from the Commission.¹⁵ A renewal reminder, however, is merely a courtesy, and non-receipt of this notice by the licensee is not sufficient justification for the licensee's failure to file a timely renewal application with the Commission.¹⁶ Thus, AlarmNet 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 Commission's

⁸ 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*).

⁹ *Id.* at 11486 ¶ 22.

¹⁰ *Id.* at 11485 ¶ 22.

¹¹ *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).

¹² 47 C.F.R. § 1.949(a).

¹³ 47 C.F.R. § 1.955(a)(1).

¹⁴ 47 C.F.R. § 1.925(b)(3).

¹⁵ Waiver Request at 1.

¹⁶ *See* 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*, WT Docket No. 98-20, 13 FCC Rcd 21027, 21071 ¶ 96 (1998).

Rules.¹⁷ 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.¹⁸ Thus, we deny AlarmNet's 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 AlarmNet's monitoring systems, by itself, is insufficient to justify a waiver. If AlarmNet wishes to obtain a new regular authorization for this station, it may file a new, properly coordinated application.¹⁹ If the company needs to continue operating the facilities in the meantime, it can seek special temporary authority (STA) pursuant to Section 1.931 of the Commission's Rules.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 request for waiver of Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, filed by AlarmNet, Inc., on February 23, 2009, IS DENIED, and application File No. 0003746916 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

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)).

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 47 C.F.R. § 101.103.

²⁰ See 47 C.F.R. § 1.931.