



Federal Communications Commission
Washington, D.C. 20554

September 8, 2009

DA 09-2024

Mr. Roger Given
Vice President, Transmission and Storage Operations
Columbia Gas Transmission Company
PO Box 2318
1700 MacCorkle Avenue SE
Charleston, WV 25314

In re: Columbia Gas Transmission Company
Microwave Industrial/Business Pool Stations
KQL65, KQM53, KQM55
File Nos. 0003731336, 0003731337, 0003731339

Dear Mr. Given:

On February 6, 2009, Columbia Gas Transmission Company (Columbia) filed applications to renew the licenses of Microwave Industrial/Business Pool Stations KQL65, KQM53, and KQM55, each of which expired on December 9, 2008.¹ Because Columbia filed its applications more than thirty days after expiration, Columbia requests as part of its applications waiver of Section 1.949(a) of the Commission's Rules² to allow acceptance of its late-filed applications.³ For the reasons stated below, we deny Columbia's Waiver Request and dismiss its Renewal Applications.

Columbia is the licensee of microwave industrial/business Stations KQL65, KQM53, and KQM55, which are used as part of a system to monitor and control the flow of natural gas in Columbia's interstate pipelines.⁴ The licenses for KQL65, KQM53, and KQM55 were last renewed on either October 14, 1998 or November 10, 1998, and expired on December 9, 2008.⁵ Section 1.949(a) of the Commission's Rules requires licensees to file renewal applications no later than the expiration dates of licenses.⁶ Columbia failed to do so, not filing until February 6, 2009, and requesting that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of Columbia's late-filed applications.⁷

Columbia states that its renewal applications were not timely submitted through an administrative oversight caused by personnel changes in its organization.⁸ It apologizes for that oversight and states it is

¹ Applications for Renewal of License, File Nos. 0003731336, 0003731337, 0003731339 (filed Feb. 6, 2009) (Renewal Applications).

² 47 C.F.R. § 1.949(a).

³ Renewal Applications, Attachment, Re: Late Filing rule section 1.946 [sic] (Waiver Request).

⁴ *Id.*

⁵ File Nos. R981014051, R981014051 (granted Oct. 5, 1998), R981110005 (granted Nov. 10, 1998).

⁶ *See* 47 C.F.R. § 1.949.

⁷ Waiver Request.

⁸ *Id.*

in the process of establishing a program to prevent future licensing errors.⁹ Columbia argues that the stations are part of a microwave system used to monitor and control the flow of natural gas in Columbia's 12,000 miles of interstate pipelines in 10 states, as well as operating 37 gas underground storage facilities in four states.¹⁰ Columbia argues that its microwave radio system is essential to providing safe and reliable natural gas delivery to millions of homes and business in its service area.¹¹

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.¹² 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.¹³ 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.¹⁴ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that Columbia's late-filed renewal applications should be dismissed.¹⁵

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.¹⁶ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹⁷ 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.¹⁸

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² 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*).

¹³ *Id.* at 11486 ¶ 22.

¹⁴ *Id.* at 11485 ¶ 22.

¹⁵ *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).

¹⁶ 47 C.F.R. § 1.949(a).

¹⁷ 47 C.F.R. § 1.955(a)(1).

¹⁸ 47 C.F.R. § 1.925(b)(3).

We do not believe that Columbia has satisfied either waiver prong. 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.¹⁹ 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.²⁰ Columbia makes no showing that the underlying purpose of the rule would not be served or would be frustrated by application to Columbia in the instant case. Nor does Columbia show how administrative oversight constitutes unique or unusual factual circumstances.²¹ Turnover in recordkeeping personnel is not a valid excuse for failure to timely renew a license.²²

Furthermore, while we note the importance of the stations in question to Columbia's natural gas operations, the nature of those operations, by themselves, does not justify a waiver. Columbia has applied for and received special temporary authority to continue operating the facilities formerly licensed under call signs KQL65, KQM53, and KQM55.²³ If Columbia wishes to obtain a new regular authorization for this station, it may file a new, properly coordinated application.²⁴ In view of the foregoing, we find that grant of Columbia's requested waiver is not in the public interest.

¹⁹ 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)).

²⁰ *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).

²¹ *Cf. Southwest Central Rural Electric Cooperative Corporation, Order on Reconsideration*, 16 FCC Rcd 5499, 5500 n. 7 (WTB PSPWD 2001) (licensee is responsible for failure to provide correct contact information).

²² See *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21.

²³ File Nos. 0003756985, 0003757022, 0003757538 (granted Mar. 4, 2009).

²⁴ See 47 C.F.R. § 101.103.

Accordingly, IT IS ORDERED, 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, that the requests for waiver of Section 1.949(a) of the Commission's Rules filed February 6, 2009 by Columbia Gas Transmission Company ARE DENIED, and application File Nos. 0003731336, 0003731337, 0003731339 SHALL BE DISMISSED.

These actions are 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.

Sincerely,

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

cc: Nisource
Nora L Ferguson
PO Box 2318
1600 Dublin Road
Columbus, OH 43216-2318