



Federal Communications Commission
Washington, D.C. 20554

September 16, 2011

DA 11-1567

Mr. Ray V. Nold
airBand Communications, Inc.
14800 Landmark Blvd, Suite 500
Dallas, TX 75254

Dear Mr. Nold:

On July 7, 2011, airBand Communications, Inc. ("airBand") filed a waiver request¹ to file late-filed applications² for renewal of licenses of Common Carrier Fixed Point to Point Microwave Stations WPSK767, WPSK770, WPSK773, and WPSK777, which expired on June 5, 2011. Because airBand filed its applications more than thirty days after expiration, airBand requests as part of its application waiver of Section 1.949(a) of the Commission's Rules³ to allow acceptance of its late-filed applications.⁴ For the reasons stated below, we deny airBand's Waiver Request and dismiss its Renewal Applications.

AirBand was the licensee of Common Carrier Fixed Point to Point Microwave Stations WPSK767, WPSK770, WPSK773, and WPSK777.⁵ The licenses for WPSK767, WPSK770, WPSK773, and WPSK777 were issued on June 5, 2001, and expired on June 5, 2011.⁶ Section 1.949(a) of the Commission's Rules requires licensees to file renewal applications no later than the expiration dates of licenses.⁷ AirBand failed to do so, not filing until July 7, 2011, and requesting that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of airBand's late-filed applications.⁸

AirBand states that it "inadvertently did not file the renewals for the call signs referenced above in a timely manner."⁹ Further, airBand states that it has an arrangement with Comsearch to ensure the required renewals are filed timely in the future.¹⁰ AirBand argues that it provides communication needs for the public, such as data services for hospitals, airlines, and other public safety entities located in and around the Dallas, TX area.¹¹

¹ Renewal Waiver, File Nos. 0004794705, 0004794706, 0004794707, and 0004794708 (filed July 7, 2011) (Waiver Request).

² File Nos. 0004794705, 0004794706, 0004794707, and 0004794708 (filed July 7, 2011) (Renewal Applications).

³ 47 C.F.R. § 1.949(a).

⁴ Waiver Request at 1.

⁵ *Id.*

⁶ File Nos. 0000421660, 0000421659, 0000421658, and 0000421657 (granted June 5, 2001).

⁷ *See* 47 C.F.R. § 1.949(a).

⁸ Waiver Request at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *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.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 airBand'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

We do not believe that airBand 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 licenses

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).

¹⁹ See Mr. Roger Given, Vice President, Transmission and Storage Operations, Columbia Gas Transmission Company, *Letter*, 24 FCC Rcd 11769 (WTB BD 2009) (*Columbia Gas*); 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)).

and submitting renewal applications to the Commission in a timely manner.²⁰ AirBand makes no showing that the underlying purpose of the rule would not be served or would be frustrated by application to airBand in the instant case. Nor does airBand show how administrative oversight constitutes unique or unusual factual circumstances.²¹

Furthermore, while we note the importance of the stations in question to providing communication needs for the public, that service, by itself, does not justify a waiver. If airBand wishes to obtain a new regular authorization for the stations, it may file new, properly coordinated applications.²² If it 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.²³ In view of the foregoing, we find that grant of airBand's requested waiver is not in the public interest.

Finally, we note that airBand has filed construction notifications for two of the licenses in question.²⁴ In light of our decision to dismiss the late-filed renewal applications, which will result in cancellation of the licenses,²⁵ we will dismiss the construction notifications as moot.

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 request for waiver of Section 1.949(a) of the Commission's Rules filed July 7, 2011 by airBand Communications, Inc. IS DENIED, and applications File Nos. 0004794705, 0004794706, 0004794707, and 0004794708 SHALL BE DISMISSED.

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. Columbia Gas, supra*; 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* 47 C.F.R. § 101.103.

²³ *See* 47 C.F.R. § 1.931.

²⁴ File Nos. 0004831716 (WPSK770, filed Aug. 8, 2011), 0004800350 (WPSK777, filed Jul. 12, 2011), 0004831721 (WPSK777, filed Aug. 8, 2011).

²⁵ *See* 47 C.F.R. § 1.955(a)(1).

IT IS FURTHER 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 1.946 of the Commission's Rules, 47 C.F.R. § 1.946, that the construction notifications filed by airBand Communications, Inc. on July 12, 2011 and August 8, 2011 (File Nos. 0004800350, 0004831716, and 0004831721) SHALL BE DISMISSED as moot.

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,

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Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

cc: Comsearch
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