

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Mobile Radio of Kokomo, Inc.	)	File No. 0004837971
Application for Renewal of Station WPCJ264	)	
And Request for Waiver of the Filing Deadline	)	

**Order**

**Adopted: December 3, 2012**

**Released: December 3, 2012**

By the Assistant Chief, Mobility Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. On April 29, 2011, Mobile Radio of Kokomo, Inc. (Mobile Radio) filed its first application to renew the license for Station WPCJ264, along with a request for waiver of the deadline for filing the application.<sup>1</sup> Mobile Radio, however, withdrew that application on July 5, 2011.<sup>2</sup> On August 12, 2011, Mobile Radio filed a second application to renew its license for Station WPCJ264, along with the same request for waiver of the deadline for filing the application that it filed with its April 29 application.<sup>3</sup> The scheduled expiration date for the license and the deadline for filing the associated application for renewal was October 19, 2010.

2. On April 26, 2011, three days before filing its first renewal application, Mobile Radio filed a request for special temporary authority (STA) to allow it to continue operating the station while its late-filed renewal application and waiver request remained pending. That STA currently expires on April 21, 2013. For the reasons discussed below, we deny Mobile Radio's waiver request, dismiss the late-filed renewal application, and authorize Mobile Radio to continue operating until the expiration date of its current STA for the purpose of discontinuing operations in an orderly manner.

**II. BACKGROUND**

3. The license for Station WPCJ264 authorized site-based trunked specialized mobile radio (SMR) service in the 800 MHz band (YM) in Kokomo, Howard County, Indiana. The license was renewed in 2000, for a ten-year term ending October 19, 2010. Five years after renewing the license, on January 27, 2006, as part of the Commission's 800 MHz reconfiguration process, Mobile Radio filed a modification application to add three frequencies, 856.6375, 857.6375, and 858.0875 MHz, to its license.<sup>4</sup> That application was granted on March 16, 2006, and on March 31, 2006, Mobile Radio filed an

<sup>1</sup> FCC File No. 0004711021, filed by Mobile Radio of Kokomo, Inc. at Att. "Letter from Alan S. Tilles, Counsel for Mobile Radio of Kokomo, Inc. to Roger Noel, Chief, Mobility Division, Wireless Telecommunications Bureau dated April 29, 2011." (Apr. 29, 2011).

<sup>2</sup> FCC File No. 0004711021, filed by Mobile Radio of Kokomo, Inc. (July 5, 2011).

<sup>3</sup> FCC File No. 0004837971, filed by Mobile Radio of Kokomo, Inc. Att. "Letter from Alan S. Tilles, Counsel for Mobile Radio of Kokomo, Inc. to Roger Noel, Chief, Mobility Division, Wireless Telecommunications Bureau dated April 29, 2011" (Aug. 12, 2011) (Waiver Request).

<sup>4</sup> FCC File No. 0002463139, filed by Mobile Radio of Kokomo, Inc. (Jan. 27, 2006).

application to assign three frequencies originally authorized on the license for Station WPCJ264, 851.1125, 852.1125, and 853.1125 MHz, to Nextel License Holdings 4, Inc. under call sign WQFU730.<sup>5</sup> That assignment was consummated on October 5, 2006.<sup>6</sup> As a result, the frequencies authorized for Station WPCJ264 at the time the license expired were 854.1125, 855.2625, 856.6375, 857.6375, 858.0875, and 859.9125 MHz.

4. On July 26, 2010, approximately 90 days before the license for Station WPCJ264 expired, the Commission's Universal Licensing System (ULS) issued a letter to Mobile Radio reminding the licensee that its authorization would expire on October 19, 2010, and needed renewed.<sup>7</sup> Mobile Radio, however, did not file an application to renew the station license. As a result, the license automatically terminated as of its expiration date. On April 29, 2011, six months after the license expired, Mobile Radio filed its first application to renew the license for Station, along with its waiver request.

5. Without explanation, on July 5, 2011, Mobile Radio withdrew its April 29 renewal application, and on August 12, 2011, filed a second renewal application for Station WPCJ264, which is currently pending. The pending renewal application once again includes the letter originally filed in the April 29 renewal application, requesting waiver of the deadline for filing the application. The August 12 renewal application was returned by ULS letter dated October 20, 2011, seeking additional information about the late filing.<sup>8</sup> Mobile Radio responded on November 22, 2011, in a timely manner.<sup>9</sup> The August 12 renewal application was accepted for filing on August 17, 2011,<sup>10</sup> and no oppositions were filed against the application or waiver request.

6. Three days before filing its April 29 renewal application, Mobile Radio filed a request for special temporary authority (STA) to continue operating the station while it filed its renewal application and request for waiver of the filing deadline.<sup>11</sup> The request was granted under call sign WQNR385, has been renewed several times,<sup>12</sup> and currently expires on April 21, 2013.

### III. DISCUSSION

7. Under Section 1.949(a) of the Commission's rules, licensees must file renewal applications no sooner than 90 days prior to expiration and no later than the expiration date of the license for which renewal is sought.<sup>13</sup> In fact, licenses automatically terminate upon the expiration date, unless a

<sup>5</sup> FCC File No. 0002557160, filed by Mobile Radio of Kokomo, Inc. (Mar. 31, 2006).

<sup>6</sup> Nextel License Holdings 4, Inc. deleted frequencies 851/852.1125 MHz from the license for Station WQFU730 in 2008, and cancelled the license all together on November 18, 2009.

<sup>7</sup> Renewal Reminder Letter, ULS Reference No. 5004540 (July 26, 2010).

<sup>8</sup> Notice of Return, ULS Reference No. 5235585 (Oct. 20, 2011) (Return Notice).

<sup>9</sup> FCC File No. 0004837971, filed by Mobile Radio of Kokomo, Inc. Ex. B (Nov. 22, 2011) (Mobile Radio Response).

<sup>10</sup> Wireless Telecommunications Bureau Site-By-Site Accepted For Filing, *Public Notice*, Report No. 7073 at 51 (Aug. 17, 2011).

<sup>11</sup> FCC File No. 0004705822, filed by Mobile Radio of Kokomo, Inc. (Apr. 26, 2011).

<sup>12</sup> FCC File No. 0004750800, filed by Mobile Radio of Kokomo, Inc. (June 2, 2011); FCC File No. 0004964305, filed by Mobile Radio of Kokomo, Inc. (Nov. 22, 2011); FCC File No. 0005182270, filed by Mobile Radio of Kokomo, Inc. (Apr. 27, 2012); FCC File No. 0005453778, filed by Mobile Radio of Kokomo, Inc. (Oct. 18, 2012).

<sup>13</sup> 47 C.F.R. § 1.949(a).

timely application for renewal is filed.<sup>14</sup> Licensees may, however, file an application for renewal and request a waiver of the filing deadline if the renewal application is not filed in a timely manner. We may grant a waiver request, pursuant to Section 1.925 of the Commission's rules, if it is shown that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver 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>15</sup>

8. Under its policy regarding late-filed renewal applications in wireless services, the Commission has acknowledged that there may be circumstances when a renewal filing is missed and that the subsequent denial of the renewal application and termination of the license would be too harsh a result in proportion to the nature of the violation.<sup>16</sup> To mitigate a harsh result, under the Commission's policy regarding late-filed renewal applications in wireless services, where a renewal application is filed up to 30 days after the license expiration date, a waiver of the filing deadline and the renewal application will be granted as long as the application is otherwise sufficient under Commission rules, but the licensee may be subject to enforcement action.<sup>17</sup>

9. In cases where the renewal application is filed more than 30 days after the license expiration date, however, the waiver request will not be routinely granted, is subject to stricter review, and also may be accompanied by enforcement action.<sup>18</sup> In determining whether to grant a waiver request, the Commission takes into consideration all of the facts and circumstances involved, including the length in delay of filing, the licensee's performance record, the reasons for the failure to timely file, and the potential consequences to the public if the license were to terminate.<sup>19</sup> Because Mobile Radio filed its pending renewal application nine months after the license for Station WPCJ264 expired, its request for a waiver is subject to this stricter level of review.

10. We find that Mobile Radio has failed to make the requisite showing that grant of its waiver request is warranted under the circumstances presented. In its waiver request, Mobile Radio explains that "[t]he individual responsible for the filing of radio station authorization renewal applications retired from Mobile Radio prior to call sign WPCJ264's expiration."<sup>20</sup> The waiver request further stated that "[t]his resulted in Mobile Radio being short staffed while having to maintain the many day-to-day business activities, as well as, also searching for a qualified replacement for the retired employee."<sup>21</sup>

11. The ULS return notice sought additional information regarding the retirement of Mobile Radio's employee. In particular, the notice asked Mobile Radio to provide detailed information regarding how long the person responsible for filing renewal applications had been absent from that position as well

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<sup>14</sup> *Id.* § 1.955(a)(1).

<sup>15</sup> *Id.* § 1.925(b)(3)(i)-(ii).

<sup>16</sup> In the Matter of Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 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*, 14 FCC Rcd 11476, 11485, ¶ 22 (1999) (*ULS MO&O*).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*; *see, e.g.*, Shubat Transportation Company, *Notice of Apparent Liability for Forfeiture*, 26 FCC Rcd 3782 (EB 2011) (proposing a forfeiture of \$19,000 for unauthorized operation and failure to submit a renewal application in a timely manner for a private land mobile radio service station).

<sup>19</sup> *ULS MO&O*, 14 FCC Rcd at 11485, ¶ 22.

<sup>20</sup> Waiver Request at 1.

<sup>21</sup> *Id.*

as the date on which the person advised Mobile Radio of his intentions to retire.<sup>22</sup> In response, Mobile Radio stated that “[t]he technician responsible for filing FCC renewal applications abruptly resigned on September 30, 2010 and left immediately.”<sup>23</sup> Mobile Radio further explained that “Applicant immediately attempted to train other personnel to take over this responsibility, review all license expiration dates and determine which licenses were eligible for renewal,” but that “[d]uring this process, Applicant discovered that some files were missing and/or misplaced and, as a result, the renewal application for call sign WPCJ264 was inadvertently not timely filed.”<sup>24</sup>

12. The Commission has previously determined that inadvertent failure to renew a license in a timely manner is clearly not so unique or unusual in itself as to warrant a waiver of the Commission’s rules.<sup>25</sup> In particular, the Commission has expressly rejected certain reasons, in and of themselves, for a licensee’s inadvertent failure to file a renewal application in a timely manner, including “turnover in recordkeeping personnel, failure to check computer records, simple forgetfulness” or “administrative oversight,”<sup>26</sup> and has emphasized that a licensee is fully responsible for knowing the terms of its license and filing a timely renewal application.<sup>27</sup>

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<sup>22</sup> Return Notice at 1. The return notice directed Mobile Radio to “provide detailed information regarding how long the person responsible for handling the license has been absent from this position. Please provide the date the person became absent and the specific reason for his absence. If the individual retired, what specific date did he advise of his intentions to retire. Failure to provide this information will result in the dismissal of your waiver request.” *Id.*

<sup>23</sup> Mobile Radio Response at 1.

<sup>24</sup> *Id.*

<sup>25</sup> Anderson Communications, *Memorandum Opinion and Order*, 16 FCC Rcd 15020, 15021, ¶ 5 (2001) (*Anderson Communications*); Peacock’s Radio and Wild’s Computer Service, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 15016, 15017, ¶ 5 (2001) (*Peacock’s Radio*) (citing Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998, ¶ 11 (2000) (*Fresno City and County*)) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575, ¶ 9 (PSPWD WTB 2000)); Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Elizabeth R. Sachs, Esq., Counsel for G & D Communications, Inc. at 3 (ULS Call Sign WNYV719) (June 30, 2011); Ramona P. Patts, City of Columbus, Ohio, *Letter*, 25 FCC Rcd 16326, 16327 (BD WTB 2010) (*City of Columbus Decision*) (citing Ms. Elaine Piccolo, AlarmNet, Inc., *Letter*, 24 FCC Rcd 11766, 11767-68 (BD WTB 2009) (*AlarmNet Decision*)); Ms. Janet Tucker, ConocoPhillips Communications Inc., *Letter*, 24 FCC Rcd 11755, 11756 (BD WTB 2009) (*ConocoPhillips Decision*)).

<sup>26</sup> *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; *see* DeltaCom, Inc., 27 FCC Rcd 3982, 3986, ¶ 12 (WTB MD 2012) (*DeltaCom*) (denying a request for waiver of the deadline for filing renewal applications where the licensee did not file its applications in a timely manner because of administrative oversight); *City of Columbus Decision*, 25 FCC Rcd at 16327 (same); Alan S. Tilles, Esq. Bangor Hydro Electric Company, *Letter*, 25 FCC Rcd 13312, 13314 (BD WTB 2010) (*Bangor Hydro Decision*) (same); *AlarmNet Decision*, 24 FCC Rcd at 11767 (same); *ConocoPhillips Decision*, 24 FCC Rcd at 11757 (same); Billy Williford d/b/a Jasper Mobil Phone, 17 FCC Rcd 477, 479 ¶ 5 (CWD WTB 2002) (affirming the underlying Branch ruling that inadvertent oversight is an insufficient basis for granting waiver of the deadline for filing renewal applications); Malden R-1 School District, *Order*, 17 FCC Rcd 23654 (PSPWD WTB 2002) (denying a request for waiver of the deadline for filing renewal applications where the licensee did not file its applications in a timely manner because of his own administrative oversight; he misfiled the Commission’s renewal notices and only filed the applications after the notices came to the appropriate person’s attention nearly two months after the licenses expired).

<sup>27</sup> *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; In the Matter of 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*, 13 FCC Rcd 21027, 21071, ¶ 96 (1998); *see also* James A. Kay, Jr., *Memorandum Opinion and Order*, 18 FCC Rcd 7585, 7587-88, ¶ 8 (2003) (stating that it is well-established that licensees are responsible for submitting renewal applications in a timely manner); *Anderson Communications*, 16 FCC Rcd at 15021, ¶ 5 (emphasizing that each licensee is solely

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13. In certain cases, however, we have granted waiver of the deadline for filing renewal applications where the licensee has demonstrated it attempted in good faith to comply with Commission requirements. For example, we have repeatedly held that the filing of a timely, but defective renewal application warrants a waiver to permit the late filing of a subsequent renewal application, where the licensee acted in good faith and moved promptly to file a proper renewal application after learning that the original attempt fell short.<sup>28</sup> We have also granted waiver of the deadline for filing renewal applications where the licensee provided documentation showing that it had attempted in good faith, but failed to file a renewal application in a timely manner,<sup>29</sup> or dismissal of the renewal application stemmed from a technical problem in ULS beyond the licensee's control.<sup>30</sup> We have also granted waiver of the deadline for filing renewal applications where the licensee demonstrated that the late-filed application was intended to be part of a larger group of applications that were filed in a timely manner.<sup>31</sup>

14. In the instant case, Mobile Radio has not provided any information to support a finding that it attempted in good faith to comply with Commission rules with respect to the renewal of its license for Station WPCJ264. For example, Mobile Radio has not described any steps that might have been taken during the 90-day renewal period to submit the required applications in a timely manner, or any actions taken to renew the authorization during the 30 days after the license expired. We have previously found that a distinction exists between a licensee that unsuccessfully attempts to file a renewal application in a timely manner, and a licensee that takes no action until after the filing deadline. Licensees that do not

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responsible for knowing the terms of its license and submitting a renewal application in a timely manner); *Peacock's Radio*, 16 FCC Rcd at 15017, ¶ 5 (same).

<sup>28</sup> *DeltaCom*, 27 FCC Rcd at 3986-87, ¶ 13 (citing Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Mr. Philip Adler, Tuchman & Brown Investments Inc. No. 2 (ULS Call Sign WPQP245) (Dec. 14, 2011); Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Pilot Communications (ULS Call Signs KNKI208 *et al.*) (July 11, 2011); Paging Systems, Inc., *Order*, 26 FCC Rcd 5913 (MD WTB 2011), *aff'd on reconsideration*, 26 FCC Rcd 16175, 16177, ¶ 6 (MD WTB 2011); City of Dardanelle Fire Department, *Order*, 17 FCC Rcd 10901 (PSPWD WTB 2002); Kent H. Sager, *Order*, 16 FCC Rcd 21353 (CWD WTB 2001); KNTV License, Inc., *Order*, 16 FCC Rcd 20440 (PSPWD WTB 2001); Navopache Electric Cooperative, Inc., *Order*, 16 FCC Rcd 11870 (PSPWD WTB 2001); City of Henderson, Nevada, *Order*, DA 99-2005 at ¶ 7 (PSPWD WTB 1999)).

<sup>29</sup> See James H. Barker, Esq., Cricket Licensee (Reauction), Inc., *Letter*, 24 FCC Rcd 3298, 3302-03 (MD WTB 2009) (*Cricket Reauction*) (granting a request for waiver of the deadline for filing a renewal application, in part, where the licensee provided a copy of a "draft" renewal application that was generated in ULS within the 90-day renewal period, but not filed, demonstrating that the licensee intended to retain its license and attempted in good-faith to comply with Commission rules).

<sup>30</sup> *Compare* San Bernard Electric Cooperative, Inc., *Order on Reconsideration*, 17 FCC Rcd 16111 (PSPWD WTB 2002) (granting a request for waiver of the deadline for filing renewal applications after finding that a payment defect relating to the licensee's initial renewal application was a consequence of a technical problem in ULS beyond the licensee's control resulting in a screen indicating the applicant had paid a filing fee, even though the payment had not been received; and finding that a printout of the ULS screen indicating that the fee associated with the licensee's application had been paid corroborated the licensee's contention that it believed it had paid the fee), *with* Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Mr. Ottis L. Anderson (ULS File Nos. 0003827481, 0003827483, and 0003827484) (Aug. 11, 2011) (rejecting an argument that the licensee had attempted in good faith to file renewal applications based on an unsubstantiated assertion that ULS would not allow the licensee to file renewal applications after the licenses expired).

<sup>31</sup> *DeltaCom*, 27 FCC Rcd at 3987-89, ¶¶ 14-16 (citing Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Cheng-Yi Liu, Esq., Counsel to Wave Runner, LLC (ULS File Nos. 0004868550 and 0004868551) (Dec. 14, 2011); Letter from Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Tony S. Lee, Esq., Counsel to Nex-Tech, Inc. (ULS File Nos. 0003957435 and 00003957438) (Sept. 9, 2010)).

take any action until the after the filing deadline have almost always simply forgotten about or overlooked the deadline.<sup>32</sup> Mobile Radio's argument that it inadvertently failed to submit a renewal application in a timely manner because of a staffing change and misplaced records, in itself, does not warrant waiver of the deadline for filing a renewal application for Station WPCJ264.

15. Mobile Radio further argues that granting its waiver requests would be in the public interest because the station "provides communications service to numerous businesses," including contracting, plumbing, cab, and gas station companies and various agricultural businesses.<sup>33</sup> Mobile Radio asserts that "without grant of the instant waiver request and renewal/reinstatement application, these entities will not have adequate communications capabilities to continue operating their respective businesses and providing timely and efficient services to new and existing customers."<sup>34</sup> Mobile Radio, however, makes no showing on how providing service to these customers in the instant case constitutes unique or unusual factual circumstances. Nor does Mobile Radio's waiver request identify any harm to public safety or consumer welfare that would result from license termination.<sup>35</sup> While Mobile Radio argues that its customer base supports grant of its waiver requests, it does not show that termination of service to its customers would leave them without reasonable service alternatives or result in loss of a unique service.<sup>36</sup> Furthermore, we have previously found that the nature of a licensee's operations, by itself, does not justify a waiver.<sup>37</sup>

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<sup>32</sup> See *Cricket Reauction*, 24 FCC Rcd at 3305-06 (finding a distinction exists between a licensee that unsuccessfully attempts to file a renewal application in a timely manner, and a licensee that takes no action until after the filing deadline, in which case the licensee has almost always simply forgotten about or overlooked the deadline); *State Contracting and Engineering Corporation, Order on Reconsideration*, 18 FCC Rcd 1685, 1689, ¶ 11 (PSPWD WTB 2003) (finding a clear distinction between a licensee that unsuccessfully attempts to renew the license before it expires, and one that submits nothing until more than 30 days after the license expiration date).

<sup>33</sup> Waiver Request at 2. Mobile Radio lists the following companies in its waiver request as companies that would be affected by termination of its license: Griffey Contracting, Isley's Plumbing, Scott Bogue Farms, Bill Lovelace Farms, David Kelly Farms, King's Plumbing & Heating, King's Marathon Oil Company, Robert Henry Farms, Mark's Friendly Cab, Climate Makers, Steve Exemeyer Farms and Rudicel Ag. *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See *Anderson Communications*, 16 FCC Rcd at 15022, ¶ 7 (denying a request for waiver of the deadline for filing renewal applications, in part, where the licensee did not identify any harm to public safety or consumer welfare that would result from license termination); *Peacock's Radio*, 16 FCC Rcd at 15018, ¶ 7 (same).

<sup>36</sup> See *Anderson Communications*, 16 FCC Rcd at 15022, ¶ 7 (stating that while the licensee provided a list of some of its customers, it provided no showing that termination of service to those customers would leave them without service alternatives or result in loss of unique service); *Peacock's Radio*, 16 FCC Rcd at 15018, ¶ 7 (same); Gene A. Smith, *Order*, 17 FCC Rcd 13366, 13367, ¶ 4 (CWD WTB 2002) (denying a request for waiver of the deadline for filing renewal applications, in part, because the licensee did not show that termination of service to its customers would leave them without service alternatives or result in loss of unique service); *Western Communications, Inc., Order*, 16 FCC Rcd 15240, 15241, ¶ 5 (CWD WTB 2001) (noting that while the licensee "mentions its customers," it provided no showing that termination of service to its customers would leave them without service alternatives or result in loss of unique service).

<sup>37</sup> See *Bangor Hydro Decision*, 25 FCC Rcd at 13314 (finding that the nature of the licensee's operations, the monitoring and controlling the flow of electricity, by itself, does not justify a waiver of the deadline for filing renewal applications); *AlarmNet Decision*, 24 FCC Rcd at 11768 (concluding that the role of the facilities in maintaining safe and efficient operation of the licensee's monitoring systems, by itself, is insufficient to justify a waiver of the deadline for filing renewal applications); *ConocoPhillips Decision*, 24 FCC Rcd at 11757 (concluding that even though the stations at issue might play an important role in maintaining the licensee's safe and efficient operations, that, by itself, is insufficient to justify a waiver); *Fresno City and County*, 15 FCC Rcd at 11001, ¶ 8 (noting that the Commission has rejected arguments where the licensee "seeks to be excused from its failure to renew its original license, based on the benefit its use of that spectrum will confer on the public") (citing Waste

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16. Mobile Radio filed its renewal application nine months late, requiring a stricter level of review of its waiver request than if it had filed the application within 30 days of license expiration. Consistent with precedent and based on our review of the record, we find that Mobile Radio neither provides reasons for its late filings sufficient to grant a waiver nor offers information demonstrating potential consequences to the public upon termination of the licenses. Taking into account all of the facts and circumstances, we conclude that Mobile Radio's failure to renew its license in a timely manner because of administrative oversight does not justify waiver of the Commission's rules. We therefore deny the request for waiver and dismiss the associated renewal application.

17. We will, however, grant Mobile Radio authority to operate on the spectrum associated with Station WPCJ264 until the expiration of its current STA. We find that it is in the public interest to provide Mobile Radio with the opportunity to make arrangements to discontinue its station operations in an orderly manner. We therefore authorize Mobile Radio to operate under its STA, call sign WQNR385, until April 21, 2013. If Mobile Radio needs additional time to complete an orderly discontinuance of operations, it may file a request to renew its STA pursuant to Section 1.931 of the Commission's rules, for up to an additional 90 days, together with the appropriate filing fee. If Mobile Radio does not request additional special temporary authority, it will no longer be authorized to provide further service and shall cease any and all operations no later than April 21, 2013. Mobile Radio shall notify the Mobility Division that it has stopped operations and shall provide the date upon which its operations ceased.

18. We finally note that Section 90.173(n) of the Commission's rules provides that "[a]ny recovered channels in the 800 MHz SMR service will revert automatically to the holder of the EA license within which such channels are included. If there is no EA licensee for recovered channels, such channels will be retained by the Commission for future licensing."<sup>38</sup> In this case, four of the frequencies, 854.1125, 856.6375, 857.6375, and 858.0875 MHz, previously authorized under Mobile Radio's license for Station WPCJ264 are SMR frequencies. Once Mobile Radio ceases operations under its STA, the spectrum from the four SMR frequencies reverts automatically to Nextel License Holdings 4, Inc. and Nextel License Holdings 1, Inc. under Economic Area licenses each holds in BEA067, Indianapolis IN-IL.<sup>39</sup> Frequencies 855.2625 and 859.9125 MHz are Industrial/Business Pool frequencies, which will revert back to the Commission and will become available for licensing subject to the Commission's frequency coordination<sup>40</sup> and 800 MHz reconfiguration rules and procedures.<sup>41</sup>

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Management, Collection & Recycling, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 12939, 12944, ¶ 12 (1999)).

<sup>38</sup> 47 C.F.R. § 90.173(n); *see id.* § 90.683(b) (providing that "[i]n the event that the authorization for a previously authorized co-channel station within the EA licensee's spectrum block is terminated or revoked, the EA licensee's co-channel obligations to such station will cease upon deletion of the facility from the Commission's official licensing records, and the EA licensee will be able to construct and operate without regard to that previous authorization").

<sup>39</sup> Nextel License Holdings 4, Inc. holds licenses in BEA067, Indianapolis IN-IL under call sign WPSD460 authorized on frequencies 856.6375 and 857.6375 MHz, and call sign WPSC329 authorized on frequency 858.0875 MHz. Nextel License Holdings 1, Inc. also holds a license in BEA067 under call sign WPRQ875 authorized on frequency 854.1125 MHz.

<sup>40</sup> 47 C.F.R. § 90.175.

<sup>41</sup> *See* In the Matter of Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004); *see also* In the Matter of Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25120 (2004); In the Matter of Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, WT Docket No. 02-55, 20 FCC Rcd 16015 (2005).

**IV. ORDERING CLAUSES**

19. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131, 0.331, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, that the waiver request filed in association with File No. 0004837971 by Mobile Radio of Kokomo, Inc. for Station WPCJ264 on August 12, 2011, IS DENIED.

20. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131, 0.331, 1.934, 1.949, and 1.955 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.934, 1.949, 1.955, the renewal application, File No. 0004837971, filed by Mobile Radio of Kokomo, Inc. for Station WPCJ264 on August 12, 2011, IS DISMISSED as defective.

21. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 309(f) of the Communications Act, as amended, 47 U.S.C. §§ 4(i), 303(r), 309(f), and Sections 0.131, 0.331, and 1.931 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.931, the Mobility Division shall allow Mobile Radio of Kokomo, Inc. special temporary authority to operate on the spectrum previously authorized under the license for Station WPCJ264 up to April 21, 2013, the current expiration date of its special temporary authorization under call sign WQNR385.

FEDERAL COMMUNICATIONS COMMISSION

Cyndi Thomas  
Assistant Chief, Mobility Division  
Wireless Telecommunications Bureau