

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

In the Matter of)	
)	
Christine M. Busby)	File Nos. 0005396043
Late-Filed Applications for Renewal and)	0005396045
Requests for Waiver of Section 1.949 for)	
Stations WPVG926 and WPVG927)	

ORDER

Adopted: February 6, 2013

Released: February 6, 2013

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

I. INTRODUCTION

1. On September 16, 2012, Christine M. Busby filed applications to renew the licenses for Stations WPVG926 and WPVG927, along with identical requests for waiver of the deadline for filing the applications.¹ The scheduled expiration date for the licenses and the deadline for filing the associated applications for renewal was June 21, 2012. For the following reasons, we deny the requests for waiver and dismiss the associated renewal applications. We further grant, on our own motion, special temporary authority (STA) to operate the frequencies authorized under the licenses for Stations WPVG926 and WPVG927 for a limited period to allow Ms. Busby to discontinue operations in an orderly manner.

II. BACKGROUND

2. Stations WPVG926 and WPVG927 were authorized to operate respectively on Channel Blocks FG (152.195-152.225; 158.655-158.685 MHz) and FK (157.845-157.875; 152.585-152.615 MHz) of the Part 22 VHF/UHF paging (CP) band in the Chicago-Gary-Kenosha, IL-IN-WI market area (BEA064). In 2001, Ms. Busby was the highest bidder in Auction No. 40, the paging auction, for the authorizations. The licenses were granted on June 21, 2002, with ten-year terms ending June 21, 2012.

3. On March 26, 2012, nearly 90 days before the deadline for filing the renewal applications, the Commission's Universal Licensing System (ULS) issued two letters for each call sign to remind the licensee that the authorizations for Stations WPVG926 and WPVG927 were about to expire and needed renewed.² Ms. Busby, however, did not file applications to renew the station licenses in a timely manner. As a result, the licenses for Stations WPVG926 and WPVG927 automatically terminated as of their expiration date, June 21, 2012. On September 16, 2012, nearly three months after the licenses expired, Ms. Busby filed applications to renew the licenses for Stations WPVG926 and WPVG927, along with requests to waive the deadline for filing the applications. The renewal applications were placed on

¹ FCC File Nos. 0005396043 (WPVG926) and 0005396045 (WPVG927), filed by Christine M. Busby, Att. "Request for Waiver and Reinstatement" submitted by Pete Fiorio, Contact Representative (Waiver Requests).

² *Renewal Reminder Notice*, ULS Reference No. 5338915 (Mar. 26, 2012) (WPVG926); and *Renewal Reminder Notice*, ULS Reference No. 5338916 (Mar. 26, 2012) (WPVG927). Two letters were issued for each call sign. One to Pete Fiorio, Fiorio Communications Consulting, 10451 Twin Rivers Road, Suite 207, PO Box 198, Clarksville, Maryland 21029; and the second to Christine M. Busby, 1532 North Ridge Avenue, Arlington Heights, Illinois 60004.

public notice as accepted for filing on September 26, 2012.³ No oppositions were filed against the applications or waiver requests. We further note that Ms. Busby has not filed for special temporary authority to allow the continued operations of the stations after June 21, 2012.

III. DISCUSSION

4. 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.⁴ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.⁵ 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.⁶

5. 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.⁷ 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.⁸

6. 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.⁹ 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.¹⁰ Because Ms. Busby filed the pending renewal applications three months after the licenses for Station WPVG926 and WPVG927 expired, her requests for waiver are subject to this stricter level of review.

³ Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing, *Public Notice*, Report No. 8097 at 1 (Sept. 26, 2012).

⁴ 47 C.F.R. § 1.949(a).

⁵ *Id.* § 1.955(a)(1).

⁶ *Id.* § 1.925(b)(3)(i)-(ii).

⁷ 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*).

⁸ *Id.*

⁹ *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).

¹⁰ *ULS MO&O*, 14 FCC Rcd at 11485, ¶ 22.

7. We find that Ms. Busby has failed to make the requisite showing that grant of the waiver requests is warranted under the circumstances presented. The waiver requests state without further explanation that “due to an administrative oversight, Ms. Busby failed to file the renewal application[s] in a timely manner.”¹¹ 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.¹² 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,”¹³ and has emphasized that a licensee is fully responsible for knowing the terms of its license and filing a timely renewal application.¹⁴

8. 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

¹¹ Waiver Requests at 1.

¹² 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)); Mobile Radio of Kokomo, Inc., *Order*, DA 12-1943 (MD WTB rel. Dec. 3, 2012) (*Kokomo*); 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*)).

¹³ *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; see *Kokomo*, DA 12-1943 at ¶ 14 (denying a request for waiver of the deadline for filing renewal applications where the licensee inadvertently failed to submit its application in a timely manner because of a staffing change and misplaced records); 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).

¹⁴ *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 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).

the original attempt fell short.¹⁵ 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,¹⁶ or dismissal of the renewal application stemmed from a technical problem in ULS beyond the licensee's control.¹⁷ 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.¹⁸

9. In the instant case, Ms. Busby has not provided any information to support a finding that she attempted in good faith to comply with Commission rules with respect to the renewal of the licenses for Stations WPVG926 and WPVG927. For example, Ms. Busby 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 authorizations 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 take any action until after the filing deadline have almost always simply forgotten about or overlooked the deadline.¹⁹ Ms. Busby's explanation that the late filings were "due to an

¹⁵ Mobile Telephone & Paging, Inc., *Order*, DA 13-143 (MD WTB rel. Feb. 4, 2013); 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)).

¹⁶ 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).

¹⁷ 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).

¹⁸ See 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)).

¹⁹ 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); *cf.* Interstate Power and Light Co. Requests for Extension of Time to Construct Private Land Mobile Radio Stations, *Order*, 18 FCC Rcd 11051, 11057, ¶ 17 (PSPWD WTB 2003) (granting a request for extension of time to construct where the licensee

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administrative oversight,” in itself, does not warrant waiver of the deadline for filing renewal applications for Stations WPVG926 and WPVG927.

10. Ms. Busby further argues that granting the waiver requests would be in the public interest because the stations have “provided a valuable service to the public and public safety in the area.”²⁰ Ms. Busby, however, makes no showing on how providing service to these customers in the instant case constitutes unique or unusual factual circumstances. Nor do Ms. Busby’s waiver requests identify any specific harm to public safety or consumer welfare that would result from license termination.²¹ While Ms. Busby argues that the service that she has provided supports grant of the waiver requests, she does not show that termination of service to her customers would leave them without reasonable service alternatives or result in loss of a unique service.²² Furthermore, we have previously found that the nature of a licensee’s operations, by itself, does not justify a waiver.²³

11. Ms. Busby filed the renewal applications three months late, requiring a stricter level of review of the waiver requests than if she had filed the application within 30 days of license expiration. Consistent with precedent and based on our review of the record, we find that Ms. Busby neither provides reasons for the late filings nor offers information demonstrating potential consequences to the public upon termination of the licenses sufficient to grant a waiver. Taking into account all of the facts and circumstances, we conclude that Ms. Busby’s failure to renew the licenses in a timely manner because of

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submitted extension requests four times, twice before the construction deadline, and noting that “[t]here is a clear distinction between a licensee that unsuccessfully attempts to timely file and one who submits nothing until the time expires”).

²⁰ Waiver Requests at 1.

²¹ 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).

²² 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); *Mobile Radio of Kokomo, Inc.*, *Order*, DA 12-1943 at ¶ 15 (MD WTB rel. Dec. 3, 2012) (finding that the licensee’s statement that the station provided communications service to numerous businesses did not demonstrate how providing that service constituted unique or unusual factual circumstances, did not identify any harm to public safety or consumer welfare, or show that termination of service would leave its customers without reasonable service alternatives or result in loss of a unique service); *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).

²³ 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 Management, Collection & Recycling, Inc.*, *Memorandum Opinion and Order*, 15 FCC Rcd 12939, 12944, ¶ 12 (1999)).

administrative oversight does not justify waiver of the Commission's rules. We therefore deny the requests for waiver and dismiss the associated renewal applications.

12. We will, however, grant Ms. Busby special temporary authority to operate on the spectrum associated with Stations WPVG926 and WPVG927 for a limited period of time. The Commission may grant special temporary authority upon a showing of extraordinary circumstances requiring operation in the public interest.²⁴ We find that it is in the public interest to grant Ms. Busby special temporary authority to provide her with the opportunity to make arrangements to discontinue operations under Stations WPVG926 and WPVG927 in an orderly manner. Accordingly, we grant special temporary authority to Ms. Busby for a period of 30 days from the date of this Order. If Ms. Busby needs additional time to initiate an orderly discontinuance of operations, the licensee can file STA requests pursuant to Section 1.931 of the Commission's rules for up to an additional 90 days for each license, together with the appropriate filing fees. It is understood that any authority granted based on Ms. Busby's request shall be solely for the purpose of allowing Ms. Busby to commence an orderly discontinuation of operations under Stations WPVG926 and WPVG927.

IV. ORDERING CLAUSES

13. 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 requests filed by Christine M. Busby in association with File Nos. 0005396043 and 0005396045 for Stations WPVG926 and WPVG927 on September 16, 2012, ARE DENIED.

14. 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 applications, File Nos. 0005396043 and 0005396045, filed by Christine M. Busby for Stations WPVG926 and WPVG927 on September 16, 2012, ARE DISMISSED as defective.

15. 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 grant special temporary authority to Christine M. Busby to operate Stations WPVG926 and WPVG927 for a period of 30 days from the release date of this Order to March 8, 2013.

FEDERAL COMMUNICATIONS COMMISSION

Cyndi Thomas
Assistant Chief, Mobility Division
Wireless Telecommunications Bureau

²⁴ 47 C.F.R. § 1.931(a)(2)(iv).