



Federal Communications Commission
Washington, D.C. 20554

April 29, 2013

DA 13-957

Mr. Mike Jeffres
Public Safety Systems Manager
State of Nebraska
P.O. Box 30370
2200 N 33
Lincoln, NE 68503

Re: State of Nebraska Request for Renewal and Reinstatement of Call Signs KA87195 and KCQ251

Dear Mr. Jeffres:

On November 15, 2012, on behalf of the State of Nebraska (Nebraska), you filed two waiver requests to permit the renewal of the licenses for VHF Conventional Public Safety Stations, call signs KA87195 and KCQ251, both of which expired on November 12, 2012.¹ Because Nebraska failed to file its renewal application for the stations prior to the date of their expiration, it now requests a waiver of Section 1.949(a) of the Commission's rules² to permit the renewal of its expired licenses.³ For the reasons stated below, we deny Nebraska's Waiver Requests.

The Commission sent a license renewal reminder notice to Nebraska on August 20, 2012.⁴ Nebraska did not file a timely renewal application and the licenses expired on November 12, 2012. In its waiver requests, Nebraska seeks waiver of Section 1.949(a) of the Commission's rules – the rule requiring licensees to renew their licenses prior to expiration. Nebraska filed an identical waiver request with a construction notification application for call sign KA87195. It also filed a license cancellation application for call sign KCQ251. The Commission dismissed both applications because they were filed after the expiration of Nebraska's licenses.⁵

Nebraska states that that "it mistakenly failed to renew [these] licenses and missed the renewal deadline."⁶ Nebraska states that it is in the process of "documenting its FCC licenses and updating for

¹ Waiver Request, (filed Nov. 15, 2012) attached to Call Sign KA87195 and Waiver Request, attached to Call Sign KCQ251 (filed Nov. 15, 2012) (collectively Waiver Requests).

² 47 C.F.R. § 1.949(a).

³ Waiver Requests.

⁴ Renewal Reminder Notice, Ref. Nos. 5430423 and 5430424 (Aug. 20, 2012).

⁵ See 0005529270 (filed Dec. 3, 2012) (construction notification regarding KA87195) and 0005582483 (filed Dec. 31, 2012) (license cancellation application regarding KCQ251).

⁶ Waiver Requests.

narrow banding prior to the end of the year.”⁷ Nebraska states that it relies on the frequencies “for essential law enforcement duties.”⁸

Pursuant to the Commission’s rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.⁹ Licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹⁰

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.¹¹ 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.¹² 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.¹³

Taking into consideration the Commission’s above policy regarding license reinstatement procedures, we now consider the merits of Nebraska’s Waiver Requests. 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

Based on the facts before us, we find that Nebraska has satisfied neither prong of the Commission’s general waiver standard. Specifically, Nebraska makes no showing that the underlying purpose of Section 1.949(a) – to preserve the integrity and administration of the Commission’s licensing processes – would not be served or would be frustrated by application to Nebraska in the instant case. Nor does Nebraska demonstrate that its inadvertent failure to renew a license in a timely manner is a unique and unusual circumstance such that application of the rule would be unduly burdensome or contrary to the public interest to warrant a waiver in this instance. In reaching this decision, we note that

⁷ *Id.*

⁸ *Id.*

⁹ 47 C.F.R. § 1.949(a).

¹⁰ 47 C.F.R. § 1.955(a)(1).

¹¹ 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*).

¹² *Id.* at 11486 ¶ 22.

¹³ *Id.* at 11485 ¶ 22.

¹⁴ 47 C.F.R. § 1.925(b)(3).

each licensee is solely responsible for knowing the terms of its license and submitting a renewal application to the Commission in a timely manner.¹⁵

We also find that waiver relief in this instance would not be consistent with the public interest. The Commission has stated that it will not afford special consideration to licensees for failing to file a timely renewal application merely because the licensee engages in activities relating to public health or safety.¹⁶ Taking into account all the facts and circumstances of the instant matter, we therefore conclude that grant of Nebraska's Waiver Requests is not warranted.¹⁷ Should Nebraska desire to use the frequencies for which it previously was licensed, it may obtain an authorization for the frequencies by filing a new, properly coordinated application. If Nebraska needs to operate on the frequencies while the application is coordinated and processed, it may file a request for special temporary authority pursuant to Section 1.931 of the Commission's rules.¹⁸ Finally, in connection with use of the frequencies under Call Signs KA87195 and KCQ251, we remind Nebraska of the Commission's VHF/UHF narrowbanding policy, which requires private land mobile radio (PLMR) licensees in the 150-174 MHz and 421-470 MHz (VHF/UHF) bands to operate using channel bandwidth of no more than 12.5 kHz, or equivalent efficiency, by January 1, 2013.¹⁹

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 November 15, 2012 by the State of Nebraska IS DENIED.

This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

Sincerely,

Michael J. Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

¹⁵ *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).

¹⁶ *Id.* at 7301 ¶ 20.

¹⁷ *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).

¹⁸ *See* 47 C.F.R. §1.931.

¹⁹ *See, e.g.*, Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology Provide Guidance on Compliance With Narrowband Requirement Now in Effect for Private Land Mobile Radio Operations in the 150-174 MHz and 421-470 MHz Bands, *Public Notice*, 28 FCC Rcd 2296 (WTB/PSHSB/OET 2013).