



Federal Communications Commission
Washington, D.C. 20554

April 29, 2013

DA 13-958

Ms. Holly Phelps
City of Lewistown Public Works
308 4th Ave. S.
Lewistown, MT 59457

Re: City of Lewistown, Montana Request for Reinstatement of Call Sign KNFW729

Dear Ms. Phelps:

On December 27, 2012, on behalf of the City of Lewistown, Montana (Lewistown), you filed a waiver request¹ to permit Lewistown to file an untimely renewal application for Conventional Public Safety Station KNFW729. The KNFW729 license expired on June 23, 2012. Because Lewistown filed its renewal application after the expiration of its license renewal period, Lewistown requests a waiver of Section 1.949(a) of the Commission's Rules² to permit acceptance of its late-filed application and the renewal of its expired license.³ For the reasons stated below, we deny Lewistown's waiver request.

On April 2, 2012, the Commission sent a license renewal reminder notice to Lewistown.⁴ Section 1.949(a) of the Commission's Rules requires licensees to file renewal applications no later than the license expiration date.⁵ On June 23, 2012, the license for Station KNFW729 expired automatically. The Commission cancelled the license on August 25, 2012. Approximately six months after the license expiration date -- on December 27, 2012 -- Lewistown filed an application to renew and modify its expired license. Lewistown requests a waiver of Section 1.949(a) of the Commission's Rules to permit the acceptance of its late-filed renewal/modification application.⁶

In its waiver request, Lewistown states that "on 6/22/2012 [it] filed what [it] thought was a renewal application."⁷ Lewistown adds that it called "your tech support and was helped."⁸ Lewistown states that it "actually filled out an administrative update and unfortunately this license [KNFW729] expired."⁹ Our licensing records indicate that, on June 22, 2012, Lewistown only updated its licensee contact phone number and email address; it did not file a renewal application.¹⁰

¹ Waiver Request, (filed Feb. 12, 2013) (Waiver Request) attached to File No. 0005575382 (filed Dec. 27, 2012 amended Feb. 4, 2013).

² 47 C.F.R. § 1.949(a).

³ Waiver Request.

⁴ Renewal Reminder Notice, Ref. No. 0005346941 Apr. 2, 2012).

⁵ 47 C.F.R. § 1.949(a).

⁶ Waiver Request.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See FCC File No. 0005275138 (filed Jun. 22, 2012).

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.¹¹ Licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹²

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.¹³ 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.¹⁴ 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.¹⁵

Taking into consideration the Commission's above policy regarding license reinstatement procedures, we now consider the merits of Lewistown's Waiver Request. 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.¹⁶

Based on the facts before us, we find that Lewistown has satisfied neither prong of the Commission's general waiver standard. Specifically, Lewistown 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 Lewistown in the instant case. Nor does Lewistown 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.¹⁷ In reaching this decision, we note that each licensee is solely responsible for knowing the terms of its license and submitting a renewal application to the Commission in a timely manner.¹⁸ Lewistown's bare statement that it called "your tech

¹¹ 47 C.F.R. § 1.949(a).

¹² 47 C.F.R. § 1.955(a)(1).

¹³ 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*).

¹⁴ *Id.* at 11486 ¶ 22.

¹⁵ *Id.* at 11485 ¶ 22.

¹⁶ 47 C.F.R. § 1.925(b)(3).

¹⁷ *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21.

¹⁸ *Id.*; 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) (*R&O*).

support and was helped” does not absolve it from not completing the renewal application form. Lewistown does not contend, and we do not believe, that “tech support” informed Lewistown that a license could be renewed simply by updating the licensee contact information.

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.¹⁹ Taking into account all the facts and circumstances of the instant matter, we therefore conclude that grant of Lewistown’s Waiver Requests is not warranted.²⁰ Should Lewistown desire to use its previously licensed frequencies it may file a new, properly coordinated application. Should Lewistown need to operate while its application is being prepared and coordinated, it may file a request for special temporary authority pursuant to Section 1.931 of the Commission’s rules.²¹ Finally, in connection with use of the frequencies under Call Signs KNFW729, we remind Lewistown of the Commission’s VHF/UHF narrowbanding policy, which requires 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, 2013.²²

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 December 27, 2012 by the City of Lewistown, Montana IS DENIED.

These actions are 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

¹⁹ *R&O*, 6 FCC Rcd at 7301 ¶ 20.

²⁰ *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).

²¹ *See* 47 C.F.R. §1.931.

²² *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).