

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

In the Matter of )
COMMONWEALTH OF PUERTO RICO ) FCC File No. 0007912651
Request for Waiver of Section 1.949 of the )
Commission's Rules )

ORDER

Adopted: September 22, 2017

Released: September 22, 2017

By the Acting Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On August 31, 2017, the Commonwealth of Puerto Rico (Puerto Rico) filed a request to accept its late-filed renewal application for its 700 MHz state license authorized under call sign WPTZ852. For the reasons set forth below, we grant Puerto Rico's request.

II. BACKGROUND

2. Puerto Rico holds a license permitting it to operate on state channels in the 700 MHz band under call sign WPTZ852. The state channels consist of ninety-six channel pairs (12.5 kHz bandwidth) from the public safety narrowband segment (769-775 MHz-799-805 MHz) of the 700 MHz band that are reserved for use by each state, territory, district or possession (state licensees) on a geographic-area basis. In order to ensure efficient use of the state channels, the Commission established a five-year interim and a ten-year final benchmark for state licensees to provide specified levels of "substantial service" within their statewide license areas.

3. The Commission explained that States can renew 700 MHz state licenses for additional ten-year periods. The Commission added that renewal will not be automatic, but state licensees will have a renewal expectancy subject to certain licensing and operational conditions, including satisfying the substantial service requirements. On September 20, 2016, we granted Puerto Rico's initial substantial

1 See Letter from Abner Gomez Cortes, Puerto Rico Emergency Management Authority to FCC (dated Aug. 30, 2017) (Waiver Request), attached to FCC File No. 0007912651 (Aug. 31, 2017). Although styled as a Petition for Reconsideration, Puerto Rico essentially seeks a waiver of Section 1.949 of the Commission's rules, 47 CFR § 1.949. Accordingly we treat the request as a waiver to permit the acceptance of Puerto Rico's late-filed renewal application.

2 47 CFR §§ 90.529 and 90.531(b)(5).

3 "Substantial service" is defined as the construction and operation of facilities on state channels which is "sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal." See 47 CFR § 90.529(c).

4 See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, Third Memorandum Opinion and Order and Third Report and Order, 15 FCC Rcd 19844, 19871 para. 61 (2000).

5 Id. at 19871 paras. 61-64.

service showing, after confirming that Puerto Rico, prior to June 13, 2014, deployed a 700 MHz state license land mobile radio system that supports interoperability communications among its public safety agencies and serves over one-third of its population and geographic territory.<sup>6</sup>

4. On February 20, 2017, the Commission issued Puerto Rico a renewal reminder notice for Station WPTZ852.<sup>7</sup> Puerto Rico failed to renew its license before May 14, 2017. The authorization for call sign WPTZ852 expired on May 14, 2017 and was cancelled on July 15, 2017.

5. On August 31, 2017 Puerto Rico submitted the above-captioned application and a request for waiver of Section 1.949 of the Commission's rules<sup>8</sup> seeking renewal of its license to operate Station WPTZ852.<sup>9</sup> Puerto Rico explains that the Puerto Rico Emergency Management Agency (PREMA) has a "new administration working with the reorganization of all the departments and agencies."<sup>10</sup> Puerto Rico notes that call sign WPTZ852 supports the State Interoperability System for state and local responders and that the operation of this system serves over 3 million citizens.<sup>11</sup> Puerto Rico adds that the renewal reminder letter "was never received by appropriate personnel to submit the license to the renewal process."<sup>12</sup>

### III. DISCUSSION

6. In 1999, the Commission adopted a policy regarding treatment of late-filed renewal applications in the wireless services.<sup>13</sup> 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 our 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.<sup>14</sup> Applicants who file renewal applications more than thirty days after the license expiration date may also request that the license be renewed *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.<sup>15</sup> In determining whether to grant a late-filed renewal application, we take into consideration 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.<sup>16</sup>

7. Taking into account all of the facts and circumstances, including Puerto Rico satisfying the Commission's initial substantial service requirement, we conclude that Puerto Rico's request should be granted. In this particular case, we conclude that dismissal of Puerto Rico's application would be

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<sup>6</sup> See *Puerto Rico, Commonwealth of*, Order, 31 FCC Rcd 10524 (PSHSB 2016).

<sup>7</sup> See Renewal Reminder Notice, FCC Reference No. 6232631 (dated Feb. 20, 2017).

<sup>8</sup> 47 CFR § 1.949.

<sup>9</sup> See Waiver Request at 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See *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 Development and Use of the Universal Licensing System in the Wireless Telecommunications Service*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476 (1999) (*ULS MO&O*).

<sup>14</sup> See *id.* at 11485 para. 22.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

unduly harsh and contrary to public interest. In particular, we believe that two of the specific factors set forth by the Commission – the potential consequences to the public if the licensee should terminate, and the performance record of the licensee – militate in favor of reinstating Puerto Rico’s licenses. Given the adverse impact to public safety that a disruption of emergency radio communications could create and Puerto Rico’s compliance with Commission’s substantial service rules applicable to state licenses, we believe that the late-filed renewal application for call sign WPTZ852 should be granted.

8. Notwithstanding our decision in this case, we reiterate that a licensee will not be afforded special consideration when it fails to file a timely renewal application simply because it engages in public safety activities.<sup>17</sup> The Commission also has stated that turnover in recordkeeping personnel, failure to check computer records, or simple forgetfulness are not valid excuses for failure to file a timely renewal application.<sup>18</sup> Furthermore, the failure to receive a renewal notice is not a unique circumstance that justifies a waiver.<sup>19</sup>

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 CFR § 1.925, that the waiver request submitted by the Commonwealth of Puerto Rico on August 31, 2017, IS GRANTED. We instruct staff to process the renewal application, FCC File number 0007912651, in accordance with this *Order*.

10. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission’s rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>17</sup> See *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, 6 FCC Rcd 7297, 7301 para. 20 (1991).

<sup>18</sup> See *ULS Reconsideration MO&O*, 14 FCC Rcd at 11485 and n.21.

<sup>19</sup> See *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 Development and Use of the Universal Licensing System in the Wireless Telecommunications Service*, Report and Order, 13 FCC Rcd 21027, 21073 para. 98 (1998) (“not receiving a renewal reminder notice does not excuse the licensee’s failure to seek a timely renewal”).