



Federal Communications Commission
Washington, D.C. 20554

November 7, 2012

DA 12-1787

Kenneth S. Vannan
CNG Communications, Inc.
7575 E. Redfield Rd. Suite 137
Scottsdale, AZ 85260

In re: CNG Communications, Inc.
Request for Renewal and Reinstatement
Call Sign WPUZ611
File No. 0005324287

Dear Mr. Vannan:

On July 25, 2012, CNG Communications, Inc. ("CNG") filed a waiver request¹ to file a late-filed application² for renewal of license of Common Carrier Fixed Point to Point Microwave Station WPUZ611, which expired on June 3, 2012. Because CNG filed its application more than thirty days after expiration, CNG requests as part of its application waiver of Section 1.949(a) of the Commission's Rules³ to grant renewal of its late-filed application.⁴ For the reasons stated below, we deny CNG's Waiver Request and dismiss its late-filed Renewal Application.

The license for Station WPUZ611 was granted on June 3, 2002, and expired on June 3, 2012.⁵ Our records indicate that a renewal reminder notice was sent to CNG on March 12, 2012.⁶ Section 1.949(a) of the Commission's Rules requires licensees to file renewal applications no later than the expiration dates of licenses.⁷ CNG failed to do so, not filing until July 25, 2012,⁸ and requesting that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of CNG's late-filed application.⁹

CNG states that that its renewal application was delayed because it inadvertently failed to file the renewal in a timely manner.¹⁰ In addition, it argues that granting a waiver would serve the public interest because its system provides E911 calls to its customers.¹¹

¹ Renewal Waiver, File No. 0005324287 (filed July 25, 2012) (Waiver Request).

² File No. 0005324287 (filed July 25, 2012) (Renewal Application).

³ 47 C.F.R. § 1.949(a).

⁴ Waiver Request.

⁵ File No. 0000856036 (granted June 3, 2002).

⁶ Renewal Reminder Notice, Ref. No. 5329221 (Mar. 12, 2012). The reminder notice was addressed to: Attn: Kenneth Vannan, CNG Communications, Inc., 7575 E. Redfield Rd. Suite 137, Scottsdale, AZ 85260.

⁷ Waiver Request.

⁸ File No. 0005324287 (filed July 25, 2012) (Renewal Application).

⁹ Waiver Request.

¹⁰ *Id.*

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.¹² 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.¹³ 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.¹⁴ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that CNG's Waiver Request should be denied.¹⁵

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.¹⁶ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹⁷ Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. 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.¹⁸

We do not believe that CNG has satisfied either waiver prong. An inadvertent failure to renew a license in a timely manner is not so unique and unusual in itself as to warrant a waiver of the Commission's Rules.¹⁹ Further, each licensee is solely responsible for knowing the terms of its license

¹¹ Waiver Request.

¹² 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*).

¹³ *Id.* at 11486 ¶ 22.

¹⁴ *Id.* at 11485 ¶ 22.

¹⁵ *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).

¹⁶ 47 C.F.R. § 1.949(a).

¹⁷ 47 C.F.R. § 1.955(a)(1).

¹⁸ 47 C.F.R. § 1.925(b)(3).

¹⁹ *See* Derek M. Fukunaga, Supervisor, Communications, Hawaiian Electric Company, Inc., *Letter*, 26 FCC Rcd 6712, 6714 (WTB BD 2011); Mr. Roger Given, Vice President, Transmission and Storage Operations, Columbia Gas Transmission Company, *Letter*, 24 FCC Rcd 11769, 11771 (WTB BD 2009); Fresno City and County Housing

and submitting a renewal application to the Commission in a timely manner.²⁰ CNG makes no showing that the underlying purpose of the rule would not be served or would be frustrated by application to CNG in the instant case.

Furthermore, while we note that the station in question provides E911 calls for its customers,²¹ the nature of those operations, by themselves, does not justify a waiver. If CNG wishes to obtain a new regular authorization for this station, it may file a new, properly coordinated application.²² If it needs to continue operating the facilities in the meantime, it can seek special temporary authority (STA) pursuant to Section 1.931 of the Commission's Rules.²³ In view of the foregoing, we find that grant of CNG's requested waiver is not in the public interest.

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 July 25, 2012 by CNG Communications, Inc. IS DENIED, and application File No. 0005324287 SHALL BE DISMISSED.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998, 11002 ¶ 11 (WTB PSPWD 2000) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

²⁰ *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).

²¹ Waiver Request.

²² See 47 C.F.R. § 101.103.

²³ See 47 C.F.R. § 1.931.