



Federal Communications Commission
Washington, D.C. 20554

DA 14-1912

December 31, 2014

Christopher R. Bjornson
Step toe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: Preferred Communication System, Inc. Application for Waiver and Reinstatement *Nunc Pro Tunc* for ULS File Nos. 0004614757-0004614832

Dear Mr. Bjornson:

This letter addresses the above-captioned Application for Waiver and Reinstatement *Nunc Pro Tunc* (Waiver Request), filed by Preferred Communication Systems, Inc. (Preferred) on February 15, 2011, seeking a waiver of the Commission's rules and reinstatement *nunc pro tunc* for 76 of its 800 MHz Specialized Mobile Radio (SMR) site-based licenses (Licenses).¹ For the reasons discussed below, we deny Preferred's request.

The Commission may grant 800 MHz SMR licenses for ten-year terms,² and licensees must file an application for renewal no sooner than 90 days prior to the expiration date and no later than the expiration date of the license for which the renewal is sought.³ Licenses automatically terminate upon the expiration date, unless a timely application for renewal has been filed.⁴

The Commission granted Preferred 76 800 MHz SMR site-based licenses between May 12, 1999, and June 14, 2010, and the licenses expired ten years after their respective grant dates. Prior to the licenses' expiration dates, Preferred filed applications for renewal of three of the Licenses on May 19, 2009,⁵ and for fifteen of the Licenses on June 17, 2009.⁶ Preferred did not file renewal applications for the other 58 Licenses prior to the license expiration date.

On June 9, 2009, and July 7, 2009, ULS generated dismissal letters for the May 19, 2009, and June 17, 2009 applications, respectively, returning the applications because "insufficient payment was received or no payment was received within the required time frame."⁷ The letters each stated that the subject application was in dismissal status without prejudice and informed Preferred that it must file a new application if it wished to still be licensed.⁸ Preferred did not file any new applications for renewal and all of the Licenses automatically terminated as of the license expiration date.

¹ See, e.g., ULS File No. 0004614757, Attachment, Request for Waiver (Feb. 15, 2011) (Waiver Request). Appendix A lists the 76 pending renewal applications for Preferred's 800 MHz SMR site-based licenses, with associated call signs and markets.

² 47 C.F.R. § 90.149.

³ *Id.* § 1.949(a).

⁴ *Id.* § 1.955(a)(1).

⁵ See, e.g., ULS File No. 0003845309, Application for Renewal (May 19, 2009).

⁶ See, e.g., ULS File No. 0003874299, Application for Renewal (June 17, 2009).

⁷ See, e.g., ULS File No. 0003874298, Application for Renewal, Automated Letter, Reference No. 4879029 (July 7, 2009).

⁸ See *id.*

In 2006, after receiving information that Preferred may not have properly disclosed information about the stock ownership and felony convictions regarding two of its consultants, Jay Bishop and Pendleton Waugh, the Enforcement Bureau (EB) initiated an investigation into Preferred, Mr. Bishop, and Mr. Waugh. On July 20, 2007, the Commission issued an Order to Show Cause, which commenced a hearing conducted by the Office of Administrative Law Judges (ALJ) of the Commission.⁹ On August 5, 2009, the ALJ released an order approving a settlement agreement,¹⁰ which Mr. Waugh and Preferred's shareholders appealed.¹¹ Pursuant to the Settlement Agreement, Preferred is required to relinquish 56 of its 77 site-based 800 MHz SMR licenses for "unconditional and immediate cancellation."¹²

On February 15, 2011, Preferred filed the Waiver Request for the Licenses, seeking reinstatement *nunc pro tunc* and renewal of the Licenses. Preferred states that all of the Licenses are associated with a pending administrative proceeding that should toll the Licenses' expirations dates. Further, Preferred states that most of the license terms expired "within the two month period coinciding with the time [Preferred] was actively negotiating with [EB]."¹³ Preferred argues that it is therefore in the public interest to grant the Waiver Request and reinstate the licenses until the ongoing proceeding is final.¹⁴

On April 11, 2014, the Commission's Office of General Counsel dismissed both pending appeals of the Settlement Agreement and terminated the proceeding.¹⁵

As specified in Section 1.925(b)(3) of the Commission's rules, the Commission may grant a waiver of its rules where "the underlying purpose of the rule(s) 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 in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative."¹⁶

Preferred has not demonstrated how a grant of the Waiver Request is in the public interest or that the underlying purpose of the rule would be frustrated by application in this case. Licensees are fully responsible for knowing the terms of their licenses and filing timely renewal applications.¹⁷ Preferred has not shown that the pendency of the EB proceeding constitutes "unique or unusual" circumstances warranting a waiver of this obligation. Preferred has not demonstrated how the proceeding prevented Preferred from timely completing its application for renewal of 18 of the Licenses or why it did not file the renewal applications for the other 58 Licenses until over a year past their expiration dates.

⁹ See Pendleton C. Waugh, Charles M. Austin, and Jay R. Bishop, *Order to Show Cause*, 22 FCC Rcd 13363 (2007).

¹⁰ See Joint Request for Approval of Settlement Agreement and Termination of Proceeding, filed August 5, 2009, by EB, Preferred, Preferred Acquisitions, Inc. (PAI), Austin, and Bishop. The settlement agreement is reprinted as an attachment to Pendleton C. Waugh, *Order*, FCC 09M-51 (ALJ Aug. 12, 2009) ("Settlement Agreement").

¹¹ See Appeal from Presiding Officer's Final Ruling, filed Oct. 26, 2009, by Waugh; Appeal, by Michael D. Judy, filed Oct. 1, 2009.

¹² See Settlement Agreement at ¶ 27.

¹³ Waiver Request at 1.

¹⁴ *Id.* at 3-4.

¹⁵ See Settlement Agreement; Pendleton C. Waugh, Charles M. Austin, and Jay R. Bishop, *Memorandum Opinion and Order*, EB Docket No. 07-147, 29 FCC Rcd 3787 (2014).

¹⁶ See 47 C.F.R. § 1.925(b)(3).

¹⁷ 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*, 14 FCC Rcd 11476, 11485-86 ¶ 22 (1999).

Preferred argues that, in other contexts, the Commission is specifically prohibited from taking action to terminate or cancel a license authorization, citing to Section 307(c)(3) of the Communications Act.¹⁸ However, Preferred's reliance on this section misguided. This provision is intended to ensure that a license is not cancelled while the Commission is reviewing a renewal application itself,¹⁹ not to serve as a mechanism for a licensee to circumvent the procedural requirements associated with maintaining a valid license, such as timely filing an application for renewal.

Also, Preferred states the Commission has acknowledged the preclusive impact of administrative and judicial proceedings on Commission deadlines.²⁰ Preferred cites to an order that modified the Commission's broadcast application and licensing procedures, which states the Commission will toll a construction deadline when the construction permit is the subject of administrative or judicial review.²¹ However, the circumstances in this case are distinguishable. In this case, Preferred seeks to retroactively toll its renewal, not construction, deadlines, and, further, the renewal deadlines themselves were not the subject of the administrative review at issue.

For the reasons stated above, we deny the Waiver Request and dismiss all associated renewal applications.²²

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁸ See 47 U.S.C. 307(c)(3). Section 307 of the Communications Act states that: Pending any administrative or judicial hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405 or section 402 of this title, the Commission shall continue such license in effect. *See id.*

¹⁹ See *Linfield College, Forfeiture Order*, 26 FCC Rcd. 7949 ¶ 8 (2011). Linfield lawfully operated its station under an expired license while the Commission reviewed its pending renewal application.

²⁰ See Waiver Request at 3-4.

²¹ See 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes, *Report and Order*, 13 FCC Rcd 23056 ¶ 84 (1998).

²² As a result of today's action, the Licenses, including the 56 licenses Preferred agreed to relinquish pursuant to the Settlement Agreement, will automatically terminate. The ULS application file numbers are listed in Appendix A.

APPENDIX A

Preferred Communication Systems, Inc. 800 MHz SMR site-based RO applications and call signs

File Number	Call Sign
0004614796	WPFT968
0004614757	WPDU206
0004614758	WPDU218
0004614759	WPDU263
0004614761	WPDU279
0004614762	WPEF461
0004614763	WPEY418
0004614764	WPEY419
0004614765	WPEY421
0004614766	WPEY422
0004614767	WPEY425
0004614768	WPEY427
0004614769	WPEY429
0004614771	WPEY445
0004614773	WPEY450
0004614774	WPEY451
0004614775	WPEZ750
0004614776	WPFA269
0004614777	WPFA273
0004614778	WPFA278
0004614779	WPF607
0004614780	WPF808
0004614781	WPF809
0004614782	WPF810
0004614783	WPF811
0004614786	WPF600
0004614787	WPF636
0004614788	WPF725
0004614789	WPFQ293
0004614790	WPF846
0004614791	WPFT416
0004614792	WPFT334
0004614793	WPFT335
0004614794	WPFT357
0004614795	WPFT369
0004614798	WPFZ805
0004614799	WPFZ806
0004614801	WPF589
0004614802	WPDU210
0004614803	WPEY430
0004614804	WPFA265
0004614805	WPDU222
0004614806	WPEY424
0004614807	WPFA268
0004614808	WPF812

0004614810	WPGD852
0004614811	WPDU287
0004614812	WPEY447
0004614813	WPFN354
0004614814	WPFV884
0004614816	WPFA266
0004614817	WPFM597
0004614818	WPGD855
0004614819	WPDU275
0004614820	WPEY423
0004614822	WPFA280
0004614823	WPF934
0004614824	WPFS856
0004614825	WPFV692
0004614826	WPEU434
0004614827	WPEX345
0004614828	WPEY431
0004614829	WPFA270
0004614830	WPFN600
0004614831	WPFT356
0004614832	WPFZ808
0004614760	WPDU266
0004614772	WPEY446
0004614784	WPF972
0004614797	WPFX997
0004614809	WPFT417
0004614821	WPEY448
0004614770	WPEY432
0004614785	WPF9598
0004614800	WPFZ807
0004614815	WPDU271