

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

In the Matter of Application of	)	
	)	
CITY OF PEARL	)	FCC File No. 0000852377
	)	
For Renewal of Public Safety Pool	)	
Conventional Private Land Mobile Radio	)	
Station KWH613, Pearl, Mississippi	)	

**ORDER ON RECONSIDERATION**

**Adopted: April 22, 2003**

**Released: April 24, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a petition for reconsideration (Petition) submitted by City of Pearl (Pearl) on November 12, 2002.<sup>1</sup> Pearl seeks reconsideration of an October 9, 2002, action by the Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Division) denying its request for waiver and dismissing the above-captioned application for renewal of Private Land Mobile Radio Station KWH613, Pearl, Mississippi.<sup>2</sup> For the reasons stated below, we dismiss the Petition as untimely. For administrative efficiency, we nonetheless give *de novo* review to its request for waiver to submit a late-filed renewal application using all of the information currently before us in the record of this proceeding.<sup>3</sup> Based on such review, we conclude that Pearl's request for waiver should be granted.

2. *Background.* On November 13, 1996, the Commission granted Pearl's renewal application to operate Station KWH613, with an expiration date of November 13, 2001. On August 20, 2001, a renewal reminder was sent to Pearl.<sup>4</sup> On November 13, 2001, Pearl's license for Station KWH613 expired by its own terms due to the absence of a timely filed renewal application. On April 12, 2002, Pearl filed the above-captioned application to renew its license.<sup>5</sup> With the application, Pearl submitted a request for waiver of Section 1.949 of the Commission's Rules<sup>6</sup> to allow submission of its

<sup>1</sup> See Letter dated November 6, 2002 from Bill Slade, Chief of Police, City of Pearl to Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 1270 Fairfield Road, Gettysburg, PA 17325-7245 (Petition).

<sup>2</sup> See Letter dated October 9, 2002 from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Chief Bill Slade, City of Pearl Police Department (*Denial Letter*).

<sup>3</sup> See Goosetown Enterprises, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 12792, 12794-95 ¶ 7 (2001) (*Goosetown*). In this regard we note that Pearl could file another waiver request to submit a late-filed renewal and renewal application.

<sup>4</sup> Renewal Reminder Notice, FCC Reference No. 1039346, sent to City of Pearl, Attn: Police Department, 2422 Old Brandon Road, Pearl, MS 39208.

<sup>5</sup> See Application FCC File number 0000825377 filed on Apr. 12, 2002; Pearl's Request for Waiver (filed Apr. 12, 2002) (Waiver Request).

<sup>6</sup> 47 C.F.R. § 1.949.

renewal application after the date of license expiration. In the waiver request, Pearl stated, “Due to the Anthrax scare, we were unable to get this application to you in a timely manner.”<sup>7</sup>

3. By letter dated October 9, 2002, the Division denied Pearl’s waiver request. The *Denial Letter* stated that Pearl had not demonstrated that a waiver of Section 1.949 was warranted because it did not explain how the 2001 anthrax scare prevented it from filing a renewal application until April 2002.<sup>8</sup> The *Denial Letter* also noted that although the Commission had experienced application processing delays due to quarantine procedures associated with the anthrax contamination during the October-November 2001, our records indicate no submission by Pearl during that timeframe.<sup>9</sup> Accordingly, the application was dismissed on October 10, 2002.

4. By letter to the Division dated November 6, 2002 and received November 12, 2002, Pearl requested reconsideration of the October 9, 2002 decision. The Petition for the first time provides information and evidence of a timely application received by the Commission on October 25, 2001. Our review confirms that an application was dismissed as defective on March 29, 2002 because it did not contain a two-letter purpose code identifying the type of application.<sup>10</sup>

5. *Discussion.* Section 405 of the Communications Act, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner’s pleadings on reconsideration.<sup>11</sup> Section 405, as implemented by Section 1.106(f) of the Commission’s Rules, requires a petition for reconsideration to be filed within thirty days from the date of public notice the Commission’s action.<sup>12</sup> In addition, Section 1.106(i) of the Commission’s Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.<sup>13</sup>

6. In this case, the date of public notice of the denial of Pearl’s waiver request was October 9, 2002, the date appearing on the *Denial Letter*.<sup>14</sup> The deadline for filing petitions for reconsideration of that action was November 8, 2002. Thus, Pearl’s Petition, which was received at the Commission’s Gettysburg, Pennsylvania, office on November 12, 2002, was untimely. The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one

---

<sup>7</sup> Waiver Request at 1.

<sup>8</sup> Denial Letter at 2.

<sup>9</sup> *Id.*

<sup>10</sup> See FCC Reference No. KPB4857, Notice of Immediate Application Dismissal, sent Mar. 29, 2002. Because defective applications are not entered into the Universal Licensing System, our initial review did not reveal this submission, nor did Pearl’s April 9, 2002, waiver request provide sufficient information to suggest further investigation of a specific timeframe.

<sup>11</sup> 47 U.S.C. § 405.

<sup>12</sup> 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

<sup>13</sup> 47 C.F.R. § 1.106(i).

<sup>14</sup> See 47 C.F.R. § 1.4(b)(5).

day late.<sup>15</sup> Consequently, we conclude that the Petition for Reconsideration submitted by Pearl must be dismissed as untimely.

7. In addition, Section 1.106(i) of the Commission's Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.<sup>16</sup> The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's Rules.<sup>17</sup> Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.<sup>18</sup> A document is filed with the Commission upon its receipt at the location designated by the Commission.<sup>19</sup> Accordingly, the plain language of the Commission's Rules states that a petition for reconsideration submitted to the Commission's Gettysburg, Pennsylvania, office is not properly filed.<sup>20</sup> The petition was never filed with the Office of the Secretary. Therefore, we find that the petition was not timely filed in the proper location. Moreover, Pearl did not request a waiver to file its petition in Gettysburg, as opposed to filing it with the Office of the Secretary. Accordingly, even if Pearl's petition had been timely, the petition would be subject to dismissal as improperly filed.<sup>21</sup>

8. Nonetheless, we note that under 1.934(a) of our Rules, when an application has been dismissed with prejudice, an applicant may not file another application for the same purpose for a period of one year.<sup>22</sup> In this instance, the dismissal was without prejudice. Thus, Pearl could file another renewal application and waiver request setting forth the additional information presented in its Petition.<sup>23</sup> Accordingly, for reasons of administrative efficiency, we will consider the merits of Pearl's waiver request on our own motion.<sup>24</sup>

9. A request for rule waiver in the Wireless Telecommunications Services may be granted if it is shown that (a) the underlying purpose of the rule would not be served or would be frustrated by

---

<sup>15</sup> See, e.g., Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975).

<sup>16</sup> 47 C.F.R. § 1.106(i).

<sup>17</sup> 47 C.F.R. § 0.401; see also Petition for Reconsideration Requirements, *Public Notice*, 15 FCC Rcd 19473 (WTB 2000).

<sup>18</sup> *Id.*

<sup>19</sup> 47 C.F.R. § 1.7; First Auction of Interactive Video and Data Service (IVDS) Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 (1996); Complaints Regarding Cable Programming Services Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14 (CSB 1995).

<sup>20</sup> See, e.g., Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782 (WTB PSPWD 1999) (finding that a petition for reconsideration sent to the Commission's lock box at Mellon bank neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office), *aff'd*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000).

<sup>22</sup> 47 C.F.R. § 1.934(a).

<sup>23</sup> See Amendment of Section 1.937 of the Commission's Rules Concerning Repetitious or Conflicting Applications, *Notice of Proposed Rule Making*, WT Docket No. 02-57, 17 FCC Rcd 5628, 5630 ¶ 5 (2002).

<sup>24</sup> See *Goosetown*, 16 FCC Rcd at 12794-95 ¶ 7 (2001).

application to the instant case, and that a grant of the requested waiver would be in the public interest; or (b) 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 application has no reasonable alternative.<sup>25</sup> It is now clear that the processing delay was due the Commission's quarantine procedures in place at the time Pearl filed its first renewal application in October 2001. But for this delay in returning the defective application, Pearl would have had the opportunity to file a proper application to prior to November 13, 2001, the scheduled date of license expiration. Accordingly we grant Pearl a waiver to submit a late-filed renewal application.

10. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration submitted by the City of Pearl on November 12, 2002 IS DISMISSED.

11. IT IS FURTHER ORDERED that the City of Pearl is hereby directed to file a renewal application within thirty days of release of this *Order on Reconsideration*, and that the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch SHALL PROCESS such application in accordance with the waiver granted in this *Order on Reconsideration*.

12. This action is 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.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

---

<sup>25</sup> 47 C.F.R. § 1.925(b)(3).