



**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

DA 03-1198

April 23, 2003

Richard D. Rubino, Esq.
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, D.C. 20037

Re: Request for Waiver

Dear Mr. Rubino:

This letter responds to the request for waiver of Sections 1.949 and 90.20(d)(60) of the Commission's Rules¹ that you filed on November 15, 2002² on behalf of the St. Joseph's Medical Center of Stockton (St. Joseph's) for leave to file a late application to renew the license for Conventional Public Safety Station KWE378, Stockton, California. For the reasons set forth below, we grant the waiver request in part and deny it in part.

Background. On April 29, 1997, the Commission granted St. Joseph's renewal application to operate Station KWE378, with an expiration date of May 7, 2002. On June 30, 1999, the Wireless Telecommunications Bureau's Public Safety and Private Wireless Division (Division) granted St. Joseph's a permanent waiver of Section 90.20(d)(60) of the Commission's Rules to permit the continued use of the frequency 453.075 MHz for internal hospital paging purposes.³ On February 11, 2002, the

¹ 47 C.F.R. §§ 1.949, 90.20(d)(60).

² See Petition for Leave to File Late Filed License Renewal Applications or, in the Alternative, New Facilities Application and Request for Waiver of Rule Section 1.949 and 90.20(d)(60) (filed Nov. 15, 2002) (Waiver Request).

³ Letter from Herbert Zeiler, Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Eugene Maliszewskyj, Director of Engineering & Licensing, Blooston, Mordkofsky, Jackson & Dickens (Jun. 30, 1999) (Permanent Waiver Letter). When the Commission established the Emergency Medical Radio Service (EMRS) in January 1993, it adopted sunset provisions terminating primary paging operations on various frequencies, including frequency 453.075 MHz. See Amendment of Part 90 of the Commission's Rules to Create the Emergency Medical Radio Service, *Report and Order*, PR Docket No. 91-72, 8 FCC Rcd 1454 (1993); 47 C.F.R. § 90.20(d)(60). The *EMRS Report and Order*, however, provided a waiver process for grandfathering existing one-way medical paging operations on the above-referenced frequency. In order to continue using its paging operations, a licensee filing a waiver requests must demonstrate that either: (1) there is adequate spectrum for EMRS communications in its area of operation; or (2) the relocation of the paging system to another channel would not serve the public interest, or (3) relocation would cause significant disruption of public safety communications. See Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc.,

Commission sent a renewal reminder to St. Joseph's.⁴ On May 7, 2002, the authorization for Station KWE378 expired by its terms. On November 15, 2002, St. Joseph's filed a request for waiver of Section 1.949(a) of the Commission's Rules,⁵ which provides that an application for renewal of license must be filed no later than the date on which the authorization expires. On November 16, 2002, St. Joseph submitted an application for Special Temporary Authority (STA), which the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) returned on November 20, 2002, because the STA application did not indicate the number of pagers authorized to Station KWE378, and no renewal application had been filed with the Commission.⁶ On January 16, 2003, St. Joseph's filed an amended STA application.⁷ On January 17, 2003, St. Joseph filed a renewal application for Station KWE378.⁸ On January 17, 2003, the Branch granted the amended STA application under Call Sign WPWT730 with an expiration of July 17, 2003.

In its waiver request, St. Joseph's states that (a) due to personnel changes, the notification did not reach the parties responsible for ensuring timely preparation and filing of the application; (b) it has taken steps to create a tickler system to alert its personnel to Commission deadlines, and at least two employees are designed to receive the reminder to ensure that the filing is timely made; (c) the cost to change to another paging frequency, which would require St. Joseph's to replace its equipment, would be prohibitive to St. Joseph's, which is a non-profit entity; (d) although commercial dispatch and two-way services are available, because the hospital is engaged in protecting health and welfare of its patients, it must rely on an internal communications systems; and (e) in the event of a major disaster or terrorist strike, commercial communications are likely to be saturated with traffic beyond capacity and as a result there would be no certainty that St. Joseph's would be able to communicate with its personnel in the event of such an emergency.⁹ The Commission will grant a waiver if (a) it is in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case, or (b) in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁰

Waiver of Section 1.949. The Commission's policy regarding treatment of late-filed renewal applications 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

Order, 13 FCC Rcd 5294 (WTB 1998); *The New York Hospital – Cornell Medical Center*, *Order*, 13 FCC Rcd 5301 (WTB 1998).

⁴ See FCC Reference Number 1280660, Renewal Reminder Notice sent to St. Joseph's Medical Center of Stockton, Attn: Lawrence A. Philipp, 1800 N. California Street, Stockton, CA 95204-6088.

⁵ 47 C.F.R. § 1.949(a).

⁶ See FCC Reference Number 1632925, Return Letter sent Nov. 20, 2002.

⁷ See Application FCC File No. 0001093596 filed Jan. 16, 2003. Schedule H is amended to reflect that frequency 453.075 MHz operates 250 paging receivers. St. Joseph explains that it submitted an application to the frequency coordinator, International Municipal Signal Associations (ISMA), on or about November 18, 2002, but the filing of the amended STA application was delayed because IMSA requested a letter of support from the California EMS Authority, which was obtained January 15, 2003.

⁸ See Application FCC File No. 0001169658 (filed Jan. 17, 2003).

⁹ Waiver Request at 2-6.

¹⁰ 47 C.F.R. § 1.925(b)(3).

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.¹¹ 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.¹² 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.¹³ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that St. Joseph's request for waiver of Section 1.949 should be denied.

In this case, we conclude that St. Joseph's has not shown the existence of unusual circumstances that warrant a waiver of Section 1.949 in this instance. The Commission has rejected the view that turnover in recordkeeping personnel is a valid excuse for failure to timely renew a license.¹⁴ In addition, the Commission has determined that a licensee will not be afforded special consideration when the licensee fails to file a timely renewal application simply because they engage in public safety activities.¹⁵ Moreover, the possibility that denial of a waiver could cause the applicant to incur additional costs does not by itself merit a waiver of the Commission's Rules.¹⁶

Waiver of Section 90.20(d)(60). In the alternative to a waiver of Section 1.949 of the Commission's Rules, St. Joseph's requests a waiver of Section 90.20(d)(60) of the Commission's Rules. We note that we may assign frequency 453.075 MHz to public safety stations in limited situations.¹⁷ Specifically, Section 90.20(d)(60) permits paging licensees as of March 20, 1991, to continue to operate on a primary basis on frequency 453.075 MHz until January 14, 1998.¹⁸ Unless a paging licensee received a waiver, it could no longer operate on a primary basis on the frequency after January 14, 1998. As noted previously, St. Joseph's received a permanent waiver of Section 90.20(d)(60) which allows it to operate one-way medical paging operations on frequency 453.075 MHz.¹⁹ As such, St. Joseph's requests

¹¹ 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*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999).

¹² See *id.* at 11486 ¶ 22.

¹³ See *id.* at 11485 ¶ 22.

¹⁴ See *id.* at 11485 ¶ 21.

¹⁵ 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*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 ¶ 20 (1991).

¹⁶ See Country Cousins, Inc., *Order*, 14 FCC Rcd 19351, 19352-53 ¶ 6 (WTB PSPWD 1999).

¹⁷ 47 C.F.R. § 90.20(c).

¹⁸ 47 C.F.R. § 90.20(d)(60).

¹⁹ See note 3.

that we permit the filing, acceptance and processing of a new application to authorize the continued operation of its facilities for Station KWE378.²⁰

St. Joseph's hospital is a non-profit 294-bed acute care hospital serving Stockton, California.²¹ St. Joseph's Hospital offers a full range of medical services, which include a state-of-the-art Heart Center, neonatal intensive care, twenty-four hour emergency services, and a regional cancer center.²² St. Joseph operates an internal paging system on frequency 453.075 MHz²³ to enhance the medical services it provides. Specifically, the paging system supports critical emergency room and intensive care unit operations, both on site and throughout San Joaquin County.²⁴ Furthermore, the most critical use of the paging system involves "code" situations. These "code" situations involve alerting critical care personnel to respond immediately to medical emergencies.²⁵ Additionally, the Hospital uses the pagers to contact maintenance personnel quickly and efficiently when emergency equipment needs immediate repair.²⁶

The Division permanently grandfathered St. Joseph's one-way paging system on frequency 453.075 MHz on June 30, 1999 in view of the public safety interests involved.²⁷ We believe that the public interest will be served by granting St. Joseph another waiver of Section 90.20(d)(60) to allow St. Joseph's to file a new application to continue operation of its internal paging system. The loss of this frequency and relocation to another channel would cause significant disruption of public safety communications resulting in adverse effects upon the quality medical treatment and responsiveness of health care personnel in the Stockton, California area.²⁸ Accordingly, we will grant St. Joseph's another waiver of Section 90.20(d)(60).

Notwithstanding our decision in this particular case, we caution that a licensee must abide by the Commission's filing deadlines. All licensees are responsible for filing renewal applications and related petitions in a timely fashion. Thus, we admonish St. Joseph's to conform to this requirement in the future and to take any necessary steps to avoid future occurrences because the Commission does not routinely grant such waiver requests. In this connection, we note that St. Joseph's has indicated that it has implemented procedures to ensure timely filings in the future.²⁹

ACCORDINGLY, IT IS ORDERED that, 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 C.F.R. § 1.925, the waiver request filed by Saint Joseph's Medical Center of Stockton on November 15, 2002 in

²⁰ Waiver Request at 7.

²¹ *Id.* at 2-3.

²² *Id.* at 3.

²³ *Id.* at 3.

²⁴ *Id.* at 4.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See* Permanent Waiver Letter.

²⁸ *See* note 3 for waiver requirements.

²⁹ Waiver Request at 2.

connection with its application to renew its authorization for Station KWE378 IS GRANTED IN PART with respect to frequency 453.075 MHz, and DENIED in all other respects.

IT IS FURTHER ORDERED that the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch SHALL PROCESS application FCC File No. 0001169658 filed by Saint Joseph's Medical Center of Stockton on January 17, 2003 in accordance with the waiver granted herein and the other applicable provisions of Commission's Rules. 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

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