



Federal Communications Commission  
Washington, D.C. 20554

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James H. Barker, Esq.  
Latham & Watkins L.L.P.  
555 Eleventh Street, N.W.  
Suite 1000  
Washington D.C. 20004

DA 09-640

Re: Request for Waiver of Filing Deadline  
Cricket Licensee (Reaction), Inc.  
Application File No. 0003069892  
PCS Station KNLH652

Dear Mr. Barker,

On June 13, 2007, Leap Wireless International, Inc. (Leap) electronically filed through the Commission's Universal Licensing System (ULS), an application on behalf of its wholly-owned subsidiary, Cricket Licensee (Reaction), Inc. (Cricket Reaction),<sup>1</sup> to renew the above-captioned license for Station KNLH652, along with a request for waiver of the filing deadline.<sup>2</sup> On June 7, 2007, six days earlier, Leap had manually filed the application along with its waiver request.<sup>3</sup> The scheduled expiration date for the license and the deadline for filing the associated application for renewal was April 28, 2007. Cricket Reaction supplemented the information it provided in its waiver request on February 11, 2008.<sup>4</sup> For the following reasons, we grant Cricket Reaction's request for waiver of the filing deadline.

### Background

The license for Station KNLH652 authorizes Personal Communications Service (PCS) in the Owensboro, Kentucky market (BTA338) (Owensboro Market).<sup>5</sup> Troup EMC Communications, Inc. (Troup EMC) won the F-block license for Station KNLH652 in Auction No. 11, the Broadband PCS

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<sup>1</sup> Cricket Reaction is wholly owned by Cricket Communications, Inc., which is wholly owned by Leap Wireless International, Inc. FCC Form 602, File No.0003321305, filed by Cricket Licensee (Reaction), Inc. (Feb.11, 2008).

<sup>2</sup> FCC File No. 0003069892, filed by Cricket Licensee (Reaction), Inc. (June 13, 2007) (Att. "Waiver Request") (Waiver Request).

<sup>3</sup> FCC Form 601, filed by Cricket Licensee (Reaction), Inc. (June 7, 2007) (Att. "Waiver Request").

<sup>4</sup> FCC File No. 0003069892, filed by Cricket Licensee (Reaction), Inc. (Feb. 11, 2008) (Att. "Supplement to Waiver Request") (Supplement).

<sup>5</sup> Five counties make up the Owensboro Market. The Commission established, as a presumption, a baseline definition of "rural area" as those counties with a population density of 100 persons per square mile or less, based on the most recently available Census data. In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078 (2004). Under this baseline definition, four of the counties in the Owensboro Market would be presumed "rural." The population density per square mile based on 2000 Census data in each of the four counties is: Ohio County, 38.6; McLean County, 39.1; Hancock County, 44.4; Muhlenberg County, 67.1. Daviess County, the county in which the city of Owensboro is located, however, exceeds the population density required under Commission rules to be designated as a rural area, with a population density of 198 people per square mile based on 2000 Census data.

(DEF block) auction, as a small business entity under Section 24.720(b) of the Commission's rules.<sup>6</sup> The Commission granted Troup EMC the license for Station KNLH652 on April 28, 1997, with a ten-year license term ending April 28, 2007. According to ULS records, Troup EMC assigned the license to Banana Communications, LLC (Banana) on May 24, 2001,<sup>7</sup> and Banana assigned the license to Cricket Reauction on November 14, 2001.<sup>8</sup> On April 26, 2002, two days before the station's construction deadline of April 28, 2002, Cricket Reauction filed a notification that the station had been constructed.<sup>9</sup>

Fifteen of Leap's Broadband PCS licenses were scheduled to expire in April 2007. Two licenses were scheduled to expire on April 17, 2007, and the remaining 13, including the license for Station KNLH652, were scheduled to expire on April 28, 2007. Cricket Reauction held five of the 15 licenses and Cricket Licensee I, Inc. held 10 licenses. Over a two-day period, April 17 and April 18, 2007, Leap submitted applications for renewal through ULS for 14 of the 15 licenses. Leap submitted 12 applications on April 17, 2008. According to ULS records, Leap submitted two of the Cricket Reauction applications in the morning of April 17, 2007, and two applications in the afternoon. We find no evidence, however, that Leap submitted an application for Station KNLH652. Leap explains that it had "every intention to

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<sup>6</sup> 47 C.F.R. § 24.720(b). Section 24.720(b) defines "small business" as an "entity that, together with its *affiliates* and persons or entities that hold interest in such entity and their affiliates, has average annual *gross revenues* that are not more than \$40 million for the preceding three years." *Id.*

<sup>7</sup> FCC File No. 0000264535 (Nov. 17, 2000) (amended on March 5 and April 5, 2001). The assignment application was consented to on April 18, 2001, Wireless Telecommunications Bureau Grants Consent to Assign F Block Broadband PCS License, *Public Notice*, 16 FCC Rcd 8552 (WTB Apr. 18, 2001). Banana filed its consummation notification, FCC File No. 0000472723, on May 24, 2001, the same day the consummation was accepted, *Public Notice*, Report No. 911 at 4 (July 11, 2001).

<sup>8</sup> FCC File No. 0000513649 (July 9, 2001) (amended August 3, 2001). The assignment application was consented to on October 3, 2001, Wireless Telecommunications Bureau Grants Consent to Assign C and F Block Broadband PCS Licenses, *Public Notice*, 16 FCC Rcd 17641 (WTB Oct. 3, 2001). Cricket Reauction filed its consummation notification on November 14, 2001, FCC File No. 0000656969, and the consummation was accepted on April 2, 2002, *Public Notice*, Report No. 1150 at 4-5 (Apr. 10, 2002).

<sup>9</sup> FCC File No. 0000866163, filed by Cricket Licensee (Reauction), Inc. (Apr. 26, 2002). On April 13, 2003, Leap and certain of its subsidiaries, including Cricket Reauction, filed voluntary petitions for protection under Chapter 11 of the United States Bankruptcy Code in the Southern District of California, in San Diego, California (Bankruptcy Court). Pursuant to those petitions, on April 28, 2003, Cricket Reauction filed an application for involuntary assignment of its licenses, including the license for Station KNLH652, to Cricket Licensee (Reauction), Inc. Debtor-in-Possession (Cricket Reauction DIP). FCC File No. 0001288793 (Apr. 28, 2003). The assignment application was consented to on July 18, 2003, *Public Notice*, Report No. 1564 at 6 (July 23, 2003). Cricket Reauction DIP filed its consummation notification on November 21, 2003, FCC File No. 0001523565, and the consummation was accepted on November 25, 2003, *Public Notice*, Report No. 1674 at 2 (Nov. 26, 2003). Once the Bankruptcy Court approved Leap's reorganization plan, Cricket Reauction DIP, among other subsidiaries, filed an application seeking Commission consent to the Bankruptcy Court-approved transfers of control to assign its licenses back to Cricket Reauction. FCC File No. 0001527331 (Dec. 1, 2003) (amended five times with the last date of amendment, August 2, 2004). The Wireless Telecommunications Bureau consented to several Leap subsidiary assignment applications on August 5, 2004, including the application filed by Cricket Reauction. In the Matter of Leap Wireless International, Inc. and Its Subsidiaries, Debtors-In-Possession, and Leap Wireless International, Inc. and Its Subsidiaries Applications to Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act, *Memorandum Opinion and Order*, 19 FCC Rcd 14909 (WTB 2004). The Bureau further determined that Leap was no longer eligible for Entrepreneur or Designated Entity status. *Id.* Cricket Reauction filed a consummation notification for Station KNLH652 on August 31, 2004, FCC File No. 0001858419, and the consummation was accepted on October 23, 2004, *Public Notice*, Report No. 1975 at 2 (Oct. 27, 2004).

renew each of these licenses in a timely manner,” that it had “prepared Form 601 PCS renewal applications for the licenses on the Commission’s Universal Licensing System (“ULS”) database well in advance of the renewal deadline,” and that “[t]he ULS generated applications for each of these licenses.”<sup>10</sup> Leap further provides a printout of an application generated in ULS for Station KNLH652 that is dated March 7, 2007.<sup>11</sup>

Leap submitted eight applications on behalf of Cricket Licensee I, Inc. also in the afternoon of April 17, 2007. The following shows the timeline for Leap’s 12 filings on April 17, 2007:

LICENSEE	STATION	FILE NO.	TIME	MARKET
Cricket Reauction	KNLH357	0002995723	11:39 A.M.	Ft. Collins-Loveland CO (BTA149)
Cricket Reauction	KNLH358	0002995725	11:40 A.M.	Greeley CO (BTA172)
Cricket Reauction	KNLF920	0002996187	3:43 P.M.	Utica-Roma NY (BTA453)
Cricket Reauction	KNLG697	0002996189	3:44 P.M.	Evansville IN (BTA135)
Cricket Licensee I	KNLF882	0002996198	3:53 P.M.	Charlotte-Gastonia NC (BTA074)
Cricket Licensee I	KNLG213	0002996216	4:09 P.M.	Denver CO (BTA110)
Cricket Licensee I	KNLG279	0002996219	4:10 P.M.	Greensboro-Winston-Salem-High Point NC (BTA174)
Cricket Licensee I	KNLG280	0002996230	4:18 P.M.	Hickory-Lenoir-Morgantown NC (BTA189)
Cricket Licensee I	KNLG667	0002996354	4:46 P.M.	Lansing MI (BTA241)
Cricket Licensee I	KNLG669	0002996355	4:47 P.M.	Muskegon MI (BTA310)
Cricket Licensee I	KNLG670	0002296356	4:48 P.M.	Saginaw-Bay City MI (BTA390)
Cricket Licensee I	KNLG684	0002296357	4:49 P.M.	Omaha NE (BTA332)

Leap filed two more applications on behalf of Cricket Licensee I, Inc. on the morning of April 18, 2007, as follows:

LICENSEE	STATION	FILE NO.	TIME	MARKET
Cricket Licensee I	KNLG741	0002996854	10:31 A.M.	Lakeland-Winter Haven FL (BTA239)
Cricket Licensee I	KNLH427	0002996856	10:32 A.M.	Pittsburgh PA (BTA332)

On June 5, 2007, the day it realized that an application had not been accepted for filing for Station KNLH652, Leap contacted the Mobility Division (Division) about the “missing” application. Leap then manually filed an application for renewal along with its waiver request on June 7, 2007, through the Secretary’s Office and informed the Division about the filing. The Division explained to Leap that it

<sup>10</sup> Supplement at 2.

<sup>11</sup> Supplement at 2, Att. 1.

must submit its renewal application and waiver request electronically through ULS.<sup>12</sup> Leap did so on June 13, 2007. After reviewing the waiver request, the Division asked Leap to provide any additional information it had regarding the application for Station KNLH652. Leap supplemented its request for waiver on February 11, 2008. No competing applications were filed against the renewal application, and no oppositions were filed against the application or waiver request.

### Discussion

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought, and no sooner than 90 days prior to expiration.<sup>13</sup> Further, licenses automatically terminate upon the expiration date, unless an application for renewal is filed in a timely manner.<sup>14</sup> The Commission has acknowledged, however, that there may be special circumstances when a renewal filing is inadvertently missed and that the subsequent denial of the renewal application and termination of the license would be too harsh a result in proportion to the nature of the violation.<sup>15</sup> As a result, renewal applications filed no later than 30 days after the license expiration date will be granted as long as the application includes a waiver request and is otherwise sufficient under Commission rules.<sup>16</sup> In cases where the renewal application is filed more than 30 days after the license expiration date, the waiver request is subject to stricter review and will not be routinely granted. Our treatment of late-filed renewal applications takes into consideration the complete facts and circumstances involved, including the length in delay of filing, the licensee's performance record, the reasons for the failure to timely file, and the potential consequences to the public if the license were to terminate.<sup>17</sup> After reviewing all facts and circumstances concerning the late filing of the renewal application, we may initiate enforcement action against the licensee.<sup>18</sup> The standard for granting a waiver of the Commission's rules is whether the applicant demonstrates that: (1) the underlying purpose of the rule 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 (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.<sup>19</sup>

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<sup>12</sup> See 47 C.F.R. § 1.913(b) (providing that FCC Form 601, among others, must be filed electronically through ULS, except as provided in Section 1.913(d)).

<sup>13</sup> *Id.* § 1.949.

<sup>14</sup> *Id.* § 1.955(a)(1).

<sup>15</sup> Waiver Requests Required for Late-Filed Renewal Applications in Most Wireless Services, *Public Notice*, 18 FCC Rcd 16703, 16703-04 (WTB 2003) (Waiver Request Public Notice) (citing In the Matter of 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 the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services; Amendment of the Amateur Service Rules to Authorize Visiting Foreign Amateur Operators to Operate Stations in the United States; Amendment of Part 95 of the Commission's Rules to Allow Organizational Licensing in the GMRS, WT Docket No. 98-20, WT Docket No. 96-188, RM-8677, RM-9107, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476, 11485 ¶ 22 (1998) (ULS MO&O)).

<sup>16</sup> ULS MO&O, 14 FCC Rcd at 11485 ¶ 22. When a renewal application is submitted after the license expiration date, including those applications filed within 30 days after the expiration date, the applicant must submit a waiver request with the application. Waiver Request Public Notice, 18 FCC Rcd at 16703.

<sup>17</sup> ULS MO&O, 14 FCC Rcd at 11485 ¶ 22.

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

<sup>19</sup> 47 C.F.R. § 1.925(b)(3).

Upon reviewing the facts and circumstances in this case, we believe that grant of Leap's request for waiver of the deadline for filing a renewal application for Station KNLH652 is warranted. As an initial matter, Leap contends that it generated an application for renewal of the license for Station KNLH652 in ULS and believed it was submitted over the two-day period of April 17 and 18, but that the application was ultimately not accepted for filing.<sup>20</sup> To support its claim, Leap offers the declaration of Douglas A. Svor, a paralegal employed by Latham & Watkins LLP.<sup>21</sup> Mr. Svor states in his declaration that in April 2007, he prepared the 13 renewal applications that were scheduled to expire on April 28, 2007, and "[o]nce authorized to file the applications, on April 17<sup>th</sup> and 18<sup>th</sup>, 2007, I submitted the applications for the Commission using the ULS."<sup>22</sup> Mr. Svor further states, under penalty of perjury, that "[w]hen I finished, I believed that I had successfully submitted all of these applications."<sup>23</sup>

Once an application is started in ULS, the system automatically saves the unsubmitted application for a period of 30 days.<sup>24</sup> If, at the end of the 30-day period, the application is not submitted, the application is automatically purged from ULS. If a user saves an application, a message appears that states, "[p]lease be advised, you have 30 days to complete your saved application after which time it will be removed from the system."<sup>25</sup> In addition, ULS database records can be reviewed to determine whether a user saved an application at a particular time. The database can also show whether the user submitted or deleted an application, or whether the application was automatically purged at the end of the 30-day period. We have reviewed the ULS database to determine the status of any applications prepared on behalf of Cricket Reaution and Station KNLH652. The database records confirm that an application for renewal for Station KNLH652 was saved on March 7, 2007, but we find no evidence that an application was ever submitted for the station. We also find no evidence that ULS failed to accept an application for filing. The application dated March 7, 2007, however, would have remained in ULS until April 5, 2007, which coincides with Mr. Svor's statement that he had prepared an application for Station KNLH652 in April 2007.

Leap further contends that the Commission has recognized that good-faith efforts to renew a license prior to its expiration weigh in favor of granting a request for waiver of the filing deadline.<sup>26</sup> We agree Leap has demonstrated that it intended to retain the license for Station KNLH652 and attempted in good faith to comply with Commission rules. In particular, the printout of the application dated March 7, 2007, shows that Leap attempted in good faith to file a renewal application for Station KNLH652 in a timely manner. In *San Bernard Electric Cooperative*, the licensee's request for waiver of the filing deadline for renewal applications was granted on reconsideration.<sup>27</sup> The licensee filed its initial renewal

<sup>20</sup> Waiver Request at 1-2; Supplement at 2.

<sup>21</sup> FCC File No. 0003069892, filed by Cricket Licensee (Reaution), Inc. (June 13, 2007) (Att. A: Declaration of Douglas A. Svor).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Once an applicant selects an application purpose and answers at least one question, the application is saved in ULS even if the applicant closes its browser or its computer "crashes."

<sup>25</sup> Day one of the 30-day period, for purposes of saving applications in ULS, is the day on which the application is saved.

<sup>26</sup> Supplement at 3-5.

<sup>27</sup> In the Matter of Application of San Bernard Electric Cooperative, Inc. and Request for Waiver to Operate Other Industrial/Land Transportation Pool Station WNSZ920, Bellville, Texas, *Order on Reconsideration*, 17 FCC Rcd 16111 (PSPWD 2002).

application 18 days after the license expiration date, believing it had also submitted a credit card payment for the filing fee. The payment, however, was not received.<sup>28</sup> In attempting to resolve the payment issue, San Bernard made other filing errors and ultimately re-submitted its last application 91 days after the filing deadline along with a request for waiver of that deadline.<sup>29</sup> The waiver request was denied and the late-filed application was dismissed because San Bernard did not provide any evidence that it had attempted to make the fee payment electronically by credit card in conjunction with its initial renewal application.<sup>30</sup> Upon reconsideration, the licensee provided a printout of a ULS screen indicating that the fee associated with its initial renewal application had been paid. San Bernard also submitted information from the frequency coordinator indicating that ULS at one time had a technical problem that resulted in a screen printing that an applicant had paid its filing fee, when in fact the filing fee had not been received.<sup>31</sup>

In granting the waiver request, the former Public Safety and Private Wireless Division (PSPWD) found that the printout corroborated San Bernard's contention that it believed it had paid a fee when it filed its first renewal application, even though the payment had not been received. PSPWD found that San Bernard had presented an explanation for its failure to renew its license earlier, agreeing that the payment defect relating to San Bernard's first renewal application was a consequence of a technical problem in ULS beyond San Bernard's control.<sup>32</sup> While Leap has not shown that a technical problem in ULS resulted in the filing of the renewal application for Station KNLH652 in an untimely manner, the printout of the renewal application from ULS for Station KNLH652 dated March 7, 2007, is evidence that supports Leap's claim that it fully intended to file a renewal application before expiration of the Station's license. The fact that a renewal application for Station KNLH652 existed in ULS during the month in which Leap filed renewal applications for its other PCS licenses, along with Mr. Svor's sworn statement that he believed he had filed the application for Station KNLH652 before the license expiration date, explains the circumstances under which Leap failed to submit the renewal application on a timely basis.

Moreover, requests for waiver of the filing deadline for renewal applications have been granted repeatedly where filings made prior to the expiration date were rejected as defective. In *City of Dardanelle Fire Department*, Dardanelle filed its renewal application four times, three times prior to the expiration date and one time after the expiration date, along with a request for waiver of the filing deadline.<sup>33</sup> PSPWD granted the waiver request noting that Dardanelle's application was untimely only

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<sup>28</sup> *Id.* at 16112 ¶ 3.

<sup>29</sup> *Id.* at 16111-12 ¶ 3. San Bernard's license for Station WNSZ920 expired on April 23, 2001. On May 11, 2001, within 30 days of the expiration date, San Bernard filed a renewal application electronically through ULS and submitted a credit card payment for the application filing fee. Because it was unclear whether the credit card payment had been processed, San Bernard contacted Commission staff on May 21, 2001, and was advised to send a payment by check. San Bernard submitted a check to pay the filing fee, with a cover letter, but did not include an FCC Form 159 (Remittance Advice Form). On May 30, 2001, PSPWD returned the cover letter and check advising San Bernard that the fee and Form 159 must be received within 10 days of the electronic filing. PSPWD further dismissed the application and instructed San Bernard to file its application again. On July 10, 2001, San Bernard filed a new application and on July 23, 2001, San Bernard amended its application to include a request for waiver of the filing deadline. *Id.*

<sup>30</sup> *Id.* at 16112 ¶ 4.

<sup>31</sup> *Id.* at 16113 ¶ 6.

<sup>32</sup> *Id.* at 16113 ¶ 7.

<sup>33</sup> *City of Dardanelle Fire Department Application to Renew License for Station WNHQ335, Dardanelle, Arkansas, Order*, 17 FCC Rcd 10901 (PSPWD 2002) (City of Dardanelle).

because prior good-faith efforts to renew its license were defective.<sup>34</sup> In particular, Dardanelle's first application was dismissed as prematurely filed. The second application was dismissed because it did not include the licensee's Taxpayer Identification Number, and the third filing was rejected because Dardanelle did not sign the application.<sup>35</sup> PSPWD found that the facts of the case reflected a good-faith effort on Dardanelle's behalf to retain the license for Station WNHQ335.<sup>36</sup> Similarly, PSPWD granted the request for waiver of the filing deadline for renewal applications in *KNTV License, Inc.*, in significant part, because the licensee filed its first set of applications to renew two Private Operational Fixed Microwave Service licenses nearly two weeks prior to their scheduled expiration dates, "clearly demonstrat[ing] its intent to remain authorized to operate the subject stations in compliance with the Commission's Rules."<sup>37</sup> Finally, in granting the request for waiver of the filing deadline for renewal applications on reconsideration in *Kent H. Sager*, the former Commercial Wireless Division (CWD) noted that the licensee's diligent efforts to file a timely renewal application four days prior to the license expiration date and promptly resubmitting its application to correct any noted errors did not warrant a result as severe as license termination.<sup>38</sup>

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<sup>34</sup> *Id.* at 10902 ¶ 4.

<sup>35</sup> The expiration date on the license for Station WNHQ335, a private land mobile radio service station used by the Dardanelle Fire Department, was November 25, 2001. On August 20, 2001, Dardanelle filed a renewal application, which was dismissed because the filing date was more than the 90 days prior to the expiration date. On September 4, 2001, Dardanelle was sent a renewal notice, after which it filed its second application. That application was returned in October 2001, because it contained an incorrect Taxpayer Identification Number. On November 19, 2001, Dardanelle filed its application a third time, but failed to sign the form. PSPWD's Licensing and Technical Analysis Branch dismissed the application on January 2, 2002. On January 23, 2002, Dardanelle filed its application a fourth time along with a request for waiver of the filing deadline. *Id.* at 10901 ¶ 2.

<sup>36</sup> *Id.* at 10902 ¶ 4.

<sup>37</sup> In the Matter of Applications of KNTV License, Inc. For Renewal of Private Operational Fixed Microwave Service Stations WNTI263 and WNTI264, San Jose, California, *Order*, 16 FCC Rcd 20440, 20442 ¶ 7 (PSPWD 2001). The expiration date on the licenses for Stations WNTI263 and WNTI264 was March 5, 2001. KNTV filed renewal applications on February 20, 2001, approximately two weeks before the expiration date, but submitted the filing fee to the wrong lockbox. The applications were dismissed on March 13, 2001. *Id.* at 20440-41 ¶ 2. After contacting Commission staff to find out why its applications were dismissed, KNTV filed a second set of applications on March 22, 2001, along with a single FCC Form 159, and two checks to the correct lockbox. This set of applications was dismissed on April 10, 2001, because both checks were submitted along with only one form. *Id.* at 20441 ¶ 3. After contacting the Call Center to find out why its applications were dismissed again, the licensee filed a third set of applications on May 4, 2001, along with separate payment forms and separate checks and a request for waiver of the deadline for filing renewal applications. *Id.* at 20441 ¶ 3.

<sup>38</sup> In the Matter of Kent H. Sager Application for Renewal of the License for SMR-Trunked System WNSS514 and Associated Request for Waiver of the Commission's Rules, *Order*, 16 FCC Rcd 21353, 21354 ¶ 5 (CWD 2001) (Kent H. Sager). Sager submitted his renewal application for Station WNSS514 four times, once before the license expiration date, which was November 6, 2000. Sager submitted his initial renewal application on November 2, 2000, to Mellon Bank, but did not remit the proper fee. Mellon Bank returned the application on November 3, 2000, requesting the correct payment. *Id.* at 21353 ¶ 2. Sager resubmitted the application with the proper fee on November 14, 2000. CWD's Licensing and Technical Analysis Branch (Branch) returned the application again on December 12, 2000, because it did not include Sager's Taxpayer Identification Number. *Id.* at 21353 ¶ 3. Sager submitted a corrected application with the proper fee and a request for waiver of the filing deadline on January 19, 2001. After being informed the waiver request must be filed separately, Sager resent the application with the waiver request to Gettysburg on February 7, 2001. *Id.* The Branch dismissed the application on February 22, 2001, without acting on the waiver request, and Sager petitioned for reconsideration on March 8, 2001. *Id.* at 21353-54 ¶ 3.

The instant case differs from the facts in these cases because Leap did not complete the filing of its renewal application for Station KNLH652 before the license expiration date or within the 30-day period following the expiration date. An application that is dismissed as defective, however, does not preserve its filing date. Any subsequently filed application is given a new filing date, even if the first application was filed in a timely manner and the subsequent application is filed after the filing deadline. In this case, Leap prepared an application for Station KNLH652 that was generated and saved in ULS in a timely manner, and subsequently filed after the filing deadline. Leap submitted 14 of 15 applications to renew its other PCS licenses on behalf of its Cricket subsidiaries, including Cricket Reauction, in a timely manner, consecutively over a two-day period. Finally, Leap promptly notified Commission staff and immediately filed an application for Station KNLH652 once it discovered the error.<sup>39</sup> These actions, taken together, show Leap intended to retain the license for Station KNLH652.<sup>40</sup> While an applicant is always responsible for making sure applications are complete and correct, we believe that Leap's diligent efforts to file timely renewal applications prior to the scheduled expiration dates for its PCS licenses and its prompt attempts at correcting subsequent errors does not warrant a result as harsh as license termination for Station KNLH652.

We also note that the Commission has expressly rejected certain reasons, in and of themselves, for a licensee's inadvertent failure to file a renewal application in a timely manner, including "simple forgetfulness" and "administrative oversight,"<sup>41</sup> and has emphasized that a licensee is fully responsible for knowing the terms of its license and filing a timely renewal application.<sup>42</sup> We find, however, that a distinction exists between a licensee that unsuccessfully attempts to file a renewal application in a timely manner, and a licensee that takes no action until after the filing deadline.<sup>43</sup> Licensees that do not take any

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<sup>39</sup> See *City of Dardanelle*, 17 FCC Rcd at 10902 ¶ 4 (granting a request for waiver of the filing deadline for renewal applications, in part, because the licensee promptly filed the latest application upon notification that the prior application was rejected); *Kent H. Sager*, 16 FCC Rcd at 21354 ¶ 5 (granting a request for waiver of the filing deadline for renewal applications, in part, because the licensee promptly corrected noted errors in prior filings).

<sup>40</sup> See *In the Matter of Self Communications, Inc. Reinstatement Application for 218-219 MHz Service License KIVD0006, Chicago, Illinois, and Request for Waiver of Sections 1.949(a) and 1.955(a)(1) of the Commission's Rules, Order and Notice of Apparent Liability for Forfeiture*, 15 FCC Rcd 18661, 18664 ¶ 7 (PSPWD 2000) (granting the request for waiver of the filing deadline for renewal applications based, in part, on the licensee filing a timely request for waiver of the construction deadline, indicating its desire to retain its license prior to the scheduled expiration date).

<sup>41</sup> ULS MO&O, 14 FCC Rcd at 11485 ¶ 21. The Commission rejected the view that turnover in recordkeeping personnel, failure to check computer records, or simple forgetfulness are valid excuses, in and of themselves, for failure to file a timely renewal application. *Id.*; see *In the Matter of Malden R-1 School District Request for Waiver of Section 1.949 of the Commission's Rules to Reinstate Licenses for Fixed Microwave Services Stations WPNE336 (Malden, MO), WPNE337 (Bernie, MO), WPNE338 (Clarkton, MO), and WPNE340 (Gideon, MO), Order*, 17 FCC Rcd 23654 (PSPWD 2002) (denying a request for waiver of the deadline for filing renewal applications where the licensee did not file its applications in a timely manner because of his own administrative oversight; he misfiled the Commission's renewal notices and only filed the applications after the notices came to the appropriate person's attention nearly two months after the licenses expired).

<sup>42</sup> ULS MO&O, 14 FCC Rcd at 11485 ¶ 21.

<sup>43</sup> See *In the Matter of Interstate Power and Light Co. Requests for Extension of Time to Construct Private Land Mobile Radio Stations WPBI312, WPBI313, WPBI314, WPBI315, WPBI316, WPBI317, and WPBI318, and Waiver of Sections 1.946 and 90.629 of the Commission's Rules, Order*, 18 FCC Rcd 11051, 11057 ¶ 17 (PSPWD 2003) (granting a request for extension of time to construct where the licensee submitted extension requests four times, twice before the construction deadline, and noting that "[t]here is a clear distinction between a licensee that unsuccessfully attempts to timely file and one who submits nothing until the time expires").



action until the after the filing deadline have almost always simply forgotten about or overlooked the deadline.<sup>44</sup> Leap, however, generated an application in ULS within the 90-day period for filing renewal applications prior to the scheduled expiration date, demonstrating that it was aware of the terms of its license for Station KNLH652. That application was saved in ULS in preparation for filing. Leap also believed it had filed the application for Station KNLH652 along with other renewal applications filed consecutively over a two-day period for its other PCS licenses. Leap did not simply forget to file its renewal application for Station KNLH652. Leap knew the terms of the license and took good-faith action to meet those terms and to comply with Commission rules.

In addition to its good-faith effort to file the renewal application in a timely manner, the record shows that Leap has previously complied with Commission rules. Infrastructure was deployed for Station KNLH652 in the Owensboro Market<sup>45</sup> and Leap filed the required construction notification for the station in a timely manner.<sup>46</sup> We further note that no one filed a competing application against the renewal application for Station KNLH652, and no one has opposed Leap's request for waiver of the filing deadline. Consequently, we are persuaded, under the facts and circumstances presented, that application of Section 1.949 of the Commission's rules would be unduly burdensome and that grant of Cricket Reaution's waiver request is warranted. We nonetheless grant Cricket Reaution's waiver request without prejudice to any enforcement action the Commission may decide to take and strongly advise Leap and its subsidiaries to adopt administrative and management procedures that will ensure strict compliance with the Commission's rules, including the deadlines and procedures for filing renewal applications.

We therefore grant, pursuant to Sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the Waiver Request filed on June 13, 2007, by Cricket Licensee (Reaution), Inc.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>44</sup> See In the Matter of Lynchburg MDS, L.L.C. License of Multipoint Distribution Service Station WMI288 in Lynchburg, Virginia, *Memorandum Opinion and Order*, 19 FCC Rcd 2817, 2820 ¶ 10 (BD 2004) (denying a request for waiver of the filing deadline for renewal applications and a petition for reinstatement of a license where the licensee provided no adequate justification for its managerial oversight because it did not explain why its management should have formed a belief that the pendency of a modification application or a desire to economize on legal fees would absolve the licensee of its responsibility to file a renewal application by the due date set out in the Commission's rules); In the Matter of Application of Village of Columbus Police Department For Renewal/Modification of Public Safety Pool Conventional Private Land Mobile Radio Station WPBX284, Columbus, New Mexico, *Order*, 18 FCC Rcd 25657 (PSCID 2003) (denying a request for waiver of the filing deadline for renewal applications because none of the reasons provided, including not knowing the information needed to renew its application and the inability to locate the information because it was overhauling its filing system, explain why the licensee did not file its renewal application on or before the expiration date of the license).

<sup>45</sup> Waiver Request at 4.

<sup>46</sup> FCC File No. 0000866163, filed by Cricket Licensee (Reaution), Inc. (Apr. 26, 2002). Leap stated in the notification that "Cricket is currently providing a signal level of at least -100 dBm to an estimated population of 39,427.54 out of a total BTA population of 157,104. Therefore, Cricket is providing adequate service to 25.10% of the population in the licensed service area." *Id.* at Ex. A at 2.