

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

July 6, 2001

In Reply Refer to:
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Dear Land Mobile Coordinators:

This responds to the requests for waiver of the mandatory electronic filing requirement and extension of the effective date of the “unified dismissal policy” filed by the Personal Communications Industry Association (“PCIA) and the Industrial Telecommunications Association (“ITA”) (hereinafter “Coordinators”). The Coordinators have filed a request for waiver of Section 1.913(b) of the Commission’s Rules, 47 C.F.R. § 1.913(b), to extend the Universal Licensing System (ULS) mandatory deadline for electronic filing and requested a delay in the implementation of the “unified dismissal policy” for Land Mobile Phase I Services. For the reasons described below, we are granting a further extension of the mandatory electronic filing deadline to the coordinators and extending of the effective date of the “unified dismissal policy” for all Phase I services until July 25, 2001, in order not to disrupt licensing of critical land mobile systems.

Section 1.913 requires that applications submitted by a frequency coordinator on behalf of an applicant be filed electronically effective July 1, 1999, or six months after the Commission begins use of ULS to process applications in a particular radio service, whichever is later. The Commission also announced in its April 29, 1999, Public Notice entitled “Wireless Telecommunications Bureau Postpones Effective Date of Unified Dismissal Policy for Applications in the Wireless Services” that the Bureau would delay implementation of the “unified dismissal policy” for a service until six months after conversion of that service to ULS. The Commission began use of ULS for the Land Mobile Phase I radio services on September 19, 2000. As a result, mandatory electronic filing and implementation of the strict “unified dismissal policy” went into effect for the Land Mobile Phase I radio services on March 20, 2001. Recently we granted two short extensions of the mandatory electronic filing deadline, from March 20, 2001, until April 20, 2001, and again until May 22, 2001, so that the Bureau could revise its procedures and make changes to ULS in response to the coordinators’ concerns.

A request for a 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 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 applicant has no reasonable alternative. *See* 47 C.F.R. § 1.925(b)(3). For the reasons stated below, we find that the Coordinators have justified the requested waivers of the rules.

In the requests for waiver of the mandatory electronic filing deadline, the coordinators maintain that there are a series of obstacles to their completion of the conversion to electronic filing. The obstacles they assert include their inability to file applications interactively without having to obtain applicants TIN/password combination and problems with filing using Electronic Batch Filing (EBF). Without implementation of the “SuperUser Password” the coordinators feel they do not have the flexibility they need to effectively access ULS interactively as an

alternative to EBF. In addition, one of the coordinators indicates that it was unaware of the requirement to file attachments electronically. Although they are working diligently to meet this requirement, they currently lack the capability of filing attachments through EBF at this time.

On March 6, 2001, the Wireless Telecommunications Bureau issued a Public Notice setting forth the standards by which it would consider whether requests to delay the implementation of mandatory electronic filing in the Land Mobile Radio Services meet the Commission's waiver standard.¹ Specifically, the Bureau stated that request for waiver must include: (1) an explanation as to why the coordinator needs an extension of the mandatory deadline; (2) a description of the steps the coordinator is taking to achieve electronic filing; and (3) a timeline of when the coordinator expects to begin filing his or her applications electronically. The coordinators have provided this information, which allows us to conclude that unique or unusual circumstances exist that make application of the rules contrary to the public interest.² Specifically, strict application of Section 1.913(b) could prevent the coordinators from filing applications and could potentially jeopardize the timely processing of many Phase I Land Mobile Radio Service applications and delay or deny the provision of important services. Therefore, we find that the Coordinators have met the waiver standard, and that good cause exists to temporarily waive the rule and extend the effective date for mandatory electronic filing.

We note that this waiver does not extend the mandatory electronic filing deadline for other frequency coordinators. Further, this waiver does not extend the deadline for mandatory use of FCC Forms 601 and 603 for any party.

In their request for extension of the effective date of the "unified dismissal policy," the Coordinators claim that implementation of that policy may lead to undue hardship for numerous businesses and consumers that rely on a multitude of services provided by Land Mobile applicants. They indicate that a significant portion of the applications they file are returned. Under the "unified dismissal policy" most of these applications would be summarily dismissed which may cause entities to lose authority to operate critical systems. The Coordinators request that the Commission extend the effective date until electronic filing issues can be resolved.

Under these circumstances, we agree with the Coordinators that a waiver would be in the public interest and would not be inconsistent with the underlying purposes of the "unified dismissal policy". In this instance, strict application of Section 1.913(b) and the "unified dismissal policy" could result in dismissal of applications filed by applicants through the coordinators in good faith. It has always been the intent of the Bureau to implement mandatory electronic filing and the "unified dismissal policy" simultaneously for each radio service, and to do otherwise for Land Mobile would not be in the public interest. Therefore, we find good cause to temporarily waive the rule and extend the effective date of the dismissal policy to provide coordinators additional time to resolve electronic filing issues. The Bureau will therefore extend the effective date of the "unified dismissal policy" until July 25, 2001. We choose to extend the effective date for the unified dismissal policy to July 25 in order to synchronize implementation of this policy for all Land Mobile Phase I, Phase II, and Phase III services.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that Section 1.913 of the Commission's Rules IS WAIVED to permit PCIA and ITA to continue manual filing of applications involving the Land Mobile Phase I radio services until July 25, 2001. In addition, we waive Section 1.913(b) of the Commission's Rules insofar as it applies to any manually submitted Land Mobile Phase I radio service applications filed by these coordinators between May 22, 2001, and the date of this letter which have not otherwise been acted on by the Wireless Telecommunications Bureau.

¹ March 6 PN

² See 47 C.F.R. §1.925(b)(3).

IT IS FURTHER ORDERED that the effective date of the “unified dismissal policy” is extended until July 25, 2001.

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.

Sincerely,

Roger Noel
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Commercial Wireless Division
Wireless Telecommunications Bureau