

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

In the Matter of)
)
PAGING SYSTEMS, INC.)
)
Request for Construction Extension)
for Three Automated Maritime)
Telecommunications System Stations)

ORDER

Adopted: December 5, 2000

Released: December 6, 2000

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

1. *Introduction.* On October 17, 2000, Paging Systems, Inc. (PSI) requested a waiver of Section 80.49 of the Commission's Rules, 47 C.F.R. § 80.49, in order to extend the construction deadline for three Automated Maritime Telecommunications System (AMTS) stations.¹ For the reasons that follow, we dismiss PSI's request.

2. *Background.* AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.² Pursuant to Section 80.49(a)(2) of the Commission's Rules, AMTS stations must be placed in operation within eight months of the license grant.³ On February 10, 2000, PSI was granted licenses for AMTS stations in Ocean City, Maryland (Station WHV949), Fort Pierce, Florida (Station WRV468), and Myrtle Beach, South Carolina (Station WXY924).⁴ On October 17, 2000, more than eight months later, PSI requested that Section 80.49(a)(2) of the Commission's Rules be waived⁵ and that the construction deadline be extended

¹ Letter from Audrey Rasmussen, Hall, Estill, Hardwick, Gable, Golden & Nelson, to Kimberly Kleppinger, Wireless Telecommunications Bureau, Federal Communications Commission (dated Oct. 17, 2000) (PSI Waiver Request).

² See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991).

³ 47 C.F.R. § 80.49(a)(2). In Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, FCC 00-370, ¶ 17 (rel. Nov. 16, 2000), the Commission extended the construction requirement for new AMTS stations from eight months to two years. The new rule will not become effective until 30 days after publication in the Federal Register. *Id.* at ¶ 87.

⁴ See *Public Notice*, Report No. 2080, rel. Feb. 15, 2000.

⁵ PSI requested the waiver pursuant to a rule, 47 C.F.R. § 90.151 (1998), that is no longer current. PSI Waiver Request at 2. The waiver standard is now codified at 47 C.F.R. § 1.925. See Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate (continued....)

to two years from the date of grant because it needed additional time to negotiate with site owners for its proposed facilities.⁶ PSI seeks the Wireless Telecommunications Bureau's consideration of its waiver request despite it being filed one week after the expiration of the construction deadline.⁷ PSI explains that an administrative oversight caused in part by personnel changes as well as the assumption that the waiver request had already been filed were the reasons that the request was filed one week late.⁸

3. *Discussion.* We note that under Section 1.955(a)(2) of the Commission's Rules, authorizations automatically terminate, without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements.⁹ Consequently, based on the record before us, we conclude that the authorizations for these three AMTS stations automatically terminated on October 10, 2000, the date of the construction deadline for the subject stations, because PSI failed to construct the stations on or before that date. Therefore, we find that PSI, on October 17, 2000, requested an extension of the construction deadline for the three subject AMTS stations the authorizations for which were no longer in effect.

4. We may waive Section 1.955(a)(2) of the Commission's Rules in order to consider PSI's request for an extension of the construction deadline if a) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and grant of a waiver would be in the public interest; 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 We conclude that PSI has not demonstrated that a waiver is warranted under either standard. First, we believe that the underlying purpose of the rule, *i.e.*, to ensure that service is provided to the public within a reasonable time following grant of the license,¹¹ is furthered by applying the rule to this case. Furthermore, we find that PSI's reasons for failing to timely file its construction extension on time request do not represent unique or unusual circumstances.¹²

5. Because we do not believe that a waiver of Section 1.955(a)(2) of the Commission's Rules is warranted, we conclude that the authorizations for the subject AMTS stations had terminated by October

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the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd 21027 (1998).

⁶ PSI Waiver Request at 1-2.

⁷ *Id.* at 1.

⁸ *Id.*

⁹ 47 C.F.R. § 1.955(a)(2).

¹⁰ 47 C.F.R. § 1.925(b)(3).

¹¹ *See* Miami MDS Company and Boston MDS Company for Extension of Time to Construct a Channel 2 Multipoint Distribution Service Station (WLK 230) at Miami, Florida, and Station (WGW339) at Boston, Massachusetts, *Memorandum Opinion and Order*, 7 FCC Rcd 4347, 4348-49 ¶ 12 (1992) (strict enforcement of construction deadline to ensure that service is not delayed or denied to the public).

¹² *See* Rush Network Corp., *Order*, 13 FCC Rcd 22866, 22868 ¶ 5 (WTB CWD 1998) (denied waiver request of applicant who missed filing deadline because the circumstances of being a small company whose two employees were busy with other responsibilities are not considered unique and unusual).

17, 2000, when PSI filed its request to waive Section 80.49 of the Commission's Rules. For that reason, we conclude that PSI's waiver request is moot.¹³ In addition, the Commission's licensing database will be modified accordingly.

6. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 1.925 and 1.955 of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.955, the waiver request filed by Paging Systems, Inc., on October 17, 2000 IS DISMISSED AS MOOT.

7. 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

¹³ See, e.g., Kenneth Sikorski, *Order*, 14 FCC Rcd 20038, 20038 ¶ 3 (WTB CWD 1999).