

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

In the Matter of)	
)	
INSTAPAGE NETWORK, LTD.)	
)	File No. 0000175254
Notification of Construction and Request for)	
Waiver for Narrowband PCS Station KNKV222)	

ORDER

Adopted: July 18, 2001

Released: July 20, 2001

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. In this Order, we address the construction notification and request for waiver filed by Instapage Network, Ltd. ("Instapage") on June 22, 2000, with respect to its regional narrowband Personal Communication Service ("PCS") license identified by call sign KNKV222.¹ Specifically, Instapage asks the Wireless Telecommunications Bureau ("Bureau") to accept its five-year construction notification or, in the alternative, waive sections 1.946 and 24.103 of the Commission's rules with respect to timing issues.² For the reasons stated below, we dismiss Instapage's construction notification as defective and deny its request for waiver. We do, however, on our own motion, grant Instapage special temporary authority ("STA") to continue its current operations, subject to certain conditions set forth below, in order for Instapage to transition its subscribers to licensed carriers.

2. On January 23, 1995, the Commission granted Instapage a narrowband PCS license for Region 2 (South Region) on channel block 16.³ In accordance with section 24.103 of the Commission's rules, Instapage was required to meet its five-year coverage requirement no later than January 23, 2000.⁴ Specifically, as of that date, section 24.103(b) required Instapage either to provide coverage to a composite area of 150,000 square kilometers or to serve 37.5 percent of the population of its licensed area.⁵ Furthermore, sections 1.913(b) and 1.946(d) of the Commission's rules required Instapage to file an electronic notification of construction no later than February 7, 2000, certifying compliance with the five-year coverage requirement.⁶ In the alternative, section 1.946(e) provides that a licensee may request an extension of time to meet a construction requirement; however, the extension request must be filed prior to the construction deadline.⁷

¹ Letter from Thomas Gutierrez, Esq., counsel for Instapage Network, Ltd. to William W. Kunze, Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, dated June 22, 2000 ("Construction Notification/Waiver Request").

² 47 C.F.R. §§ 1.946, 24.103.

³ Region 2 (South Region) consists of ten Major Trading Areas, Puerto Rico, and the United States Virgin Islands. See 47 C.F.R. § 24.102(b)(2). As a small business, Instapage was eligible to pay the remainder of its winning bid, after down payments, with installment payments. See Construction Notification/Waiver Request, Appendix I at n. 2. See also 47 C.F.R. §§ 1.2110(g), 24.309(b)(1).

⁴ 47 C.F.R. § 24.103.

⁵ *Id.* The rules in effect on that date did not permit Instapage to make a showing of substantial service as an alternative to the geographic or population coverage benchmarks.

⁶ 47 C.F.R. §§ 1.913(b), 1.946(d).

⁷ 47 C.F.R. § 1.946(e).

3. Instapage filed its five-year construction notification on June 22, 2000. Therein, Instapage stated that it had met the construction requirement of section 24.103 and, for some time, had been providing a level of service to the market that constitutes “substantial service.”⁸ In the event that the Commission did not accept its construction notification, Instapage requested a waiver of sections 1.946 and 24.103 “with respect to timing issues.”⁹ On July 13, 2000, the Bureau requested clarification of Instapage’s claim that it had met the coverage requirements of section 24.103.¹⁰ In its August 21, 2000 reply, Instapage stated that “[b]ased on the strict numerical coverage requirements that were in place as of [its five-year construction deadline], Instapage did not provide coverage to 37.5 percent of the population within its service area or provide coverage to a composite area of 150,000 square kilometers.”¹¹

4. Instapage was required by section 1.946(d) to file its notification of construction by February 7, 2000. In the alternative, Instapage could have requested a waiver or extension of time under section 1.946(e), but had to do so before its construction deadline of January 23, 2000. However, Instapage filed its construction notification and request for waiver and extension of time on June 22, 2000, four and a half months after such notification was due and five months after any extension request was due. Additionally, by its own admission, Instapage did not meet the minimum coverage benchmarks required of a regional narrowband PCS licensee within five years of its license grant.¹² Therefore, Instapage’s regional narrowband PCS license, identified by call sign KNKV222, terminated automatically pursuant to sections 1.946(c) and 1.955(a)(2) on January 23, 2000.¹³

5. Instapage argues that its failure to file a timely notification or extension request should not lead to license termination because the Commission provided in the *ULS Report and Order* that licenses would not be terminated on this basis without both pre- and post-deadline notification by the Commission to the licensee.¹⁴ However, the stated purpose of the notification procedures described in that order was to prevent inadvertent termination of licenses where the licensee could demonstrate that it had timely met the underlying construction requirements, but had failed to file a notification.¹⁵ Here, by

⁸ Construction Notification/Waiver Request at 3-4.

⁹ *Id.* at 1. See also Construction Notification/Waiver Request, Appendix I.

¹⁰ See Letter from Paul D’Ari, Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, to Thomas Gutierrez, Esq., dated July 13, 2000.

¹¹ See Letter from Thomas Gutierrez, Esq., to Paul D’Ari, Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, dated August 21, 2000.

¹² Although Instapage did not provide exact figures of its coverage as of the construction deadline, it did indicate that, as of that date, it was only providing coverage to the San Juan, Puerto Rico area. At the most, the greater San Juan, Puerto Rico area only includes approximately 4.2 percent of the population or 5,097 square kilometers of Region 2, significantly less than the minimal 37.5 percent population coverage or 150,000 square kilometers geographic coverage requirement of regional narrowband PCS licensees. This estimate was calculated using the population and square kilometers of the Basic Trading Area of San Juan, Puerto Rico (BTA488), which is one component of Region 2 (South Region).

¹³ 47 C.F.R. §§ 1.946(c), 1.955(a)(2). In light of the automatic termination of the license, Instapage’s license term is ended and it is no longer eligible to pay the outstanding amount of its winning bid obligation with installment payments. See 47 C.F.R. § 1.2110(g)(3)(ii).

¹⁴ Construction Notification/Waiver Request, Appendix I at 2, 10, citing Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd. 21027 (1998) (*ULS Report and Order*).

¹⁵ *ULS Report and Order* at ¶ 106. The Commission stated that the purpose of the notification procedures was to “verify whether licensees have in fact met their construction and coverage obligations, not to terminate licenses for legitimately operating facilities based on a failure to notify by the licensee that could be the result of a mailing error.” *Id.*

contrast, Instapage concedes that it neither met the applicable coverage requirements by the five-year deadline nor sought timely relief from those requirements. In addition, Instapage ignores that, both before and after the construction deadline, it has been afforded notice and opportunity to demonstrate compliance that are substantively identical to what was contemplated in the *ULS Report and Order*.¹⁶ Thus, there is no need to provide further “notice” to Instapage prior to rendering a decision.

6. Furthermore, we are not persuaded by Instapage’s request for waiver of the filing deadlines. In order to be granted a waiver, the petitioner must establish either that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or (2) application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the petitioner has no reasonable alternative, in the light of the petitioner’s unique or unusual circumstances.¹⁷ In this case, Instapage failed to provide any reason why it was unable to file a construction notification as of February 7, 2000 or to request an extension prior to the construction deadline of January 23, 2000. Moreover, Instapage failed to provide an explanation why it was unable to make any such filing until five months after the deadline. We therefore find that Instapage failed to meet the standard for grant of a waiver. Furthermore, we point out that, as discussed above, the license in question had terminated automatically for failure to meet the minimum coverage requirements several months before Instapage submitted its request for waiver of the filing deadlines.

7. Because Instapage currently has subscribers in Region 2 (particularly in greater San Juan, Puerto Rico), we find that it is in the public interest to grant an STA to Instapage, subject to certain conditions, in order to transition these subscribers to licensed carriers.¹⁸ First, STA is granted to Instapage for the lesser of 180 days from release of this Order or 60 days following receipt of written notice from a new licensee for channel block 16 in Region 2 notifying Instapage that it intends to commence operations.¹⁹ Second, Instapage shall, within 30 days of the release of this Order, provide written notice to each of its current subscribers that: (i) its regional license has been terminated; (ii) it is only authorized to provide service to existing customers under a grant of special temporary authority; and (iii) it will provide customers with at least 30-days written notice prior to permanently discontinuing service.²⁰ Third, Instapage is not permitted to solicit or add new subscribers in Region 2 while it is operating under this STA. Fourth, Instapage shall, as described above, provide written notice to each of its subscribers at least 30 days prior to permanently discontinuing service.²¹ Finally, after the expiration of the STA or any renewals, Instapage will no longer be authorized to provide further service and shall cease any and all operations in Region 2.

¹⁶ Prior to the construction deadline, the Bureau issued a public notice reminding all narrowband PCS licensees, including Instapage, of the pending construction deadline and providing detailed instructions on how to file notifications. See Wireless Telecommunications Bureau Reminds Narrowband Personal Communications Services (PCS) Licensees of Five-Year Construction Benchmark, *Public Notice*, 14 FCC Rcd. 9020 (1999). Following the construction deadline, Instapage has had a full opportunity in this proceeding to document the nature and timing of its actual coverage in support of its waiver request.

¹⁷ See 47 C.F.R. § 1.925. See also 47 C.F.R. § 1.3.

¹⁸ In the event that Instapage does not want to continue operation, the STA will terminate once the Commission has received notification from Instapage.

¹⁹ Once the Commission has granted a new license for channel block 16 in Region 2, we will consider any requests for renewal of the STA in which the new licensee has agreed to continue to allow Instapage to operate in its licensed area.

²⁰ Instapage shall provide a copy of such notice to the Commission.

²¹ Instapage shall also provide a copy of such notice to the Commission.

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309(j)(4)(B) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(j)(4)(B), and sections 0.331, 1.946, and 24.103(b) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.946, 24.103, the construction notification filed by Instapage Networks, Ltd. on June 22, 2000, is DISMISSED as defective.

9. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 309(j)(4)(B) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(j)(4)(B), and section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, the request for waiver filed by Instapage Networks, Ltd. on June 22, 2000 is DENIED.

10. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(f), and section 1.931(a) of the Commission's rules, 47 C.F.R. § 1.931(a), Special Temporary Authority IS GRANTED *sua sponte* to Instapage Networks, Ltd., subject to the terms and conditions set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau