



Federal Communications Commission
Washington, D.C. 20554

August 30, 2007

Stefan M. Lopatkiewicz
Dorsey & Whitney
1050 Connecticut Avenue, Suite 1250, Washington Square
Washington, DC 20036

DA 07-3807

Re: Request for Waiver and Extension of Time to Construct Ten Cellular Locations – KNKR318

Dear Mr. Lopatkiewicz:

This letter addresses the above-captioned Waiver and Request for Extension of Time to Construct (Waiver Request), filed on behalf of OTZ Telecommunications, Inc. (OTZ) on June 20, 2007, seeking waiver of the construction requirements of section 22.946 of the Commission's rules¹ for ten proposed locations on file for the cellular A-block license located in the Alaska 1 – Wade Hampton Cellular Market Area (CMA315), call sign KNKR318.² Specifically, OTZ seeks to complete construction for the ten locations over a four-year period, rather than in a single year as required by the rules. For the reasons stated below, we grant the Waiver Request.

Pursuant to section 22.946,³ licensees must place base stations in operation within one year of receiving authorization, unless the Commission grants an extension or waives the construction requirements.⁴ A waiver may be granted, pursuant to section 1.925 of the Commission's rules, if the petitioner establishes 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) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁵

OTZ provides wireless telephone service and fixed wireless service in the vicinity of Kotzebue, Alaska. OTZ filed a major modification application to add ten locations to its A-block cellular license located in CMA315 in order to expand its service offerings to additional remote areas in rural Alaska.⁶ As part of its application, OTZ requested a waiver of the rule that requires cellular locations such as the ten filed by OTZ to be constructed within one year. OTZ states that the areas in which it needs to

¹ 47 C.F.R. § 22.503(k)(2).

² File No. 0003079437, Request for Waiver and Extension of Time to Construct (filed June 20, 2007); Amended on June 26, 2007 and June 27, 2007.

³ 47 C.F.R. § 22.946).

⁴ 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

⁵ 47 C.F.R. § 1.925. The Commission has stated that, in situations in which the circumstances are unique and the public interest would be served, it would consider waiving construction requirements on a case-by-case basis. *See* Amendment of the Commission's Rules To Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 5019 (1994) (*PCS MO&O*), *citing WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁶ File No. 0003079437.

construct its cellular system are some of the most remote areas in the United States and located in an area as large as the state of Indiana.⁷ OTZ also states that the areas are not accessible by roads or rail systems, but instead can only be accessed by plane or shallow draft vessels.⁸ Furthermore, OTZ states that based on the extreme cold temperatures, the time period where any construction can occur is limited to two or three months a year.⁹ Based on these factors, OTZ argues that it is nearly logistically impossible for a small, rural telephone company such as OTZ to construct the ten locations within one year.¹⁰ OTZ also states that in order to obtain the proper funding needed to construct the ten locations, it must demonstrate a commitment and ability to provide the necessary wireless services, and can only do so by having the necessary authorizations in hand.¹¹

Based on the totality of the circumstances presented, we believe that the public interest would be served by extending the construction deadline for the ten locations, permitting them to be constructed over a four-year period. OTZ has demonstrated a commitment to utilizing the spectrum by providing wireless services to remote, rural portions of northern Alaska. We find that OTZ does not have any reasonable alternatives to complete its construction of the ten locations and that a denial of the extension of time would not serve the underlying purpose of the construction requirements.

Accordingly, IT IS ORDERED that, pursuant to section 4(i) and 303(r) of the Communications Act of 1934, 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 by OTZ Telecommunications, Inc. IS HEREBY GRANTED to extend the construction deadlines for the ten locations in File No. 0003079437 until four years from the date of this letter (*i.e.*, August 30, 2011).

Sincerely,

Michael Ferrante
Associate Chief, Mobility Division
Wireless Telecommunications Bureau

⁷ Waiver Request at 2.

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.* at 4-5.