

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

In the Matter of Applications of)	
)	
Sioux Valley Rural Television, Inc.)	FCC File Nos.
)	
For Renewal of License and Extension of Time to)	0002054479, 0002054437
Construct 218-219 MHz Service Stations)	
KIVD0489, Rapid City, South Dakota)	
)	
Request for Waiver of Section 95.831 of the)	
Commission's Rules)	
)	

ORDER

ADOPTED: January 31, 2007

RELEASED: January 31, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address the applications and waiver requests filed by Sioux Valley Rural Television, Inc. (SVRTV), for renewal of license and extension of the construction deadline for the above-captioned 218-219 MHz Service station. For the reasons discussed below, we grant the request for a limited 90-day waiver and hold SVRTV's renewal application in pending status until such time as SVRTV amends its renewal application to reflect compliance with our rules, specifically Section 95.833(b).

II. BACKGROUND

2. On February 28, 1995, the Commission granted 218-219 MHz Service license, KIVD0489, Block B, Market IVM289 – Rapid City, South Dakota to SVRTV. In 1999, the Commission extended the license term for the 218-219 MHz Service to ten years from the date of license grant, establishing February 28, 2005 as the expiration date for the license.¹ The Commission also eliminated interim construction benchmarks and adopted a “substantial service” requirement to be assessed at the end of the license term as a condition for renewal.² Substantial service is “service that is sound, favorable and substantially above a level of service which might minimally warrant renewal.”³ Unless a waiver or extension is granted, the failure to meet the Commission’s construction requirements results in the

¹ Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999) (1999 Flexibility Order).

² *Id.*, 15 FCC Rcd at 1540 ¶ 75. The Commission specifically stated that “[f]ailure to demonstrate that ‘substantial service’ is being provided will result in a license not being renewed.” *Id.*; see also 47 C.F.R. § 95.833 (substantial service showing required at license renewal).

³ 47 C.F.R. § 95.831.

automatic termination of the license.⁴

3. On February 22, 2005, SVRTV timely filed an application to renew its license.⁵ The application included a request to waive any rules necessary to ensure renewal of its licenses.⁶ One day later, SVRTV filed a waiver request seeking a 90-day waiver and extension of the ten-year construction requirement for its 218-219 MHz Service license.⁷ In its Waiver Request, SVRTV contends that a “waiver and extension of time would serve the public interest without presenting any counterbalancing negative consequences.”⁸ As discussed below, we find the circumstances set forth in SVRTV’s Waiver Request warrant grant of a limited waiver to enable the licensee to meet the ten-year construction requirement.

III. DISCUSSION

4. The Commission may grant a waiver if the licensee establishes 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) 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.⁹ The Commission has also 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.¹⁰

5. SVRTV states that although it has had difficulty obtaining reliable equipment for the referenced licenses,¹¹ it currently provides with other authorizations broadband wireless internet service to homes and business in rural areas.¹² SVRTV states that it intends to use its 218-219 MHz Service as a complementary service to its existing broadband offerings, and is now pursuing equipment in collaboration with W&E Interactive TV L.C. (“W&E”), another license-holder in the 218-219 MHz band. Together with W&E, SVRTV has identified a new manufacturer capable of providing equipment that can be used to build-out SVRTV’s system.

6. SVRTV contends that its service plans include “a new application for a simple, slow-speed monitoring and control system, which will work very well with the slow-speed data transfer rates available with 218 MHz systems.”¹³ SVRTV states that such service “will be a viable product for many

⁴ See 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

⁵ FCC File No. 0002054479 (filed Feb. 22, 2005).

⁶ *Id.*

⁷ Request for Waiver and Extension of Time to Construct, FCC File No. 0002054437, (filed Feb. 23, 2005)(“Waiver Request”).

⁸ Waiver Request at 1.

⁹ 47 C.F.R. § 1.925.

¹⁰ See, e.g., Amendment of the Commission’s Rules To Establish New Personal Communications Services, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 5019 (1994), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹¹ Waiver Request at 1.

¹² *Id.* at 1. SVRTV also provides MMDS wireless television service to rural areas. *Id.*

¹³ *Id.* at 2.

new IP based remote control devices that can be used for a multitude of applications.”¹⁴ SVRTV contends that the equipment required to build out such a system will be available shortly once manufacturer testing is complete and product shipment begins. SVRTV states that it has obtained all necessary tower sites and facilities to construct its 218-219 MHz Service system.¹⁵ SVRTV further states that it intends to use its systems to provide monitoring and control services that can be used by various customers, including utility companies.¹⁶

7. Based on our review of the record, we find that grant of a limited waiver to allow SVRTV 90 days to complete construction of its system is warranted. We conclude that strict application of the rule would not support the statutory and Commission goals in adopting the 218-219 MHz Service construction requirements and such application would be contrary to the public interest. SVRTV’s planned deployment is consistent with the statutory goals of performance requirements; specifically, “to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.”¹⁷ Moreover, promoting construction and operation of 218-219 MHz Service systems also fosters the Commission’s goals of improving efficiency of spectrum use, encouraging competition and providing “services to the largest feasible number of users within the 218-219 MHz band.”¹⁸

8. We find it persuasive that SVRTV has a ready plan to launch service in the band using newly available equipment, and has acquired all necessary tower sites and facilities for its systems.¹⁹ SVRTV’s proposed systems will benefit the public by introducing new IP-based monitoring and control services to its market. Moreover, we find that a waiver is warranted because SVRTV intends to use its system to provide service in rural areas. We believe the relatively short 90-day waiver requested by SVRTV will further these goals and thereby serve the public interest.²⁰ We also find that a waiver is supported by the fact that SVRTV has identified a manufacturer which can supply equipment to build out its license in the near-term, and that SVRTV has “already located a remote-control system that can be interfaced” with the new equipment.²¹

9. Based on the totality of factors stated above, we believe the public interest is served by granting a limited 90-day waiver of SVRTV’s ten-year construction requirement. Accordingly, we grant SVRTV’s request and waive the requirements in sections 1.946(c), 1.955(2), 95.831, 95.833 such that SVRTV has a period of 90 days from the release date of this Order to meet its ten-year construction

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3.

¹⁷ 47 U.S.C. § 309(j)(4)(B).

¹⁸ 1999 Flexibility Report and Order, 15 FCC Rcd at 1497.

¹⁹ See, e.g., Leap Wireless MO&O, 16 FCC Rcd at 19578 (licensee’s demonstrated diligence in constructing licenses – site planning, market research and deployment in other markets – was one factor supporting waiver of construction deadline).

²⁰ See, e.g., In the Matter of Leap Wireless International, Inc. Request for Waiver and Extension of the Broadband PCS Construction Requirements, *Memorandum Opinion and Order*, 16 FCC Rcd 19573 (2001) (“Leap Wireless MO&O”) (granting limited waiver and extension of time to comply with broadband PCS construction requirements where licensee was awaiting near-term delivery of equipment necessary to construct high speed data system).

²¹ Statement of Joel A. Brick at 3.

deadlines for the subject 218-219 MHz Service license.²² We will also hold SVRTV's renewal application, FCC File No. 0002054479, in pending status for 90 days from the release date of this Order or until such time as SVRTV amends its renewal application to reflect compliance with our rules, specifically Section 95.833(b).

IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, that Sioux Valley Rural Television, Inc.'s request for waiver of the ten-year construction deadline for its 218-219 MHz Service license, FCC File No. 0002054437, filed on February 22, 2005, is GRANTED, and that the construction deadline is hereby extended for 90 days from the release date of this grant.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

²² We note that SVRTV will also be required to comply with Section 1.946 of the Commission's rules which requires a licensee who commences service within its construction period to notify the Commission by filing an FCC Form 601 within 15 days of the expiration of the applicable construction deadline. 47 C.F.R. § 1.946(d).