



Federal Communications Commission
Washington, D.C. 20554

February 21, 2008

DA 08-414

Kenneth J. Schmier
NextBus Information Systems, Inc.
1475 Powell St Suite 201
Emeryville, CA 94608

Re: Request for Extension of Time to Construct Twenty-Eight Paging Licenses

Dear Mr. Schmier:

This letter addresses the above-captioned Request for Extension of Time to Construct (Waiver Request), filed on behalf of NextBus Information Systems, Inc. (NextBus) on June 21, 2007, seeking waiver of the construction requirements of section 22.503(k)(2) of the Commission's rules¹ for twenty-eight geographic area-based Part 22 paging licenses.² Specifically, NextBus requests a waiver of the construction deadline until March 31, 2009 to complete construction for the twenty-eight licenses subject to the Waiver Request. For the reasons stated below, we grant the Waiver Request.

Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, NextBus's licenses will terminate automatically as of the construction deadline if NextBus fails to meet the requirements of section 22.503(k)(2),³ unless the Commission grants an extension or waives the construction requirements.⁴ The construction deadline for the twenty-eight licenses was June 21, 2007.

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

NextBus acquired the twenty-eight licenses (where each license is a channel pair) for thirteen different Major Economic Areas (MEAs) in June 2002 as the winning bidder in Auction No. 40. NextBus states that it provides computer-calculated prediction of transit vehicle arrival times under contract to over

¹ 47 C.F.R. § 22.503(k)(2).

² Request for Extension of Time to Construct (filed June 21, 2007) ("Waiver Request"); Amendment to Request for Extension of Time to Construct (filed October 19, 2007) ("Amendment to Waiver Request"). See Appendix A for a list of the File Nos. and Call Signs subject to the Waiver Request.

³ Pursuant to section 22.503(k)(2) of the Commission's rules, an EA paging licensee must construct facilities to cover two-thirds of the population of its license area within five years of initial license grant. 47 C.F.R. § 22.503(k)(2).

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).

fifty municipally owned public transit agencies across the United States and that NextBus is entirely funded by its users.⁶ NextBus describes its system in such a manner as “Using GPS and wireless data transmission, each bus or transit vehicle reports its location to [NextBus’s] central computer at least as frequently as every 90 seconds or a movement of 200 meters. The transmitted location data is then combined with stored operational data to produce extremely accurate predictions of vehicle arrival times.”⁷ NextBus states that its service provides real-time information to individuals that utilize public transportation such as minutes to arrival at a specific location, passenger load and whether a bus includes a wheel chair lift or bicycle rack.⁸ NextBus states that to date it has implemented some measure of its service in San Francisco, Washington, D.C., Philadelphia, Miami, Pittsburgh, Chicago, Denver, Seattle and Atlanta.⁹ However, NextBus argues that numerous delays in federal transportation funding to local governments has limited its ability to fully construct its system.¹⁰ Specifically, NextBus states that because the entities that contract for service (*i.e.*, municipalities) are reliant upon federal funding to help pay for transportation projects and because money earmarked by the federal government for the reauthorization of a transportation bill that covers 2004 – 2009 was two years late in being dispersed, NextBus has been unable to fully construct its system.¹¹ For example, NextBus states that the transportation bill contained earmarks for \$4 million in San Francisco and \$2.6 million in Chapel Hill, North Carolina, respectively, for NextBus service.¹² NextBus states that since federal funds have been allocated, it is in a position to complete construction of its system.

Based on the totality of the circumstances involved in this case, we believe that the public interest would be served by extending the construction deadline for the twenty-eight licenses listed in Appendix A until March 31, 2009. Specifically, we find that automatic termination of these licenses pursuant to Section 1.946(c) would not serve the underlying purpose of the construction rule, and that grant of the waiver would be in the public interest.¹³ The record indicates that NextBus has been diligent in implementing its service in many municipalities and with the extra time granted here would be able to assist other public transportation agencies wishing to implement its service. Further, termination of the licenses would not serve the public interest now that federal funding has been allocated to implement NextBus’s real-time tracking system for use by various public transit agencies across the United States. We expect that NextBus’s system will provide public interest benefits such as enhanced communication services to individuals that rely on public transportation as well as to entities that provide NextBus’s services. Finally, we believe that granting NextBus the additional time it has requested to construct its

⁶ Amendment to Waiver Request at 1.

⁷ *Id.*

⁸ Waiver Request at 1.

⁹ *Id.* at 2.

¹⁰ Waiver Request at 1; Amendment to Waiver Request at 2 – 3.

¹¹ The original transportation bill referred to by Nextbus is the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, 112 Stat 107 (1998). The bill that NextBus refers to as being “reauthorized” is the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, 119 Stat 1144 (2005).

¹² *Id.* at 3.

¹³ *See* 47 C.F.R. § 1.925(b)(3)(i).

system is consistent with the Commission's public interest goal of promoting efficient utilization of spectrum in the near term.¹⁴

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 Request by the NextBus Information Systems, Inc. for Extension of Time to Construct IS HEREBY GRANTED, to extend the construction deadlines for the licenses listed in Appendix A until March 31, 2009.¹⁵

Sincerely,

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

¹⁴ See Interstate Power and Light Co, Requests for Extension of Time to Construct Private Land Mobile Radio Stations WPBI312, WPBI313, WPBI314, WPBI315, WPBI316, WPBI317, and WPBI318, and Waiver of Sections 1.946 and 90.629 of the Commission's Rules, *Order*, 18 FCC Rcd 11051, 11056 ¶ 15(2003).

¹⁵ 47 U.S.C. § 154(i), 47 C.F.R. §§ 0.331, 1.925.

Appendix A

File Number	Call Sign	Market Code	Market Description	Channel Block
0003082590	WPVI386	MEA001	Boston	AX
0003082591	WPVI387	MEA001	Boston	AZ
0003082592	WPVI388	MEA002	New York City	AX
0003082593	WPVI389	MEA002	New York City	AZ
0003082594	WPVI390	MEA004	Philadelphia	AU
0003082595	WPVI391	MEA004	Philadelphia	AZ
0003082614	WPVI448	MEA005	Washington	A
0003082596	WPVI392	MEA005	Washington	AJ
0003082597	WPVI393	MEA005	Washington	AR
0003082598	WPVI394	MEA005	Washington	AU
0003082599	WPVI395	MEA005	Washington	AZ
0003082600	WPVI396	MEA008	Atlanta	AO
0003082601	WPVI397	MEA008	Atlanta	AP
0003082602	WPVI398	MEA011	Miami	AA
0003082603	WPVI399	MEA011	Miami	AB
0003082604	WPVI400	MEA012	Pittsburgh	AX
0003082605	WPVI401	MEA012	Pittsburgh	AY
0003082615	WPVI449	MEA018	Chicago	A
0003082606	WPVI402	MEA018	Chicago	AV
0003082607	WPVI403	MEA018	Chicago	AZ
0003082608	WPVI404	MEA030	St. Louis	AE
0003082616	WPVI450	MEA033	Denver	I
0003082609	WPVI407	MEA040	Phoenix	AL
0003082610	WPVI408	MEA040	Phoenix	AN
0003082611	WPVI409	MEA043	San Francisco-Oakland-San Jose	AJ
0003082612	WPVI410	MEA043	San Francisco-Oakland-San Jose	AM
0003082613	WPVI411	MEA043	San Francisco-Oakland-San Jose	AT
0003082617	WPVI451	MEA046	Seattle	L