

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

In the Matter of)
)
NRTC LLC)
Demonstration of Five-Year Construction) ULS File Nos. 0003222741, 0003222743,
Requirements and Request for Extension of) 0003222745, 0003222746, 0003222767,
Construction Deadlines) 0003222770, 0003222771, 0003222773,
) 0003222775, 0003222776, 0003698323 –
) 0003698330
)

ORDER

Adopted: June 26, 2009

Released: June 26, 2009

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

I. INTRODUCTION

1. In this Order, we address the demonstration of the five-year construction requirements for certain Phase II 220 MHz licenses filed by NRTC LLC (NRTC).¹ In addition, we address the request for waiver and extension of time to construct for certain Phase II 220 MHz licenses filed by NRTC.² Specifically, NRTC requests that the Commission accept its Substantial Service Showings with respect to its five-year construction requirements, or alternatively, pursuant to sections 1.925 and 1.946 of the Commission’s rules, NRTC requests a waiver and extension of time to construct for its five-year construction requirements (First Extension Request).³ In addition, pursuant to sections 1.925 and 1.946 of

¹ See File Nos. 0003222770 (WPOI700); 0003222771 (WPOK780); 0003222773 (WPOL330); 0003222775 (WPOL332); and 0003222776 (WPOL333), filed November 5, 2007 (Substantial Service Showings).

² NRTC has on file extension requests that cover its five-year (First Extension Request) and ten-year construction requirements (Second Extension Request). See File Nos. 0003222741 (WPOI700); 0003222743 (WPOL330); 0003222745 (WPOL332); 0003222746 (WPOL333); and 0003222767 (WPOK780), filed November 5, 2007 (First Extension Request) and 0003698323 – 0003698330 (WPOI700, WPOK780, WPOL329, WPOL330, WPOL331, WPOL332, WPOL333, and WPOL334, respectively), filed January 9, 2009 (Second Extension Request). For purposes of this Order, NRTC’s First Extension Request and Second Extension Request are referred to as the Extension Request.

³ A Regional licensee must construct a sufficient number of base stations (i.e., base stations for land mobile and/or paging operations) to provide coverage to at least one-third of the population of its REAG within five years of the issuance of its initial license and at least two-thirds of the population of its REAG within ten years of the issuance of its initial license. Licensees may, in the alternative, provide substantial service to their licensed areas at the appropriate five- and ten-year benchmarks. See 47 C.F.R. § 90.767(a). A nationwide licensee must construct a sufficient number of base stations (i.e., base stations for land mobile and/or paging operations) to provide coverage to a composite area of at least 750,000 square kilometers or 37.5 percent of the United States population within five years of the issuance of its initial license and a composite area of at least 1,500,000 square kilometers or 75 percent of the United States population within ten years of the issuance of its initial license. Licensees may, in the alternative, provide substantial service to their licensed areas at the appropriate five- and ten-year benchmarks. See 47 C.F.R. § 90.767(a).

the Commission's rules, NRTC requests a waiver and extension of time to construct for its ten-year construction requirements (Second Extension Request).⁴ For the reasons stated below, we dismiss NRTC's Substantial Service Showings and grant a modified version of the First Extension Request and grant the Second Extension Request.

II. BACKGROUND

2. The National Rural Telecommunications Cooperative (Cooperative), the manager and majority interest holder of NRTC LLC, is a non-profit cooperative association representing the interests of more than 1,400 rural utilities and affiliates in forty-seven states.⁵ The Cooperative's mission is to ensure that state-of-the-art telecommunications services are available throughout rural America, just as they are in more urbanized areas.⁶ NRTC states that it has made its 220 MHz frequencies available to members and other entities primarily for wireless communications systems that support the safe and efficient operation of electric distribution systems and other core business applications.⁷

3. On July 13, 2004, the Wireless Telecommunications Bureau (Bureau) released a *Memorandum Opinion and Order* extending the five-year construction requirement deadlines by three years until November 5, 2007, for a large number of Phase II EA and REAG licensees.⁸ The Bureau indicated that a three-year extension would be sufficient time for the 220 MHz licensees to construct their systems using available or soon to be developed equipment. The Bureau found that the public interest would be served by allowing additional time for licensees to consolidate licenses, develop new technologies, or take advantage of the technical flexibility provided in the 1997 restructuring of the 220 MHz service rules that has enabled entities to provide a variety of services, including fixed data applications.⁹

4. On November 5, 2007, NRTC filed its Substantial Service Showings for one nationwide license and seven regional licenses.¹⁰ In addition, NRTC filed its First Extension Request on November 5, 2007 for the same set of licenses. In its First Extension Request, NRTC requested an extension of time to construct for a period of one year after the date the Commission ruled on the request if the Commission did not accept its Substantial Service Showings.¹¹ On January 9, 2009, NRTC filed its Second Extension Request for its ten-year construction requirements for the same nationwide license and seven regional licenses.¹² In its Second Extension Request, NRTC requested an extension of time to construct until

⁴ *Id.*

⁵ Second Extension Request at 1.

⁶ *Id.*

⁷ *Id.*

⁸ Request of Warren C. Havens for Waiver or Extension of The Five-Year Construction Requirement For 220 MHz Service Phase II Economic Area and Regional Licensees, Request of BizCom USA, Inc. for Waiver And Extension of the Construction Requirements for 220 MHz Service Phase II Regional and Nationwide Licensees, and Request of Cornerstone SMR, Inc. for Waiver of Section 90.157 of the Commission's Rules; *Memorandum Opinion and Order*, 19 FCC Red 12994 (WTB 2004) (*MO&O*).

⁹ *MO&O* at ¶ 17.

¹⁰ Because NRTC certified that it covered in excess of one-third of the population within its licensed areas for three regional licenses, the notifications of construction were accepted and the corresponding extension requests were withdrawn. See File Nos. 0003222772 and 0003222742 (WPOL329); 0003222774 and 0003222744 (WPOL331); and 0003222777 and 0003222747 (WPOL334).

¹¹ First Extension Request at 7.

March 22, 2012.¹³

5. In support of its Substantial Service Showings, NRTC states that its communications network is used to provide advanced services in support of rural electric distribution systems to the overall benefit of rural consumers.¹⁴ NRTC states that the primary applications used in its current communications system are supervisory control and data acquisition (SCADA) and automated meter reading (AMR).¹⁵ Furthermore, NRTC states that it currently provides coverage at 395 sites in 17 different states.¹⁶ NRTC argues that monitoring and controlling SCADA functions are essential to minimize the likelihood and scope of brownouts and blackouts throughout the country and to gird against terrorist threats, while AMR facilitates effective and efficient utility distribution to consumers.¹⁷ In addition, NRTC points out that it does not provide a subscriber-based service that is interconnected with the public switched network and supported by commercial fees, but rather a service used for private, internal purposes by utilities for fixed telemetry and two-way voice communications to ensure the safe and efficient generation, transmission and distribution of electric utility services.¹⁸ Finally, NRTC states that its communications system is used to respond to various emergency situations, including hurricanes, floods, fires and other natural disasters in remote, sparsely populated areas.¹⁹

6. In addition to the current uses of its communications system, NRTC states that it has pursued and continues to pursue technologies and partnerships in an effort to enhance the use of the 220 MHz band and to expand applications available to entities operating in the band.²⁰ For example, NRTC has invested approximately one million dollars to assist in the development of an IP-based voice technology to meet the voice dispatch needs of rural electric cooperatives.²¹ Furthermore, NRTC states that it has a distribution agreement with TAIT Radio Communications (a manufacturer of 220 MHz voice radios) and has a number of 220 MHz band voice dispatch system proposals pending that if accepted will further expand 220 MHz deployment.²²

7. In the event that its Substantial Service Showings are not accepted for its five-year construction requirements, NRTC requests that the Commission extend its construction requirements for a period of one year from the date of the Commission's ruling.²³ Furthermore, with respect to its ten-year

(...continued from previous page)

¹² See generally Second Extension Request. Substantial service showings were not filed for the 10-year construction requirements.

¹³ *Id.* at 5.

¹⁴ Substantial Service Showings at 4.

¹⁵ *Id.*

¹⁶ *Id.* NRTC covers the following percentage of populations with respect to each of its licenses based on 2000 Census figures: Nationwide license (WPOI700) – 8.2%; EAG002 (WPOL329) – 60.6%; EAG002 (WPOL330) – 8.3%; EAG003 (WPOL331) – 44.9%; EAG003 (WPOK780) – 13.7%; EAG004 (WPOL332) – 4.9%; EAG005 (WPOL333) – .78%; EAG006 (WPOL334) – 61.2%.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ First Extension Request at 7.

construction requirements, NRTC requests an extension of time to construct until March 22, 2012.²⁴ In addressing the waiver standard in section 1.925 of the Commission's rules, NRTC argues that application of the construction deadlines for its licenses would not be "undermined" since it is not warehousing spectrum and that it is proceeding expeditiously and in good faith in deploying its communications system.²⁵ In addition, NRTC argues that it has demonstrated a commitment to constructing a communications system for use extensively in rural areas, to the overall benefit of rural consumers and that strict application of the construction requirements is not warranted in this instance.²⁶

III. DISCUSSION

8. Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, NRTC's licenses will terminate automatically as of the construction deadlines if NRTC fails to meet the requirements of sections 90.767 (regional licenses) or 90.769 (nationwide license) of the Commission's rules unless the Commission grants an extension or waives the construction requirements.²⁷ The current construction deadlines for all but one of the licenses are March 22, 2007 and March 22, 2009, respectively. The construction deadline for call sign WPOK780 is October 7, 2007 and October 7, 2009, respectively.

9. 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.²⁸

10. As an initial matter, we are not persuaded that NRTC's current level of construction and coverage should be construed as "substantial service." Although the 220 MHz construction rules do not specifically define substantial service, other 220 MHz rules do define it as well as many other service-specific rules as "service that is sound, favorable, and substantially above a level of mediocre service that might minimally warrant renewal."²⁹ NRTC holds a nationwide license as well as regional licenses that also cover the entire United States. NRTC states that it represents more than 1,400 rural utilities and affiliates in 47 states.³⁰ However, to this point, NRTC provides service to only 29 utility companies in 17 states.³¹ While we recognize that the nature of NRTC's business, providing services to rural electric cooperatives, may not lend itself to cover large population areas,³² we would expect NRTC's coverage to

²⁴ Second Extension Request at 5.

²⁵ *Id.* at 5, First Extension Request at 6.

²⁶ *Id.*

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

²⁸ 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).

²⁹ 47 C.F.R. §§ 90.743(a)(1), 24.16(a), 27.14(a).

³⁰ Substantial Service Showings at 1.

³¹ *Id.* at 5.

³² We note that three of NRTC's five-year construction showings were accepted because NRTC certified that it covers at least one-third of the population of the licensed areas. *See* File Nos. 0003222772 (WPOL329); 0003222774 (WPOL331); and 0003222777 (WPOL334).

be more robust than its current state given the large number of members across 30 states that are currently not served by NRTC's 220 MHz spectrum.

11. Although we do not accept NRTC's Substantial Service Showings for its five-year construction requirements, we are encouraged with NRTC's progress to date in deploying a system that provides value added services to rural electric cooperatives and consumers and in this specific case, find that a waiver for NRTC to meet its construction requirements is warranted.³³ We recognize the importance of NRTC's 220 MHz system in ensuring reliable power service to the public, including consumers in rural areas, responding to weather emergencies and communicating with public safety entities. Providing NRTC with the additional time it has requested is, therefore, consistent with the Commission's public interest goal of promoting efficient use of spectrum.³⁴ Through its construction of over 395 sites across 17 states and provision of 220 MHz service to 29 rural electric cooperatives,³⁵ NRTC has demonstrated that it has, and will continue, to put its licenses to effective use and will not warehouse the spectrum. We are also encouraged that NRTC has recently leased spectrum to three different entities, further increasing the use of the 220 MHz band.³⁶

IV. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED THAT, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.925, 1.946, 90.767 and 90.769 of the Commission's rules, 47 C.F.R. §§ 1.925, 1.946, 90.767, 90.769, the requests of NRTC LLC, filed on November 5, 2007 and January 9, 2009, for an extension of time to meet its current five- and ten-year construction requirements for its 220 MHz licenses, File Nos. 0003222741, 0003222743, 0003222745, 0003222746, 0003222767 and 0003698323 – 0003698330 IS GRANTED, and that the five- and ten-year construction deadline IS HEREBY EXTENDED until March 22, 2012.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.925, 1.946, 90.767 and 90.769 of the Commission's rules, 47 C.F.R. §§ 1.925, 1.946, 90.767, 90.769, the substantial service showings of NRTC LLC, filed on November 5, 2007, for its 220 MHz licenses, File Nos. 0003222770, 0003222771, 0003222773, 0003222775 and 0003222776 ARE HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Derenge
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Wireless Telecommunications Bureau

³³ We will extend the five- and ten-year construction deadlines until March 22, 2012.

³⁴ 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).

³⁵ Substantial Service Showings at 4 – 5.

³⁶ File Nos. 0003724408, 0003517365 and 0003565842.