



Federal Communications Commission
Washington, D.C. 20554

August 26, 2009

DA 09-1882

SWWG, LLC
6450 E Cave Creek Rd STE 105
Cave Creek, AZ 85331

ATTN: Jake Taylor
Dennis Chambers

In re: Petition for Reconsideration of Auto-Termination Status for
Microwave Industrial/Business Pool Stations WQEX684 Paths 1 and 2,
WQEX687, and WQEX688 Path 1.

Dear Mr. Taylor and Mr. Chambers:

On January 15, 2008, SWWG, LLC filed a petition for reconsideration¹ of the placement in termination pending status licenses for microwave industrial/business pool Stations WQEX684, WQEX687, and WQEX688 (the Stations) in Phoenix, Arizona. For the reasons stated below, we deny the Petition with respect to the call signs and paths noted above² and update the Commission's records to reflect that the licenses for the above-referenced stations and associated paths have been terminated.

The paths in question were required to have been constructed by November 11, 2007.³ On August 14, 2007, a construction reminder was sent to SWWG for the above stations and associated paths.⁴ You state that construction was completed on January 15, 2008.⁵ Therefore, the facilities were not constructed timely.

Section 1.946 requires that if a licensee fails to commence service or operations by the expiration of its construction period its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires.⁶ Section 1.946(e) sets out the process for licensees to request to extend a construction period or coverage period by filing FCC Form 601.⁷ The rule requires such a request to be filed before the expiration of the construction or coverage period. Because SWWG, LLC did not request an extension of the construction deadline in a timely manner, it

¹ Completion Dates for Links (filed Jan. 15, 2008) (Petition).

² The Petition was previously granted with respect to Station WQEX688, Path 2. *See* Letter to Dennis W. Chambers, SWWG, LLC (dated Jan. 29, 2008).

³ *See* File Nos. 0002520400, 0002520402, 0002520405; Wireless Telecommunications Bureau Site-By-Site Action, *Public Notice*, Report No. 2505 (rel. May 17, 2006) at 9. *See also* 47 CFR § 101.63(a) ("Each Station ... authorized under this part must be in operation within 18 months from the initial date of grant.").

⁴ Construct/Coverage Reminder, Ref. No. 1404137 (Aug. 14, 2007).

⁵ Petition.

⁶ *See* 47 C.F.R. § 1.946(c).

⁷ 47 C.F.R. § 1.946(e).

would need a waiver of Section 1.946 of the Commission's Rules to allow consideration of its untimely construction.

Pursuant to Section 1.925 of the Commission's Rules, we may grant a waiver if it is shown that either: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁸ In this case, we conclude that SWWG has failed to make the requisite showing that grant of a waiver is warranted under the circumstances presented. "An applicant for waiver faces a high hurdle even at the starting gate. When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action."⁹ SWWG provided no justification for the untimely construction of the above-referenced stations and paths. The Commission has emphasized that requiring licensees to file extension requests on a timely basis serves important policy objectives and has upheld the dismissal of untimely requests for extension.¹⁰ By operation of the Commission's rule, the authorization for the microwave paths terminated on November 11, 2007. Accordingly, we decline to grant a waiver and update our licensing records to reflect that the referenced facilities are no longer valid because they terminated automatically on November 11, 2007.¹¹

If SWWG wishes to continue operating the terminated facilities, it must file a completed FCC Form 601, in accordance with all applicable Commission Rules, to reauthorize the facilities. In the interim, SWWG should file a request for Special Temporary Authority, in accordance with Section 1.931 of the Commission's Rules, if it wishes to continue operating the facilities.

Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.946 and 101.63 of the Commission's Rules, 47 C.F.R. §§ 1.946, 101.63, the pleading filed by SWWG, LLC on January 15, 2008 IS DENIED.

⁸ 47 C.F.R. § 1.925(b)(3).

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹⁰ Nathan Sherman Enterprises, Inc., Lubbock SMR, Inc., S&C Investments, Inc., Triangle Communications, Inc., Mobilecom One, L.L.C., Hawaiian Wireless, Inc., HBS Communications, Inc., SRI, Inc. and Spectrum Resources of the Northeast, Inc., *Order*, 16 FCC Rcd 11150 (2001) ("As a general matter, allowing the filing of untimely extension requests... would undermine orderly and efficient spectrum management, lead to administrative uncertainty and delay, and hinder [the Commission's] ability to relicense scarce spectrum resources to other licensees who are ready and able to construct"); *see also* Interstate Power and Light Co., *Order*, 18 FCC Rcd 11051 (WTB PSPWD 2003).

¹¹ For Stations WQEX684 and WQEX687, the licenses are terminated because there are no remaining active paths. For Station WQEX688, the specified path terminates, but the remaining paths on the license remain active.

IT IS FURTHER ORDERED that the licensing staff of the Broadband Division SHALL TERMINATE the authorizations for Station WQEX684, Station WQEX687, and Station WQEX688, Path 1 in accordance with this letter and the Commission's Rules.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau