



Federal Communications Commission  
Washington, D.C. 20554

September 1, 2009

Larry D. Mayes  
Windy City Cellular  
1410 Rudakof Circle  
Anchorage, AK 99518

DA 09-1987

Re: Request for Extension of Time to Construct Two Cellular Sites, Call Sign WQIQ784

Dear Mr. Mayes:

This letter addresses the above-captioned Request for Extension of Time to Construct (Extension Request), filed on behalf of Windy City Cellular (Windy City) on July 16, 2009, seeking additional time to meet the construction requirements of section 22.946(c) of the Commission's rules<sup>1</sup> for two cellular sites (Clam Lagoon and White Alice) associated with Call Sign WQIQ784, CMA316 - Alaska 2- Bethel.<sup>2</sup> Specifically, Windy City requests an extension of time until August 1, 2010, to satisfy its construction requirements for the two cellular sites. For the reasons stated below, we grant the Extension Request.

Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, Windy City's authorization for the two cellular sites will terminate automatically as of the construction deadline if Windy City fails to meet the requirements of section 22.946(c),<sup>3</sup> unless the Commission grants an extension or waives the construction requirements.<sup>4</sup> The construction deadline for the Clam Lagoon site was August 18, 2009 and the construction deadline for the White Alice site is March 6, 2010.

Windy City has already constructed and placed into operation one cellular site in Adak, Alaska associated with Call Sign WQIQ784, but has been unable to construct and place into operation the Clam Lagoon and White Alice sites. Windy City states that due to causes beyond its control, an extension is needed to comply with section 22.946 of the Commission's rules with respect to the Clam Lagoon and White Alice sites.<sup>5</sup> Specifically, Windy City states that it has encountered considerable problems with a vendor's software, including billing and accounting functions related to the vendor's mobile switching center.<sup>6</sup> Windy City states that it has been unable to reconcile minutes of use on the trunks between the local end office switching system and the mobile switching center.<sup>7</sup> In addition, to the billing issues, Windy City states that it has also encountered technical difficulties with establishing two roaming partners and that thus far, the problems point to the vendor's equipment.<sup>8</sup> Due to the remoteness of its sites, Windy City is also having technical difficulties with its limited bandwidth satellite connection for

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<sup>1</sup> 47 C.F.R. § 22.946(c).

<sup>2</sup> Request for Extension of Time to Construct (filed July 16, 2009) (Extension Request). See File No. 0003902430.

<sup>3</sup> Pursuant to section 22.946(c) of the Commission's rules, the construction period for new or modified cellular facilities for which a separate authorization is granted is one year, beginning on the date the authorization is granted. See 47 C.F.R. § 22.946(c). In addition, in order to comply with section 22.946(c) of the Commission's rules, licensees must be "providing service" as outlined in section 22.946(b) of the Commission's rules. See 47 C.F.R. § 22.946(c).

<sup>4</sup> 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

<sup>5</sup> Extension Request at 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

out-of-area calls, but with additional time and testing, it feels the technical problems can be resolved.<sup>9</sup> Windy City states that it continues to work with all parties involved to resolve outstanding issues.

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.<sup>10</sup> Alternatively, a licensee may be granted an extension of time to meet its construction requirements, pursuant to section 1.946(e), if the failure to construct is due to involuntary loss of its site or other causes beyond its control.<sup>11</sup>

We find that Windy City has demonstrated that an extension of time to construct the two sites is warranted due to factors beyond its control. Windy City appears to have been diligent in constructing the two sites for WQIQ784 and would likely meet its construction requirement had various vendor problems not occurred. We also recognize the unique environment in which Windy City is attempting to provide service and we believe this regulatory relief will more rapidly enhance cellular service to these remote areas of Alaska. Therefore, in this instance, we find that an extension of time, pursuant to section 1.946(e), will allow Windy City to correct the unforeseen circumstances, as discussed above, and continue towards its efforts to construct the two sites. Furthermore, we find that termination of the authorization would not serve the underlying purpose of the rule and would further delay cellular service in the areas involved.

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 1.946 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.946, the Request by Windy City Cellular for Extension of Time to Construct IS HEREBY GRANTED, and the construction deadline for the Clam Lagoon and White Alice Sites shall be extended until August 1, 2010.<sup>12</sup>

Sincerely,

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

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<sup>9</sup> *Id.*

<sup>10</sup> 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).

<sup>11</sup> 47 C.F.R. § 1.946(e).

<sup>12</sup> 47 U.S.C. § 154(i), 47 C.F.R. §§ 0.331, 1.946.