



Federal Communications Commission
Washington, D.C. 20554

November 2, 2009

DA 09-2366

Tom Craig
Rocky Mountain Public Broadcasting Network, Inc./KRMA-TV
1089 Bannock Street
Denver, CO 80204

In re: Rocky Mountain Public Broadcasting Network, Inc.
TV Intercity Relay WQIG869, Ignacio, Colorado
Reference No. 4902071

Dear Mr. Craig:

On October 9, 2009, Rocky Mountain Public Broadcasting Network, Inc. (Rocky Mountain) filed a petition for reconsideration and waiver request¹ in response to the placement of TV Intercity Relay Station WQIG869 in termination pending status.² For the reasons stated below, we deny the Petition and update the Commission's records to reflect that the license for TV Intercity Relay Station WQIG869 has been terminated.

The station in question was required to have been constructed by August 6, 2009.³ On May 5, 2009, a construction reminder was sent to Rocky Mountain for the above station.⁴ Rocky Mountain states it inadvertently did not file a construction notice and that a delay in receiving grant money prevented construction.⁵

Section 1.946(c) of the Commission's Rules states:

If a licensee fails to commence service or operations by the expiration of its construction permit or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires.⁶

¹ Petition for Reconsideration Due to Termination Pending Status – Waiver Request for Construction Notice (filed Oct. 9, 2009) (Petition).

² See Wireless Telecommunications Bureau Site Based Licensee Termination Pending Public Notice, *Public Notice*, Report No. 5250 (rel. Sep. 9, 2009) at 2. See also 47 C.F.R. § 101.63(a) (“Each Station . . . authorized under this part must be in operation within 18 months from the initial date of grant.”).

³ See File No. 0003281190 (granted Feb. 6, 2008).

⁴ Construct/Coverage Reminder, Ref. No. 4860292 (May 5, 2009).

⁵ Petition.

⁶ 47 C.F.R. § 1.946(c).

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 Rocky Mountain did not request an extension of the construction deadline in a timely manner, it would need a waiver of Section 1.946 of the Commission's Rules to allow consideration of Station WQIG869's untimely extension request.⁸

The Commission's Rules state that waivers may be granted if it is shown that: (i) the underlying purpose of the rules(s) 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 (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁹ In this case, we conclude that you have 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."¹⁰ A delay in receiving grant money is insufficient justification to consider Rocky Mountain's untimely request for an extension of time to construct Station WQIG869. The Commission's Rules explicitly state, "Extension requests will not be granted for failure to meet a construction or coverage deadline due to delays caused by a failure to obtain financing."¹¹ You also failed to explain why Rocky Mountain did not request an extension in a timely manner. 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.¹² By operation of the Commission's rule, the authorization for the station terminated on August 6, 2009.

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 August 6, 2009. If Rocky Mountain wishes to operate the terminated facilities, it must file a completed FCC Form 601, in accordance with all applicable Commission Rules, to reauthorize 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 petition for reconsideration and waiver request filed by Rocky Mountain Public Broadcasting Network, Inc. on October 9, 2009 IS DENIED.

⁷ 47 C.F.R. § 1.946(e).

⁸ We interpret the Petition's request for a waiver of Section 1.946(d) as a request for such a waiver.

⁹ 47 C.F.R. § 1.925(b)(3).

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹¹ 46 C.F.R. §1.946(e)(2).

¹² 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).

IT IS FURTHER ORDERED that the licensing staff of the Broadband Division SHALL TERMINATE the authorization for Station WQIG869 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