

**Before the  
Federal Communications Commission  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Request of Northern New Mexico Telecom, Inc.	)	File Nos. 0003129424, 0003129430
	)	
For Waiver of Section 1.949 and Section	)	
1.955(a)(1) Regarding Application for Renewal of	)	
PCS Licenses WPQT378 and WPQS926	)	

**ORDER**

**Adopted: March 19, 2009**

**Released: March 19, 2009**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this Order, we address Northern New Mexico Telecom, Inc.’s (“NNMT”) requests for waiver (“Waiver Requests”) of sections 1.949 and 1.955(a)(1) of the Commission’s rules<sup>1</sup> to allow the grant of its late-filed applications to renew Personal Communications Service (“PCS”) licenses WPQT378 (BTA008, submarket 8 – Mora County, New Mexico) and WPQS926 (BTA008, submarket 6 – Colfax County, New Mexico)(collectively the “Licenses”).<sup>2</sup> NNMT filed its Waiver Requests on August 2, 2007 and filed additional supplements to its Waiver Requests on May 9, August 5, and December 31, 2008 and on February 20, 2009.<sup>3</sup> For the reasons stated below, we grant the Waiver Requests without prejudice to any enforcement action the Commission may decide to take in this matter.<sup>4</sup>

<sup>1</sup> 47 C.F.R. §§ 1.949, 1.955(a)(1).

<sup>2</sup> Northern New Mexico Telecom, Inc., Waiver Requests, FCC File Nos. 0003129424 and 0003129430 (filed Aug. 2, 2007). The Waivers Requests are substantially identical and will be referred to collectively as “Waiver Requests.”

<sup>3</sup> Northern New Mexico Telecom, Inc. Supplements (filed May 9, 2008) (These Supplements are identical and will be referred to collectively as “May 9, 2008 Supplements.”); E-mail from Howard Shapiro, Counsel, NNMT, to Lloyd W. Coward, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 5, 2008) (“August 5, 2008 Supplement”); E-mail from Howard Shapiro, Counsel, NNMT, to Joyce Jones, Attorney Advisor, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Dec. 31, 2008) (“December 31, 2008 Supplement”); E-mail from Howard Shapiro, Counsel, NNMT, to Joyce Jones, Attorney Advisor, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Feb. 20, 2009) (“February 20, 2009 Supplement”).

<sup>4</sup> See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission’s Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485-86 ¶ 22 (1999) (“*ULS Order*”); see also General Growth Properties, Waterbury, Connecticut, 22 FCC Rcd 6562, 6564-65 ¶¶ 9-10 (SED EB 2007) (issuing separate monetary forfeitures for failure to timely file a renewal application and continued unauthorized operations where licensee failed to timely file renewal application for Private Land Mobile Service Station and failed to file request for Special Temporary Authorization for more than one year after expiration of its license); Berkshire Communicators, Inc., Licensee of Stations KCA237, KNKC731 and KNKC816; Pittsfield, Massachusetts, *Forfeiture Order*, 15 FCC Rcd 18242, 18242 ¶ 3 (EB 2000) (noting that the Wireless Telecommunications Bureau granted renewal applications for wireless licenses that were filed almost three months late, but upholding \$4,500 forfeiture for failing to timely file).

2. *Background.* On September 28 and October 3, 2000, respectively, the Commission granted PCS licenses WPQS926 and WPQT378 to Qwest Wireless; both Licenses had an expiration date of June 26, 2007. In October 2001, both Licenses were assigned to NNMT, the wireless subsidiary of La Jicarita Rural Telephone Company, a telephone cooperative that is the incumbent local exchange carrier in Mora, New Mexico.<sup>5</sup> NNMT timely filed construction notifications for both Licenses on June 26, 2002 and states that it has continued to operate its facilities and provide uninterrupted service since that time.<sup>6</sup> On June 26, 2007, the Licenses expired by their own terms because NNMT failed to timely file renewal applications.<sup>7</sup> On August 2, 2007, 37 days after the expiration dates, NNMT submitted renewal applications for the Licenses accompanied by the Waiver Requests.<sup>8</sup> On May 9, 2008, in response to an inquiry from Commission staff, NNMT filed two identical Supplements providing further information regarding the nature of its system and service.<sup>9</sup>

3. In support of its waiver, NNMT states that it has been “very active in bringing the benefits of wireless service to the citizens of the State of New Mexico.”<sup>10</sup> NNMT further states that it operates a CDMA and GSM all roaming system in Mora and Colfax counties – 100 percent of its users are the roaming customers of other carriers.<sup>11</sup> NNMT states that this area is “extremely remote” and there are large pockets of white space in the area.<sup>12</sup> NNMT contends that its build-out was unique because it targeted areas where its wireline cooperative members lived and worked, rather than the interstate (I-25) and larger cities (*e.g.*, Raton, New Mexico, population 7,000) as other service providers had done.<sup>13</sup> NNMT represents that in some areas, it is the only CDMA provider,<sup>14</sup> while in other areas it is the only wireless service provider.<sup>15</sup> If the Licenses are not renewed, NNMT maintains that there are areas in

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<sup>5</sup> Waiver Requests at 1.

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

<sup>7</sup> 47 C.F.R. § 1.955(a)(1).

<sup>8</sup> FCC File Nos. 0003129424 and 0003129430.

<sup>9</sup> *See generally* May 9, 2008 Supplements.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.* The Commission’s baseline definition of “rural area” is a county with a population density of 100 persons per square mile or less. *See* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, *Report and Order*, 19 FCC Rcd 19078, at 19087- 19088, ¶ 11 (2004). Based on 2000 Census Data, Mora County has a population density of 2.7 persons per square mile and Colfax County has a population density of 3.8 persons per square mile.

<sup>13</sup> *Id.* NNMT posits that given the remoteness of the area, other wireless service providers would be unlikely to duplicate NNMT’s coverage. *Id.*

<sup>14</sup> *Id.* NNMT states that it is the only provider of CDMA service at the following site locations: Angel Fire, Colfax County; and Mora, Mora County. *Id.* NNMT states that it has constructed CDMA sites in Eagle’s Nest and Cimarron in Colfax County and that it is the only CDMA provider in those areas. August 5, 2008 Supplement. In addition, NNMT states that a CDMA site is planned for Ute Park in 2009 and indicates that it will be the only provider of CDMA service at that site once it is operational. May 9, 2008 Supplements at 1-2. We note that NNMT represents that it is the sole provider of wireless service in Angel Fire and Eagle’s Nest through a partnership with Excomm that includes “sharing tower assets and providing coverage enhancements.” February 20, 2009 Supplement, Attachment at 2.

<sup>15</sup> May 9, 2008 Supplements at 1. NNMT states that it is the only provider of GSM and CDMA wireless service at the following site locations: Buena Vista and Borrego Park, both in Mora County. *Id.* NNMT also states that it (continued....)

Mora and Colfax counties where roamers will be unable to place a call or contact emergency services using E911, which would “would affirmatively degrade the wireless services available to the rural areas of New Mexico served by NNMT.”<sup>16</sup>

4. NNMT admits that it inadvertently failed to timely file renewal applications for the Licenses.<sup>17</sup> NNMT argues, however, that its record of service to rural communities, as discussed above, and its historical compliance with Commission rules and filing deadlines support its Waiver Requests and renewal applications.<sup>18</sup> Specifically, NNMT states that it has “a good track record of compliance with FCC regulations and deadlines” and highlights its timely compliance with the build-out requirements for the Licenses and related filing requirements.<sup>19</sup> NNMT maintains that its failure to timely file its renewal applications in the instant case is “an isolated instance of inadvertence,” which NNMT discovered on its own and promptly acted to remedy.<sup>20</sup> In addition, NNMT states that it has “implemented internal procedures and cross checks to ensure that such deadlines are not missed in the future.”<sup>21</sup> NNMT argues that the length of delay in filing was relatively brief – 37 days – which, NNMT notes, was seven days outside of the Commission’s 30-day grace period for submitting late-filed renewal applications.<sup>22</sup> NNMT also argues that because it has met the applicable service and construction requirements for the licenses, it should be afforded a renewal expectancy; such a renewal expectancy will “ensure a stable regulatory environment” for licensees, such as NNMT, which have “invested [their] resources to provide service in a particular licensed are[a].”<sup>23</sup> In addition, NNMT maintains that no third party would be harmed by this renewal, nor would a third party have any expectation that the renewal would not occur.<sup>24</sup>

5. *Discussion.* Under the Commission’s policy regarding treatment of late-filed renewal applications in the Wireless Radio Services, renewal applications that are filed up to 30 days after the

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constructed GSM and CDMA sites at Philmont Scout Ranch in Colfax County and Pendaries Village in Mora County and indicates that it is the only provider of GSM and CDMA service at these sites. *See* August 5, 2008 Supplement; December 31, 2008 Supplement. NNMT notes that the Philmont Scout Ranch site serves 26,000 Scouts, 50 full time employees and hundreds of volunteers who frequent the Ranch annually. NNMT also explains that the Pendaries Village site area is a remote vacation community used primarily in the summer months and previously had no wireless service. NNMT states that it was asked by the local community to provide wireless service in the area as both an amenity and a safety feature, which would help promote the development of the area. May 9, 2008 Supplements at 1-2. In addition, NNMT states that a CDMA/GSM site is planned for Ocate in 2009 and indicates that it will be the only provider of CDMA/GSM service at that site once it is operational. May 9, 2008 Supplements at 2.

<sup>16</sup> May 9, 2008 Supplements at 1; Waiver Requests at 4.

<sup>17</sup> Waiver Requests at 1. NNMT acknowledges that it may be subject to enforcement action, including fines or forfeitures, for failing to comply with the Commission’s rules. *Id.* at 5.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 2-3.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.*

expiration date of the license will be granted *nunc pro tunc*<sup>25</sup> if the application is accompanied by a waiver request and otherwise sufficient under our rules.<sup>26</sup> In those cases, the licensee may be subject to an enforcement action for untimely filing and unauthorized operation.<sup>27</sup> Renewal applications filed more than thirty days after the license expiration date must also include a waiver request, but will be subject to stricter review, will not be routinely granted, and may be accompanied by enforcement action, including more significant fines or forfeitures.<sup>28</sup>

6. In determining whether to grant a late-filed application, we take into consideration all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.<sup>29</sup> We may grant a request for a waiver when: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and 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.<sup>30</sup>

7. After review of the record, we find that strict application of Sections 1.949(a) and 1.955(a)(1) of the Commission's Rules would be inequitable and contrary to the public interest. Here, the length of the delay in filing was limited – 37 days – seven days beyond the 30-day period within which the Commission allows licensees to file late renewal applications which will be granted *nunc pro tunc*.<sup>31</sup> In addition, NNMT has a history of compliance with our rules, including timely construction of the Licenses and appropriately notifying the Commission.<sup>32</sup> NNMT has also implemented new internal procedures and cross-checks to ensure that all deadlines are met in the future.<sup>33</sup> Moreover, grant of the Waiver Requests and renewal applications will prevent adverse consequences to the public in the very rural areas of New Mexico served by NNMT.<sup>34</sup> We agree that, absent NNMT's service, there would be

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<sup>25</sup> *Nunc pro tunc* is a phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, *i.e.*, with the same effect as if regularly done.

<sup>26</sup> Waiver Requests Required for Late-Filed Renewal Applications in Most Wireless Services, *Public Notice*, 18 FCC Rcd 16703 (WTB 2003) (“*Waiver Request Public Notice*”); *ULS Order*, 14 FCC Rcd at 11485-86 ¶ 22.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Waiver Request Public Notice*, 18 FCC Rcd 16703; *see also ULS Order*, 14 FCC Rcd at 11485-86 ¶ 22.

<sup>30</sup> 47 C.F.R. § 1.925(b)(3).

<sup>31</sup> Applications of Monroe County and Request for Waiver to Operate Microwave Public Safety Pool Stations WNTX 234, *et al.*, Rochester, New York, *Order on Reconsideration*, 16 FCC Rcd 16447, 16449 ¶ 7 (PSPWD WTB 2001) (“*Monroe County*”) (granting waiver and renewal of late filed renewal applications where licensee filed 33 days late, but had history of compliance with Commission rules, newly devised plan to track FCC authorizations to avoid future occurrences, and denial would have had an adverse impact on public safety by disrupting emergency radio communications).

<sup>32</sup> *See id.*; *see also* Andrea Hall and David Fitts (Call Sign WPCA882); Request for Waiver of Section 90.149(a) of the Commission's Rules, *Order*, 15 FCC Rcd 710, 710 ¶ 2 (finding grant of waiver was in public interest where “licensees timely constructed their authorization and [were] currently providing service”).

<sup>33</sup> *See Monroe County*, 16 FCC Rcd at 16449 ¶ 7.

areas in Mora and Colfax counties where some wireless roamers would be unable to place a call or initiate a public safety contact via E911 in the event of an emergency, and in areas where NNMT is the only wireless provider, all roamers will be prevented from placing any wireless calls. Grant of the Waiver Requests and renewal applications will ensure that service is not interrupted in those areas where NNMT is either the only provider of CDMA service or is the only provider of any wireless service. Taking into account all of the facts and circumstances, we find that it is in the public interest to grant the Waiver Requests and renewal applications without prejudice to any possible enforcement action.

8. *Ordering Clauses.* Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.949(a) and 1.955(a)(1) of the Commission's Rules, 47 C.F.R. §§ 1.949(a), 1.955(a)(1), the Waivers of Sections 1.949(a) and 1.955(a)(1) of the Commission's Rules filed in connection with FCC File Nos. 0003129424 and 0003129430 ARE GRANTED.

9. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309, and Section 1.949(a) of the Commission's Rules, 47 C.F.R. § 1.949(a), that FCC File Nos. 0003129424 and 0003129430 ARE GRANTED.

10. These actions are 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.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>34</sup> See, e.g., *Monroe County*, 16 FCC Rcd at 16449 ¶ 7, *City of Dardanelle Fire Department, Application to Renew License for Station WNHQ335, Dardanelle, Arkansas, Order*, 17 FCC Rcd 10901, 10902 ¶ 4 (PSPWD WTB 2002) (granting waiver and renewal of late filed renewal application where licensee used license for fire department operations and there would be adverse consequences to the public if the license were to lapse).