



Federal Communications Commission
Washington, D.C. 20554

March 31, 2009

DA 09-733

Mark C. Allen
4531 Shannon Place
Redding, CA 96001

In re: Mark C. Allen
TV Studio Transmitter Link WQGV372, Redding, California
Reference No. 4809549

Dear Mr. Allen:

On December 11, 2008, you filed a request for extension of time¹ to construct TV Studio Transmitter Link Station WQGV372. You filed this Request in response to the change of status of TV Studio Transmitter Link Station WQGV372 into termination pending status. For the reasons stated below, we deny the Request and update the Commission's records to reflect that the license for TV Studio Transmitter Link Station WQGV372 has been terminated.

The station in question was required to have been constructed by October 25, 2008.² On July 29, 2008, a construction reminder was sent to you for the above station.³ You state that construction has not yet been completed.⁴ Therefore, the facilities were not constructed timely. You state that because of the Slide Wildland Fire in the area of WQGV372 in 2007, power was lost, and more time is needed to get power to the site.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

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

¹ Extension of Time (filed Dec. 11, 2008) (Request).

² See Wireless Telecommunications Bureau Site Based Licensee Termination Pending Public Notice, *Public Notice*, Report No. 4563 (rel. Dec. 3, 2008) 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 Construct/Coverage Reminder, Ref. No. 4768313 (July 29, 2008).

⁴ Request.

⁵ *Id.*

⁶ 47 C.F.R. § 1.946(c).

⁷ 47 C.F.R. § 1.946(e).

expiration of the construction or coverage period. Because you did not request an extension of the construction deadline in a timely manner, you would need a waiver of Section 1.946 of the Commission's Rules to allow consideration of Station WQGV372's untimely extension request.

The Commission's Rules state that waivers may be granted if it is shown that: (i) the underlying purpose of the rule(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.⁸

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."⁹ You have provided insufficient justification for consideration of the untimely request for extension of time to construct Station WQGV372. While we recognize the magnitude of the Slide Wildland Fire in 2007,¹⁰ the incident was contained over a year ago.¹¹ You offer no explanation of why more time is needed to get power to the site, nor of what efforts, if any, you have made to remedy the situation. You also failed to explain why you failed to 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 October 25, 2008. 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 October 25, 2008.

If you wish to operate the terminated facilities, you 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 request for extension of time filed by Mark C. Allen on December 11, 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 *See, e.g.*, http://en.wikipedia.org/wiki/2007_California_fires (viewed Dec. 24, 2008).

¹¹ *See* <http://inciweb.org/incident/1005/> (viewed Dec. 24, 2008).

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 WQGV372 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,

Blaise A. Scinto
Chief, Broadband Division
Wireless Telecommunications Bureau