



Federal Communications Commission
Washington, D.C. 20554

April 21, 2009

DA 09-873

John E. Furlough
Commonwealth of Virginia
Department of State Police
P.O. Box 27472
7700 Midlothian Turnpike
Richmond, VA 23261-7472

Re: Request for Extension of Time to Construct Twenty Paging Licenses

Dear Mr. Furlough:

This letter addresses the above-captioned Request for Extension of Time to Construct (Waiver Request), filed on behalf of the Virginia Department of State Police (VSP) between May 2, 2007 and January 6, 2009, seeking waiver of the construction requirements of section 22.503(k) of the Commission's rules¹ for twenty geographic-based Part 22 paging licenses.² Specifically, VSP requests a waiver until October 1, 2010 to complete construction for eleven licenses listed in Appendix A and a waiver until December 31, 2011 to complete construction for nine licenses listed in Appendix B. For the reasons stated below, we grant the Waiver Request.

Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, VSP's licenses will terminate automatically as of the construction deadline if VSP fails to meet the requirements of section 22.503(k)(2),³ unless the Commission grants an extension or waives the construction requirements.⁴ The construction deadline for eleven licenses was June 21, 2007 and the construction deadline for nine licenses was January 8, 2009.

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) unique or unusual factual circumstances exist, such that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁵

VSP states that it acquired Part 22 paging licenses as the winning bidder in a paging auction as well as in the secondary market for purposes of supporting the Commonwealth of Virginia Statewide

¹ 47 C.F.R. § 22.503(k)(2).

² Request for Extension of Time to Construct (filed May 2, 2007, June 19, 2007 and January 6, 2009) (Waiver Request). See Appendix A and Appendix B for a list of the File Nos. and Call Signs subject to the Waiver Request.

³ Pursuant to section 22.503(k)(2) of the Commission's rules, an EA paging licensee must construct facilities to cover two-thirds of the population of its license area within five years of initial license grant. 47 C.F.R. § 22.503(k)(2). Alternatively, an EA paging licensee may demonstrate that it provides substantial service to its license area within five years of initial license grant. 47 C.F.R. § 22.503(k)(3).

⁴ 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

⁵ 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).

Agencies Radio System (STARS).⁶ VSP states that the STARS facilitates interoperability between 22 participating state agencies and 134 city or county agencies using a public-safety grade communications system.⁷ VSP also states that the Virginia General Assembly has appropriated funds since 2000 to create a state-wide network, including an additional \$201.9 million in 2006. VSP states that the completion of the state-wide system requires a multi-phase approach whereby certain areas of the state-wide system have been constructed, including 40 Part 22 paging licenses that are operational, while other areas are in different phases of construction, including surveying, permitting, equipment ordering and civil work.⁸ The twenty Part 22 paging licenses that need to be constructed are located in five Economic Areas (EAs) throughout the Commonwealth of Virginia. VSP outlines its implementation schedule for the licenses subject to its Waiver Request and states that the licenses will be constructed by September 2009 for the eleven licenses with a construction deadline of June 21, 2007 and by December 2010 for the nine licenses with a construction deadline of January 8, 2009.⁹

Based on the totality of the circumstances involved in this case, we believe that the public interest would be served by extending the construction deadline for the twenty licenses listed in Appendix A and Appendix B. We find waiving 22.503(k)(2) in this instance is justified because terminating VSP's licenses would not serve the underlying purpose of the construction requirements and would undermine public safety and the public interest. We acknowledge that such lengthy extensions are not routine, but we believe it is justified in this instance, given the challenges in constructing a state-wide public safety network and VSP's progress in building portions of its network to date. We also note that VSP has obtained state funding for its system. We expect that such a system will provide critical communications to first responders and other public safety users and, accordingly, will benefit the public with an enhanced public safety communications system.

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 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the Request by the Virginia Department of State Police for Extension of Time to Construct IS HEREBY GRANTED to extend the construction deadline for eleven licenses listed in Appendix A until October 1, 2010 and the nine licenses listed in Appendix B until December 31, 2011.¹⁰

Sincerely,

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

⁶ Waiver Request at 1.

⁷ *Id.*

⁸ *Id.*

⁹ VSP requests an addition year from the date that construction is supposed to be completed in order to correct any potential interference issues. *Id.* at 2.

¹⁰ 47 U.S.C. § 154(i), 47 C.F.R. §§ 0.331, 1.925.

Appendix A - Licenses with a Construction Deadline of June 21, 2007

File Number	Call Sign	Market	Market Description	Channel Block
0003014264	WPVE519	BEA016	Staunton, VA-WV	FJ
0003014265	WPVE520	BEA016	Staunton, VA-WV	FO
0003014266	WPVE522	BEA017	Roanoke, VA-NC-WV	FO
0003014273	WQFP302	BEA013	Washington-Baltimore, DC-MD-VA-WV-PA	FR
0003014270	WPVI530	BEA016	Staunton, VA-WV	FC
0003014271	WPVI534	BEA017	Roanoke, VA-NC-WV	FC
0003014272	WPVI539	BEA018	Greensboro-Winston-Salem-High Point, NC-VA	FH
0003014268	WPVH386	BEA013	Washington-Baltimore, DC-MD-VA-WV-PA	FG
0003014269	WPVH387	BEA013	Washington-Baltimore, DC-MD-VA-WV-PA	FI
0003014267	WPVF426	BEA015	Richmond-Petersburg, VA	FG
0003077234	WPVE521	BEA016	Staunton, VA-WV	FP

Appendix B - Licenses with a Construction Deadline of January 8, 2009

File Number	Call Sign	Market	Market Description	Channel Block
0003694012	WPZG558	BEA016	Staunton, VA-WV	FG
0003694013	WPZG559	BEA016	Staunton, VA-WV	FI
0003694014	WPZG846	BEA017	Roanoke, VA-NC-WV	FI
0003694015	WPZG848	BEA017	Roanoke, VA-NC-WV	FK
0003694016	WPZG849	BEA017	Roanoke, VA-NC-WV	FM
0003694017	WQFP305	BEA018	Greensboro-Winston-Salem-High Point, NC-VA	FQ
0003694018	WQFP306	BEA017	Roanoke, VA-NC-WV	FQ
0003694019	WQGJ326	BEA018	Greensboro-Winston-Salem-High Point, NC-VA	FG
0003694020	WQGJ327	BEA018	Greensboro-Winston-Salem-High Point, NC-VA	FO