



Federal Communications Commission
Washington, D.C. 20554

July 11, 2012

Communication Specialists of Wilmington, LLC
3330 Wrightsville Avenue
Wilmington, NC 28403
ATTN S. Frank McNeil

DA 12-1106

RE: Communication Specialists of Wilmington, LLC's Request for Extension of Time to Construct Call Sign WPZG977, File No. 0003694996.

Dear Mr. McNeil:

This letter addresses Communication Specialists of Wilmington, LLC's (CSW) January 7, 2009 Request for Extension of Time to Construct with respect to its Part 22 VHF/UHF Paging license under call sign WPZG977 (Extension Request).¹ For reasons discussed below, we deny the Extension Request pursuant to section 1.946(e) of the Commission's rules.² As a result, the license referenced above automatically terminated as of the construction deadline, January 8, 2009, pursuant to sections 22.503(k) and 1.955 of the Commission's rules.³

Background. Pursuant to sections 22.503(k)(1) and (2) of the Commission's rules, an Economic Area (EA) or Major Economic Area (MEA) licensee authorized to provide public mobile paging and radiotelephone service must construct or otherwise acquire and operate sufficient facilities to provide coverage to one-third of the population of the paging geographic area no later than three years after the initial grant of the EA or MEA license, and two-thirds of the population no later than five years after the initial grant of the license.⁴ As an alternative to meeting the construction requirements, a paging geographic area licensee may demonstrate, no later than five years after the initial grant of its license, that it provides substantial service to the paging geographic area.⁵ The licensee must notify the Commission at the end of the three-year period that it either has covered one-third of the population or that it plans to provide substantial service at the five-year benchmark.⁶ Finally, section 22.503(k) provides that failure by an EA or MEA licensee to meet the applicable construction or substantial service requirements will result in automatic termination of its license.⁷

¹ FCC File No. 0003694996 (filed Jan. 7, 2009) (Extension Request).

² 47 C.F.R. § 1.946(e).

³ *Id.* §§ 22.503(k), 1.955(a)(2).

⁴ *Id.* § 22.503(k)(1) and (2).

⁵ *Id.* § 22.503(k)(3).

⁶ *Id.* § 22.503(k)(1) (citing *id.* § 1.946). The licensee must also notify the Commission at the end of the five-year period that it has either satisfied the construction requirement or that it has satisfied the substantial service requirement. *Id.* § 22.503(k)(2) (citing *id.* § 1.946).

⁷ 47 C.F.R. § 22.503(k); *see id.* §§ 1.955(a)(2) (providing that "[a]uthorizations automatically terminate (in whole or in part as set forth in the service rules), without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements"); 1.946(c) (providing that "[i]f a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically (in whole or in part as set forth in the service rules), without specific Commission action, on the date the construction or coverage period expires").

CSW acquired its license in Auction No. 48 as the highest bidder for BEA018 – Greensboro-Winston-Salem-High Point, NC-VA. The Commission granted CSW’s license on January 8, 2004, with a three-year construction deadline of January 8, 2007, and a five-year construction deadline of January 8, 2009. CSW timely submitted its three-year construction notification on December 28, 2006, electing to demonstrate substantial service at the five-year benchmark.⁸ One day before the five-year construction deadline, CSW filed its Extension Request seeking a one-year extension, until January 1, 2010 to meet its construction requirement.⁹ CSW amended its Extension Request on February 24, 2009 (1st Supplement to Request), and June 1, 2009 (2nd Supplement to Request), well after the license’s five-year construction deadline.

Discussion. We find that grant of an extension of time to construct the subject call sign is not warranted in this instance. Section 1.946(e) of the Commission’s rules provides that an extension of time to meet construction requirements “may be granted if the licensee shows that failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control.”¹⁰ Section 1.946(e) also specifies circumstances where an extension will not be granted, such as “a failure to obtain financing, or to obtain an antenna site or to order equipment in a timely manner.”¹¹ The extension standard must be applied in consideration of section 309(j) of the Communications Act, as amended, which states that the Commission shall include performance requirements to ensure prompt delivery of services, to prevent stockpiling and warehousing of spectrum by licensees, and to promote investment and deployment of new technologies and services.¹²

In its initial Extension Request, CSW simply states that the incumbent licensee in the area, USA Mobility Wireless, Inc. (UMW) “holds eight (8) station locations under call sign KRH656, ... precluding Licensee [CSW] from establishing the required buildout” and that CSW “anticipates that on or before January 1, 2010, the site-based carrier [UMW] will have deconstructed most, if not all, of its 158.7 MHz facilities, allowing Licensee [CSW] to meet its build out requirements.”¹³ In its 1st Supplement, CSW adds that UMW has three licenses, KRH656, KRH659, and WRV269 that authorize stations at 17 sites, that “[t]hese stations effectively block Licensee’s construction in all portions of the license area where service is commercially viable,” and that “[a]pproximately 95% of the population of BEA018 cannot be served by Licensee due to the active site-based licenses of USA Mobility.”¹⁴ In its 2nd Supplement, filed six months after the five-year construction deadline had passed, CSW explains that it consulted with UMW to ask “about the possibility of a surrender of [UMW’s] licenses.” CSW then states that after approaching the incumbent, UMW allowed the licenses for stations KRH656, KRH658 and KRH659 to expire,¹⁵ and canceled its license for station WRV269.¹⁶ CSW claims that it now has an “opportunity to

⁸ FCC File No. 0002863203.

⁹ Extension Request at 1.

¹⁰ 47 C.F.R. § 1.946(e)(1).

¹¹ *Id.* § 1.946(e)(2).

¹² *See* 47 U.S.C § 309(j)(4)(B).

¹³ Extension Request at 1.

¹⁴ 1st Supplement to Request at 1. In particular, CSW states that UMW holds active licenses for 8 station locations under the call sign KRH656; 4 station locations under the call sign KRH659 and 1 station location under the call sign WRV269. *Id.*

¹⁵ 2nd Supplement to Request at 2. A search of the Universal Licensing System (ULS) database indicates these call signs expired on April 1, 2009 four months after CSW’s five-year construction deadline.

¹⁶ UMW cancelled its license for Station WRV269 on March 11, 2009, more than three months after CSW’s construction deadline. FCC File No. 0003768749 (filed Mar. 11, 2009).

construct and operate in areas where the population density is sufficient to support Licensee's [CSW's] investment."¹⁷

We find that CSW has not demonstrated that its failure to meet its construction requirement for Station WPZG977 was due to factors beyond its control. First, we note that the incumbent operations were present in the area that makes up BEA018 when CWS purchased the license at auction. The public notice announcing Auction No. 48 stated that "[p]otential bidders are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Geographic area licensees in accordance with the Commission's Rules must protect such incumbents from harmful interference... These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas."¹⁸ Further, regarding the Commission's recommended due diligence, the public notice stated that "[p]otential bidders are solely responsible for identifying associated risks, and investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 48."¹⁹ We encourage potential bidders to take heed of these warnings. The level of incumbency in an area is not a factor, in and of itself, beyond the control of a potential geographic area licensee in terms of complying with Commission rules and policies.

Further, the fact that UMW's stations encumbered a significant part of CSW's geographic area does not adequately explain what steps CSW took during the five-year period to meet its construction requirement. CSW's explanation submitted six months after the deadline, in its 2nd Supplement, that it had researched population density in small areas of the BEA and after checking equipment and installation costs "concluded that it was not economically feasible to proceed with construction" does not provide any evidence that CSW took actual steps to meet its obligation. Further, simply inquiring with UMW about obtaining access to the spectrum and learning that UMW was "conducting a review of its operations and may take action regarding certain" licenses is not a material demonstration that CSW had a plan to meet its construction obligation by the deadline or that a short extension would allow CSW to construct. Rather, these steps appear to be part of a speculative business decision to obtain encumbered spectrum in hopes that it may become available at some point.

While CSW claims to have "made reasonable and diligent efforts prior to the deadline to design and construct facilities,"²⁰ CSW failed to provide any service by the five-year deadline. Further, CSW did not provide material evidence that it was diligent during the initial five years of the license term by, for example, attempting to relocate, remove or obtain the incumbent facilities to meet its construction obligation by the deadline. CSW's primary rationale for not moving forward on providing service is that it was not economically feasible, a reason expressly rejected by Commission rule as a basis for obtaining an extension. We therefore find that CSW has made certain business decisions, first to obtain the license and then to wait to see if the incumbent vacated the spectrum to allow construction. The Commission has consistently found that licensee business decisions are not circumstances beyond the licensee's control and are not the basis for regulatory relief.²¹ We conclude that CSW's failure to timely meet its

¹⁷ 2nd Supplement to Request at 2.

¹⁸ Lower and Upper Paging Bands Auction Scheduled for May 13, 2003, *Public Notice*, 17 FCC Rcd 27809 (WTB 2002).

¹⁹ *Id.*

²⁰ 2nd Supplement to Request at 2.

²¹ *See, e.g.*, Redwood Wireless Minnesota, LLC, Order, 17 FCC Rcd 22416 (WTB CWD 2002) (construction delays resulting from business disputes were exercise of business judgment and were not outside Petitioner's control); Eldorado Communications LLC, Order, 17 FCC Rcd 24613 (WTB CWD 2002) (licensee's determination to initially deploy TDMA system and subsequently to adopt GSM with months remaining before construction deadline was business decision within its control); Bristol MAS Partners, Order, 14 FCC Rcd 5007 (WTB PSPWD 1999) (equipment installation or delivery not delayed for some unique reason and licensee failing to obtain equipment was

construction requirement is not due to involuntary loss of a site or the result of circumstances beyond its control.

Because we deny CSW's Extension Request, the license for Station WPZG977 automatically terminated, pursuant to sections 22.503(k) and 1.955 of the Commission's rules,²² as of its construction deadline, January 8, 2009.

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 Section 1.946(e) of the Commission's Rules, 47 C.F.R. § 1.946(e), the Request for Extension of Time to Construct filed by Communications Specialists of Wilmington, LLC, on January 7, 2009 IS DENIED and File No. 0003694996 IS DISMISSED. This action is taken pursuant to delegated authority under sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

Thomas Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

business decision); AAT Electronics Corporation, 93 FCC 2d 1034 (1983) (decision not to market service aggressively because of equipment uncertainties is within licensee's control); Business Radio Communications Systems, Inc., 102 FCC 2d 714 (1985) (construction delay caused by zoning challenge not a circumstance beyond licensee's control); Texas Two-Way, Inc., 98 FCC 2d 1300 (1984), *aff'd sub nom.*, Texas Two-Way, Inc. v. FCC, 762 F.2d 138 (D.C. Cir. 1985) (licensee is responsible for delay resulting from interference caused by construction adjacent to construction site because site selection was an independent business decision).

²² 47 C.F.R. §§ 22.503(k), 1.955.