



Federal Communications Commission
Washington, D.C. 20554

February 29, 2012

BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED

DA-312

Mr. Tom Holst
City of Springfield
Department of Public Works
3301 S FF Hwy
Springfield, MO 65807

Re: City of Springfield
Requests for Waiver of Construction Deadline and Construction
Notification Deadline Station WQAU423; File No. 0004690767

Dear Mr. Holst:

On April 14, 2011, the City of Springfield (Springfield) filed a construction notification and requests for waiver of Sections 1.946(d) and 90.155 of the Commission's Rules¹ with respect to its 800 MHz conventional land mobile station WQAU423, located in Greene County, Missouri.² The construction deadline for station WQAU423 was August 9, 2005, but Springfield constructed the station on March 1, 2011, and requests waivers to extend its construction deadline and its construction notification deadline. As outlined below, we deny Springfield's construction deadline waiver request; therefore, the license automatically canceled on August 9, 2005.

The Mobility Division (MD) granted Springfield a license for Station WQAU423 on August 9, 2004.³ Section 90.155 of the Commission's rules requires that all stations authorized under Part 90, including Station WQAU423, be placed into operation within twelve (12) months from the date of grant or the authorization cancels automatically.⁴ In addition, Section 1.946(d) of the Commission's rules requires a licensee who commences service within its construction period to notify the Commission by filing an FCC Form 601 within 15 days of the expiration of the applicable construction deadline.⁵ Commission rules therefore required Springfield to construct Station WQAU423 by August 9, 2005, and to file its construction notification within 15 days.

We note that 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 of the instant case, and that grant of the waiver would be in the public interest; or 2) where the petitioner establishes unique or unusual factual circumstances, that application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁶ Alternatively, a licensee may be granted an extension of time to meet its

¹ 47 C.F.R. §§ 1.946(d), 90.155.

² FCC File No. 0004690767 (filed April 14, 2011) (Request).

³ FCC File No. 0001590132 (filed April 28, 2004).

⁴ 47 C.F.R. § 90.155; *see also* § 1.946(c).

⁵ 47 C.F.R. § 1.946(d).

⁶ 47 C.F.R. § 1.925.

construction requirements, pursuant to section 1.946(e), if the failure to construct is due to involuntary loss of its site or other causes beyond its control.⁷ However, Section 1.946 stipulates that the request must be filed before the expiration of the construction period.⁸

On April 14, 2011, well past the construction deadline, Springfield submitted its requests for waiver of the one-year construction deadline and a waiver to allow it to submit a late filed notification of construction.⁹ Springfield explains that due to shortfalls in revenue, “decisions were made to not spend the money until it seemed prudent.”¹⁰ Springfield added that it recently determined that better communications were needed to serve the public, including in times of natural disasters. Accordingly, Springfield indicates that it procured the needed equipment and completed construction on March 1, 2011.

We deny Springfield’s request to waive the construction deadline. First we note that Springfield failed to timely file its request to extend or waive the construction deadline, therefore, its authorization terminated automatically on the date the construction period expired.¹¹ Further, Section 1.946(e)(2) states that extensions of time to construct facilities will not be granted for failure to obtain financing,¹² which is the sole reason offered by Springfield for not constructing its station. We therefore deny Springfield’s request to waive the construction deadline and dismiss as moot Springfield’s request to waive the construction notification requirement.

If Springfield has constructed the facility and wishes to continue operation, it must obtain Special Temporary Authority pursuant to Section 1.931 of the Commission’s Rules¹³ for a period of up to 90 days. This action is taken without prejudice, so Springfield may file for a new authorization for the necessary frequencies authorized under WQAU423 if they have not been assigned to other licensees. If you have any questions or need further information on this matter, you may contact the Mobility Division licensing staff at (202) 418-0620.

Pursuant to Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Sections 0.331, 1.946 and 90.155 and of the Commission’s Rules, 47 C.F.R. §§ 0.331, 1.946, 90.155, we deny the Request of Waiver for Rules Section 90.155 and dismiss the Request of Waiver for Rules Section 1.946 D, FCC File No. 0004690767, filed by City of Springfield on April 14, 2011, to the extent set forth in this letter.

FEDERAL COMMUNICATIONS COMMISSION

Thomas Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁷ 47 C.F.R. § 1.946(e).

⁸ 47 C.F.R. § 1.946(e).

⁹ FCC File No. 0004690767 (filed April 14, 2011).

¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.946(c).

¹² 47 C.F.R. § 1.946(e)(2).

¹³ *See* 47 C.F.R. § 1.931.