

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

In the matter of)	
)	
COMMNET SUPPLY, LLC, CROSSROADS)	Call Sign WQGH652
LICENSE HOLDING SUB A, and their)	ULS File Nos. 0003818184
successors in interest)	0003805569
)	
Request for Waiver and Extension of PCS)	
Construction Requirements)	
)	
Request for Renewal of PCS License)	

ORDER

Adopted: May 31, 2012

Released: May 31, 2012

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this order, we deny the request for waiver and extension of time for construction filed by Commnet Supply, LLC (“Commnet”) and its wholly owned subsidiary, Crossroads License Holding Sub A Inc. (“Crossroads Sub”), for the Jefferson City, MO Basic Trading Area (“BTA”) PCS C-Block License (call sign WQGH652) (“License”).¹ We also dismiss the Renewal Request filed by Petitioners.² For the reasons set forth below, we find that Petitioners have not met the Commission’s requirements for waiver or extension of its construction deadlines. As a result, the License automatically terminated on June 30, 2009.

II. BACKGROUND

2. The License was created on October 21, 2006 by a disaggregation of call sign WPOJ715 and, at the time of the disaggregation action, the License was in compliance with its first construction requirement under Section 24.203(a)³ of the Commission’s rules.⁴ On April 27, 2007, the License was

¹ Crossroads License Holding Sub A Inc., Request for Extension of Time to Satisfy 10-year Construction Threshold for Call Sign WQGH652, Universal Licensing System (“ULS”) File No. 0003818184 (filed April 24, 2009; updated and amended May 18, 2009, July 8, 2009, and May 5, 2010) (“Waiver Request”). Commnet, Crossroads Sub, and its successor in interest, Crossroads Wireless, Inc. Debtor-in- Possession (“Crossroads DIP”) (jointly, “Petitioners”) filed three separate supplements to the original waiver request. We refer to these filings cumulatively as the Waiver Request unless otherwise noted. Where reference to a specific supplemental filing is necessary, we refer to them as the “Original Waiver Request,” “First Supplement,” “Second Supplement,” and “Third Supplement” consistent with the filing dates.

² Crossroads Wireless, Inc., Debtor-in-Possession, Application for Renewal of Call Sign WQGH652, ULS File No. 0003805569 (filed April 13, 2009; updated May 17, 2010) (“Renewal Request”).

³ 47 C.F.R. § 24.203(a).

⁴ See generally, administrative details in ULS for call sign WPOJ715.

acquired by Crossroads Wireless, Inc. (“Crossroads Wireless”).⁵ Pursuant to Section 24.203(a) of the Commission’s rules, the License’s second construction deadline was June 30, 2009, by which time the licensee would have had to demonstrate that it was providing “adequate service” to at least two-thirds of the population in its license area.⁶

3. On August 6, 2008, Crossroads Wireless filed a pro forma notification to advise the Commission that it had assigned the License, along with certain other wireless licenses, to a newly formed, wholly owned subsidiary, Crossroads Sub.⁷ At the same time, Crossroads Wireless pledged all of the equity in Crossroads Sub as collateral for debts owed to Commnet.⁸ On November 18, 2008, Crossroads Wireless and Commnet filed an application for consent to transfer all of the equity in Crossroads Sub to Commnet in partial satisfaction of that debt.⁹ At the time of the transfer, the License was operational, with a single cell site providing roam-only service to an area covering more than one-third of the BTA population.¹⁰ Subsequently, the site ceased providing service.¹¹

4. In February 2009, several of Crossroad Wireless’ creditors filed an involuntary petition under Chapter 7 of the Bankruptcy Code to force its operating subsidiary into bankruptcy.¹² On February 20, 2009, Crossroads Wireless filed a voluntary bankruptcy petition under Chapter 11 of the Bankruptcy Code and its operating subsidiary converted its Chapter 7 case into one under Chapter 11. Subsequently, the cases were consolidated under the jurisdiction of the Bankruptcy Court.¹³ The Bankruptcy Court later authorized the bankruptcy estate to sell substantially all of the assets of Crossroads Wireless, including its wireless licenses, to satisfy its debts.¹⁴

5. According to Commnet and Crossroads Sub, immediately after the bankruptcy petitions were filed, the question arose as to whether the transfer of the License was “avoidable as a preference” and, as such, whether the transfer should be invalidated and the License included in the bankruptcy estate with the remainder of Crossroads Wireless’ assets.¹⁵ In response to this threatened “avoidance action,” Commnet and Crossroads Sub filed the Original Waiver Request on April 24, 2009. In the Request, Commnet and Crossroads Sub request a waiver of Section 24.203¹⁶ of the Commission’s Rules and a six-month extension of time to complete construction, starting from the resolution of the threatened avoidance action.¹⁷ According to Commnet and Crossroads Sub, the threatened avoidance action places “a substantial cloud over the ownership of the Licensee” which would not be resolved until August 2009

⁵ See ULS File No. 0002938946.

⁶ See 47 C.F.R. §24.203(a). In the alternative, licensees may chose to provide “substantial service” in the license area within the appropriate five- and ten-year benchmarks. “Substantial service” is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.

⁷ See Crossroads Wireless Inc.. Notification of Pro Form Assignment, ULS File No. 0003535532 (filed August 6, 2008); Original Waiver Request at 1.

⁸ Original Waiver Request at 1-2.

⁹ *Id.* at 2; Third Supplement at 2.

¹⁰ Original Waiver Request at 2.

¹¹ *Id.*

¹² See Third Supplement at 1-2.

¹³ Original Waiver Request at 2; Third Supplement at 1-2.

¹⁴ Third Supplement at 2.

¹⁵ *Id.* at 2-3.

¹⁶ 47 C.F.R. § 24.203.

¹⁷ Original Waiver Request at 3.

at the earliest.¹⁸ As such, it would be unreasonable to require either Commnet or Crossroads Sub to complete construction by the June 30, 2009 deadline.¹⁹

6. In the First Supplement, filed on May 18, 2009, Commnet and Crossroads Sub state that they have “agreed in principle to allow the broker retained by the Creditors’ Committee in the ‘Crossroads’ bankruptcy cases to include Applicant’s [Crossroads Sub] licenses as being offered for sale together with the licenses held by Crossroads DIP, so as to increase the number of licenses to be offered and therefore increase outside bidding interest.”²⁰ They claim that any such sale would be without prejudice to any avoidance action filed by Crossroads DIP. They also amended their request to extend the deadline to January 23, 2010 while reserving the option to request a further extension if the disputed ownership of the License was not resolved by July 23, 2009.²¹

7. On July 8, 2009, Commnet and Crossroads Sub filed the Second Supplement, which they assert is responsive to concerns raised by Commission staff in informal meetings with the parties. In the Second Supplement, the parties note that the avoidance action “remains threatened but as yet unfiled in the bankruptcy court.”²² The parties also propose a written policy that they claim would provide relief for licensees facing construction deadlines for licenses whose ownership is under a cloud of uncertainty. Under this proposed policy, the License would have to be constructed within four months of the final resolution of its ownership status.²³

8. In December 2009, the bankruptcy court approved a settlement requiring the assignment of the License to Crossroads DIP.²⁴ This assignment was consummated on January 19, 2010.²⁵ On February 18, 2010, the bankruptcy court approved a joint plan of action allowing assignment of the Licenses held by Crossroads DIP to a liquidating trustee.²⁶ On March 19, 2010, the Commission approved a transfer of control of the License from Crossroads DIP to the liquidating trustee.²⁷ The liquidating trustee then sought to secure a buyer who would be willing and able to complete construction of the License in accordance with Section 24.203 of the Commission’s rules.

9. The liquidating trustee subsequently reached an agreement with NTCH, Inc. (“NTCH”) to transfer the License to its control, contingent upon the Commission’s approval of the Waiver Request.²⁸ The transfer of control was consented to by the Commission on April 3, 2010.²⁹ On May 5, 2010, Crossroads DIP filed the Third Supplement, in which it describes its agreement with NTCH and further supplements its requests for waiver and extension of the construction deadline.³⁰ Specifically, Crossroads

¹⁸ *Id.* at 3.

¹⁹ Original Waiver Request at 3.

²⁰ First Supplement at 1.

²¹ First Supplement at 1-2.

²² Second Supplement at 1.

²³ *Id.* at 2-3.

²⁴ Third Supplement at 3.

²⁵ See ULS File No. 0004088784.

²⁶ See ULS File No. 0004142962, Exhibits 1 and 2.

²⁷ See ULS File No. 0004142962.

²⁸ Third Supplement at 3.

²⁹ Third Supplement at 3; ULS File No. 0004195749.

³⁰ See Third Supplement at 1.

DIP states that “[i]f the Commission grants the Extension Request [Waiver Request], NTCH and Crossroads DIP will immediately enter into a short term lease arrangement under which NTCH will, on an expedited basis, construct sufficient cell sites to provide at least the requisite two-thirds coverage of the Jefferson City BTA, and will install the associated infrastructure for these cells. Upon the timely completion of the build out...the parties will consummate the assignment of Station WQGH652 to NTCH....”³¹

III. DISCUSSION

10. Section 24.203(a) of the Commission’s rules requires Broadband PCS licensees to meet construction requirements by operating facilities that transmit with a signal level sufficient to provide adequate service to at least one-third of the population in their licensed area within five years of being licensed and two-thirds of the population in their licensed area within ten years of being licensed.³² Licensees may, in the alternative, provide substantial service within their license area prior to the appropriate five- and ten-year deadlines.³³ Unless an extension or waiver is granted, failure to meet the Commission’s construction requirements results in the automatic termination of the license.³⁴

11. Under Section 1.946(e) of the Commission’s rules, an extension of time to complete construction may be granted if the licensee shows that the failure to complete construction is due to causes beyond its control.³⁵ Section 1.946 also lists specific circumstances where extension requests will not be granted, including delays caused by a failure to obtain financing, because the license undergoes a transfer of control, or because the licensee intends to assign the authorization.³⁶ In addition, pursuant to Section 1.925 of the Commission’s rules, a waiver may be granted if the petitioner establishes either 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) where the petitioner establishes unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.³⁷

12. Petitioners argue that an extension is warranted under Section 1.946(e) of the Commission’s rules³⁸ because the uncertainty surrounding the ownership of the License was caused by circumstances beyond the licensee’s control.³⁹ Specifically, Petitioners claim that the conflict between Commnet and the bankruptcy estate over ownership of the License constituted a circumstance beyond the licensee’s control and “froze the station in limbo.”⁴⁰ Petitioners further argue that “[t]he Commission has ruled numerous times that where outside events have placed a cloud, either directly upon the license itself or upon the ownership of the license, it is unreasonable to require a licensee to commit large sums for capital investment while the cloud persists, and the licensee is entitled to a waiver to afford it a new

³¹ Third Supplement at 4.

³² 47 C.F.R. § 24.203(a).

³³ *Id.*

³⁴ See 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

³⁵ See 47 C.F.R. § 1.946(e).

³⁶ See 47 C.F.R. § 1.946(e)(2)-(3).

³⁷ 47 C.F.R. § 1.925.

³⁸ 47 C.F.R. § 1.946(e).

³⁹ Original Waiver Request at 4.

⁴⁰ Third Supplement at 5.

window to construct beginning when the cloud is lifted.”⁴¹ Petitioners cite the *Nextwave/Urbancomm*⁴² line of cases, the *Rainbow Broadcasting*⁴³ case, and other Commission precedent to support their assertions.⁴⁴

13. With regards to their request for a waiver of the construction deadline, Petitioners assert that such a waiver would be consistent with the underlying purpose of Section 24.203 of the Commission’s rules⁴⁵ and would otherwise promote the public interest.⁴⁶ Specifically, Petitioners argue that the underlying purpose of Section 24.203 is to encourage PCS licensees to put their licenses to their highest and best use.⁴⁷ In the Original Waiver Request, Commnet argues that it has the same incentive as any other licensee to put the spectrum to work but that it could only put it to its highest and best use if it were allowed to wait until after the resolution of the avoidance action to build. Commnet claims that, if it were compelled to build out the license area absent a waiver, it would not be in a position to construct a state of the art system but would have to “try to put up the cheapest system possible, with the understanding that the system would be so inferior that nobody would use it.”⁴⁸ Moreover, in the Third Supplement, Crossroads DIP claims that, if the Commission grants the extension request, NTCH can complete all of the necessary work to bring the station into compliance with the build out milestones within six months.⁴⁹

14. Petitioners also claim that granting the requested extension would further the public interest since it would not harm the retail or wholesale wireless market in the affected license area.⁵⁰ As Petitioners note, even when it was in service, the License was operated as a roam-only system with no local subscribers.⁵¹ Moreover, the BTA is served by six other wireless carriers who provide roaming options to visiting wireless customers and whose customers have no need of the services provided under the License. Thus, no incoming roamer would ever be without service due to the inactivity of the License.⁵² In addition, neither Commnet nor Crossroads Wireless was ever approached by an unaffiliated carrier for a roaming agreement in the BTA and there is no evidence that any unaffiliated carrier has been unable to reach a satisfactory agreement with one of the other carriers operating in the BTA.⁵³ Finally, Petitioners claim that denial of the Waiver Request will have a chilling effect on the credit market for

⁴¹ Original Waiver Request at 4.

⁴² See *Federal Communications Commission v. NextWave Personal Communications Inc.*, 537 U.S. 293 (January 2003); *NextWave Personal Communications Inc. and NextWave Power Partners Inc.*, Order, 18 FCC Rcd 3235 (WTB 2003); *Urban Comm-North Carolina, Inc.*, Order, 20 FCC Rcd 993 (WTB 2005); *Urban Comm-North Carolina, Inc.*, Order, 21 FCC Rcd 10824 (WTB 2006) (collectively, *Nextwave/Urbancomm*).

⁴³ *Rainbow Broadcasting Company*, Decision, 13 FCC Rcd 21000 (1998) (“*Rainbow Broadcasting*”).

⁴⁴ Original Waiver Request at 4-7.

⁴⁵ 47 C.F.R. § 1.925.

⁴⁶ *Id.* at 7-10; see also 47 C.F.R. § 24.203.

⁴⁷ Original Waiver Request 9-10.

⁴⁸ *Id.*

⁴⁹ Third Supplement at 5-6.

⁵⁰ Original Waiver Request at 7.

⁵¹ *Id.*

⁵² *Id.* at 7-8.

⁵³ *Id.* at 8.

wireless licensees.⁵⁴

15. After a thorough examination of the record, we find that an extension of time to meet the construction milestone in Section 24.203 is not warranted.⁵⁵ As an initial matter, Petitioners' arguments rest almost entirely on the supposed cloud of uncertainty surrounding the ownership of the License between February 2009 and December 2009.⁵⁶ They assert that this uncertainty was caused by factors beyond their control, specifically the threatened avoidance action associated with Crossroads Wireless' bankruptcy proceeding.⁵⁷ However, we find that, during the period in question, the ownership of the License was entirely certain and that the decision not to meet the build out requirements was a voluntary business decision completely within Commnet's control.

16. Here, Commnet made several voluntary business decisions that contributed to its failure to meet the construction deadline, including: (1) entering into the original agreement with Crossroads Wireless to use Crossroads Sub (and the License) as security for Crossroads Wireless' debt; (2) acceptance of the subsequent transfer of Crossroads Sub (and the License) from Crossroads Wireless; and (3) its decision not to construct a compliant PCS system prior to June 30, 2009 when, by its own admission, it could have completed the build out in a timely fashion.⁵⁸ We have consistently rejected the argument that voluntary business decisions by a licensee, particularly those motivated by economic factors, create situations beyond the licensee's control that would justify an extension under Section 1.946(e).⁵⁹ Indeed, we recently reaffirmed this position in *ComScape*, where we found that extensive internecine litigation over the ownership of a PCS license and the subsequent voluntary bankruptcy of the licensee were events within the licensee's control and as such, did not constitute sufficient grounds for grant of an extension of the construction deadline.⁶⁰ While, in this case, Commnet was not directly involved in the filing of the bankruptcy action, it did voluntarily accept the largely undeveloped License, along with its attendant construction obligations, less than eight months before those obligations were to have been fulfilled. In addition, by Commnet's own admission, service was discontinued within the license area shortly after it took possession of Crossroads Sub and Commnet did not re-initiate service or construct additional facilities within the license area prior to filing the Original Waiver Request, nearly five months later.⁶¹ Indeed, Commnet makes it clear that it made a business decision not to complete the

⁵⁴ *Id.* at 8-9.

⁵⁵ See 47 C.F.R. § 24.203(a).

⁵⁶ It bears noting that the Original Waiver Request was filed less than three months prior to the construction deadline and, at the time, no service was being provided within the License area.

⁵⁷ Original Waiver Request at 4-7.

⁵⁸ See *supra* Section II.

⁵⁹ See *ComScape Communications, Inc., Order*, 16 FCC Rcd 8831 ¶ 12 (WTB-Mobility Division 2011) ("*ComScape*") ("We find that the internecine litigation as well as the subsequent petition for voluntary bankruptcy were both circumstances well within *ComScape*'s control and thus insufficient grounds for grant of an extension."); Thomas A. Seaman, Receiver for Vitech Corporation, *Order*, 22 FCC Rcd 1916 ¶ 6 (WTB-Mobility Division 2007) ("It is well established that failed business decisions do not qualify as grounds for relief of our regulatory requirements...") citing *Globalstar, L.P., Memorandum Opinion and Order*, 18 FCC Rcd. 1249 ¶¶ 7-8 (IB 2003) (business decisions based on economic considerations are not circumstances outside the control of the licensee and do not warrant an extension); see also *Panamsat License Corp, Memorandum Opinion and Order*, 15 FCC Rcd 18720 ¶¶ 10-11 (IB 2000) (business transactions are within the control of the licensee, and so cannot justify a milestone extension).

⁶⁰ See *ComScape* at ¶ 12.

⁶¹ See Original Waiver Request at 2.

construction of the license area despite having the means to bring the License into compliance.⁶²

17. In addition, Section 1.946(e)(3) explicitly precludes extensions of construction deadlines “because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization...” and states that “[t]he Commission will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct.”⁶³ As detailed above, since November 2008, the various license holders have not constructed any facilities in the license area but they have repeatedly arranged to transfer or assign the largely undeveloped License to other parties.⁶⁴ Indeed, Commnet voluntarily entered into an agreement with the bankruptcy estate to allow the still undeveloped License to be sold along with Crossroad Wireless’ other assets rather than complete construction of the License area just prior to the construction deadline.⁶⁵ The License was most recently assigned to NTCH in April 2010, over nine months after the License’s build-out deadline. NTCH now claims that it would be able to bring the license into compliance within six months after the approval of the transfer. However, under the explicit terms of Section 1.946(e)(3), NTCH cannot be granted an extension of the construction deadline simply to finish a build-out that prior license holders neglected.⁶⁶ By the same token, Commnet could not have been granted extensions simply to allow it additional time to sell or assign the License to another party.

18. We also find that Petitioners have failed to satisfy the waiver standard set forth in Section 1.925 of the Commission’s rules.⁶⁷ The underlying purpose of the construction rules is to ensure the efficient and effective use of the radio spectrum. In addition, 47 U.S.C § 309(j) makes it clear that the purpose of performance requirements, including construction timetables, for licenses acquired via competitive bidding is to “ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.”⁶⁸ In the Original Waiver Request, Crossroads Wireless and Commnet acknowledge that the License is not in use and has not been in use since shortly after it was assigned to Commnet.⁶⁹ They also claim that, if Commnet were to build out its system before the deadline, it would “have to try to put up the cheapest system possible” and that it would not be put to its “highest and best use” unless the Waiver Request is granted.⁷⁰ They further note that, “[t]he constraining factor here is not a desire to leave the spectrum fallow; rather, it is Commnet’s fear of throwing good money after bad, if it loses the Avoidance Action litigation.”⁷¹ However, it is not the licensee’s financial concerns that are relevant, but whether the spectrum is being efficiently and effectively used. It is clear from Commnet’s own statement that it could have met the construction deadline but made a business decision not to do so and, as a result, the spectrum has gone entirely unused since approximately the time that Commnet first obtained the License.⁷² Under these circumstances, where the licensed spectrum has gone unused through

⁶² See Original Waiver Request at 9-10.

⁶³ See 47 C.F.R. § 1.946(e)(3).

⁶⁴ See *supra* Section II.

⁶⁵ See First Supplement at 1.

⁶⁶ *Id.*

⁶⁷ 47 C.F.R. § 1.925.

⁶⁸ 47 U.S.C. § 309(j)(4)(B).

⁶⁹ Original Waiver Request at 2.

⁷⁰ *Id.* at 9-10.

⁷¹ *Id.* at 9.

its second construction deadline entirely due to the voluntary business decisions of the license holder, we do not find that the underlying purpose of the rules would be furthered by granting the Waiver Request.

19. Petitioners also fail to establish that a waiver of the construction deadline would be in the public interest, as required by Section 1.925 of the Commission's rules.⁷³ Petitioners make it clear that they do not provide a unique service within the license area and that no customers or potential customers would be disadvantaged by the discontinuation of the license.⁷⁴ Curiously, the Petitioners seem to argue that not providing service in a well covered license area is sufficient to demonstrate that granting the Waiver Request would serve the public interest. While waiver and extension requests are considered on a case by case basis, we have typically found that the public interest is served when a licensee demonstrates that granting its request would allow it to provide a unique service and/or serve an underserved region or population.⁷⁵ Since Petitioners did not identify any individual, group, or underserved area that would benefit from the requested extension, we do not find that granting the Waiver Request would serve the public interest. We are also unconvinced by Petitioners' claims regarding the potentially adverse effects that denial of the Waiver Request could have on the credit market for wireless carriers. Petitioners' arguments on this issue appear speculative at best and they provide no evidence to support their contentions.⁷⁶ Indeed, we find that a grant of the extension would be contrary to the public interest because it could encourage speculators to obtain licenses in areas where they have no intention of providing service.

20. Finally, the cases cited by Petitioners in support of their argument that the supposed "cloud" over the License entitled them to an extension are easily distinguishable from the facts presented in the Waiver Request. First, the *Nextwave/Urbancomm* cases are not persuasive since, in those cases, the "cloud" over the licenses was directly caused by the Commission's cancellation of the subject licenses for non-payment of debts owed to the Commission and the ensuing litigation over that decision.⁷⁷ Here, the Commission has taken no prior action to cancel the License and there is no question that, until June 30, 2009, the License was active. Petitioners' reliance on *Rainbow Broadcasting* is similarly misplaced since, just as in the *Nextwave/Urbancomm* cases, the cloud of uncertainty over the subject licenses was caused entirely by factors beyond the licensee's control.⁷⁸ Notably, *Rainbow Broadcasting* faced outside litigation, Commission inquiries, and Mass Media Bureau actions that consumed the entire buildout period and more, placing the status of the license and the licensee's ownership thereof in an uncertain

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⁷² NTCH's assurances that it will promptly build out the License area if a waiver is granted are irrelevant. While we have no reason to doubt NTCH's sincerity or ability to build out the License area, Commnet's failure to satisfy the applicable waiver or extension standards in its Original Waiver Request renders the subsequent assignment of the license and NTCH's assertions regarding its build out plans moot.

⁷³ See 47 C.F.R. § 1.925.

⁷⁴ See Original Waiver Request at 7-9.

⁷⁵ See, e.g., Trustee in Bankruptcy for Magnacom Wireless, LLC and Telecommunications Wrapup Group LLC, Order, 17 FCC Rcd 9535 (WTB-Commercial Wireless Division 2002) ("*Magnacom Wireless*") (Granting an extension of a PCS licensee's five-year construction deadline in part because it demonstrated that it would serve small communities, rural areas, and tribal lands that were not adequately served by other operators); American Wireless LLC, Memorandum Opinion and Order, 15 FCC Rcd 11025 (WTB-Commercial Wireless Division 2003) ("*American Wireless*") (Granting an extension of a PCS licensee's construction deadline in part because the licensee demonstrated that it would bring more and better service to underserved rural BTAs than would otherwise be made available).

⁷⁶ *Id.* at 8-9.

⁷⁷ See generally, *NextWave/Urbancomm*.

⁷⁸ See *Rainbow Broadcasting*.

state for the vast majority of the license term. In this case, there were no such official or outside factors involved and, in any event, the alleged cloud of uncertainty lasted for only a small fraction of the license term.⁷⁹

IV. CONCLUSION

21. For the reasons set forth above, we deny the Waiver Request and, as a result, the License automatically terminated on June 30, 2009. Accordingly, since there is no longer a valid license to renew, the Renewal Application is hereby dismissed as moot.

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 0.131, 0.331, 1.925, 1.946 (c) and (e), 1.955(a)(2), and 24.203(a), 47 C.F.R. §§ 0.131, 0.331, 1.925, 1.946(c), 1.946(e), 1.955(a)(2), and 24.203(a), that the requests for waiver and extension of the construction requirements for PCS license WQGH652 filed on April 24, 2009 and amended on May 18, 2009, July 8, 2009, and May 5, 2010, ARE HEREBY DENIED. Accordingly, PCS License WQGH652 TERMINATED AUTOMATICALLY ON JUNE 30, 2009.

23. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 0.131, 0.331, and 1.949 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, and 1.949, that the above-captioned application for renewal of license, IS HEREBY DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

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

⁷⁹ The cases cited, but not analyzed, by NTCH in the Third Supplement are also easily distinguishable from the present case as none of them present an analogous set of facts or procedural disposition. *See Magnacom Wireless; American Wireless; Pacific Communications LLC and Coral Wireless LLC, Memorandum Opinion and Order*, 19 FCC Rcd 15574 (WTB-Mobility Division 2004) (Granting an extension request where extensive litigation regarding the ownership of the license had consumed all but six-months of the licensee's build-out period).