

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

In the Matter of)	
)	
Cornerstone SMR, Inc. Applications for Renewal of Licenses in the 220 MHz Band	)	File Nos. 0003798880, 0003798881,
	)	0003798882, 0003798883, 0003798884,
	)	0003798885, 0003798886, 0003798887,
	)	0003798888, 0003798879, 0003976777,
	)	0003976778, 0003976779, 0003976780,
	)	0004100107, 0004100194, 0004100250,
	)	0004100301, 0004100367, 0004100457,
	)	0004100706, 0004100515, 0004100566,
	)	0004100718, 0004100590, 0004100594,
	)	0004100910, 0004100634, 0004100664,
	)	0004100672, 0004100680, 0004100686,
	)	0004100695, 0004100916, 0004100920

ORDER

Adopted: May 31, 2012

Released: May 31, 2012

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

1. This Order addresses 35 license renewal applications, and related filings, in the 220-222 MHz Radio Service (220 MHz Service) filed on various dates in 2009 by Cornerstone SMR, Inc. (Cornerstone).¹ As discussed below, we grant a waiver to permit the late-filing of renewal applications; and we grant license renewal for 4 of those licenses where Cornerstone has demonstrated that it is providing substantial service. However, we deny 26 of the 35 pending applications for failure to demonstrate the renewal standard was met; and we dismiss 5 of the pending renewal applications as moot because the licenses previously terminated automatically for failure to meet their construction requirements. Additionally, with respect to the Petitions to Deny filed by Warren C. Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC and Skybridge Spectrum Foundation (collectively, Havens), we deny the

¹ Cornerstone's licenses can be divided into the following three groups, based upon their issuance dates and expiration dates:

- 21 licenses issued in March 1999, each with 10-year license term that expired in March 2009: FCC File Nos. 0004100107, 0004100194, 0004100250, 0004100301, 0004100367, 0004100457, 0004100706, 0004100515, 0004100566, 0004100718, 0004100590, 0004100594, 0004100910, 0004100634, 0004100664, 0004100672, 0004100680, 0004100686, 0004100695, 0004100916 and 0004100920;
- 10 licenses issued in April/May 1999, each with 10-year license term that expired in April/May 2009: FCC File Nos. 0003798879, 0003798880, 0003798881, 0003798882, 0003798883, 0003798884, 0003798885, 0003798886, 0003798887 and 0003798888; and
- 4 licenses issued in October/November 1999, each with 10-year license term that expired in October/November 2009: FCC File Nos. 0003976777, 0003976778, 0003976779 and 0003976780.

Havens petitions against the four Cornerstone licenses where we grant renewal, and we dismiss as moot the remaining Havens petitions.²

I. BACKGROUND

2. Licensees in the 220 MHz Service must comply with the construction requirements outlined in section 90.767 of the Commission's rules, which require a demonstration of construction at five-year and ten-year benchmarks.³ Moreover, pursuant to section 1.946(c) of the Commission's rules, if a licensee fails to meet its coverage or substantial service obligations by the expiration of the applicable period, its authorization terminates automatically, without specific Commission action, on the date the construction period expires.⁴ Additionally, pursuant to section 90.743(a) of the Commission's rules,⁵ 220 MHz licensees have a separate renewal requirement at the end of the ten-year license term. The renewal application must include sufficient information to demonstrate that substantial service was provided during the past license term and that the licensee has substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended. In addition, licensees seeking to establish a right to a renewal expectancy must provide a showing pursuant to section 90.743(b) of the Commission's rules.⁶

3. At issue here are renewal applications for 35 220 MHz licenses filed by Cornerstone at the end of their license terms in 2009. Cornerstone's renewal applications fall into three groups: (1) twenty-one licenses with terms that expired in March 2009; (2) ten licenses with terms that expired in April/May 2009; and (3) four licenses with terms that expired in October/November 2009.⁷

- The 1st Group of Cornerstone's renewal applications were timely filed on March 2, 2009, but the applications were dismissed on March 21, 2009 due to improper submission of the application fee. On April 11, 2009, Cornerstone separately filed Petitions for Reconsideration for each

² See Petition to Dismiss or Deny, or in the Alternative Section 1.41 Request (Petition to Deny) filed by Warren C. Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC and Skybridge Spectrum Foundation (collectively referred to as Havens) filed on October 30, 2009 to ULS File Nos. 0003976777, 0003976778, 0003976779, and 0003976780; and on February 26, 2010 to ULS File Nos. 0004100107, 0004100194, 0004100250, 0004100301, 0004100367, 0004100457, 0004100706, 0004100515, 0004100566, 0004100718, 0004100590, 0004100594, 0004100910, 0004100634, 0004100664, 0004100672, 0004100680, 0004100686, 0004100695, 0004100916, and 0004100920.

³ See 47 C.F.R. § 90.767. Specifically, a 220 MHz Economic Area (EA) licensee must construct a sufficient number of base stations (*i.e.*, base stations for land mobile and/or paging operations) to provide coverage to at least one-third of the population of its EA within five years of the issuance of its initial license and to at least two-thirds of the population of its EA within ten years of such issuance. In the alternative, licensees may provide "substantial service" within their licensed area in order to meet the applicable five-year and ten-year benchmarks. With regard to licenses in the 220 MHz band, the Commission defines "substantial service" as "service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal."

⁴ 47 C.F.R. § 1.946(c).

⁵ 47 C.F.R. § 90.743(a).

⁶ 47 C.F.R. § 90.743(b) provides that a showing must include: (1) a description of its current service in terms of geographic coverage and population served; (2) for an EA, Regional, or nationwide licensee, an explanation of its record of expansion, including a timetable of the construction of new stations to meet changes in demand for service; (3) a description of its investments in its system; (4) copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and (5) a list of any pending proceedings that relate to any matter described in this paragraph.

⁷ See *supra* note 1.

dismissed application,⁸ and on January 22, 2010, filed the pending renewal applications along with requests for waiver of Section 90.743(a) to allow it to apply for and receive renewal of its licenses.⁹ Petitions to deny were filed against these renewal applications.¹⁰

- The 2nd Group of Cornerstone's renewal applications were timely filed on March 2, 2009, but due to Cornerstone's improper submission of the application fee, the applications were dismissed on March 21, 2009. On April 7, 2009, Cornerstone timely re-filed the renewal applications. On September 15, 2009, the Wireless Telecommunications Bureau (Bureau) returned the applications, requesting that Cornerstone file an amendment to include sufficient information to demonstrate that substantial service had been provided during the past license term.¹¹ On September 16, 2009, Cornerstone filed renewal amendments that referred to its construction notification and included technical parameters of transmitting facilities and population coverage predictions, with no description of service. No petitions to deny were filed against these renewal applications.
- The 3rd Group of Cornerstone's renewal applications were timely filed on September 24, 2009. Petitions to deny were filed against these renewal applications.¹²

4. For five of these licenses (in the 1st Group described above), Cornerstone also filed on March 20, 2009 requests for extension of time to construct.¹³ In its Extension Request, Cornerstone argues that it has made a substantial investment by constructing a 220 MHz radio system, "when and where possible given the economic realities of the marketplace," but seeks an extension for five of its call signs.¹⁴ Cornerstone contends that 220 MHz licensees continue to be in an "untenable position of constructing facilities for which there exists no market due to the unavailability of reliable...equipment."¹⁵ Cornerstone also contends that a 220 MHz equipment manufacturer plans to provide viable equipment to allow meaningful construction by June 2010, after which licensees will require additional time to obtain the equipment and construct facilities. Cornerstone accordingly requested an extension until March 31, 2012 to meet its construction requirements, while accepting a lesser amount of time (18 months) if the Commission deemed it appropriate.¹⁶

⁸ See e.g., Petition for Reconsideration on Renewal Application attached to Call Sign WPOJ256 (filed Apr. 11, 2009).

⁹ See e.g., Waiver of Untimely Renewal attached to Universal Licensing System (ULS) File No. 0004100590 (filed Jan. 22, 2010).

¹⁰ Petition to Deny filed by Warren C. Havens, *et al.* (Feb. 22, 2010), *supra* note 2.

¹¹ We note that these renewal applications had no attachments explaining how they met the renewal requirements.

¹² Petition to Deny filed by Warren C. Havens, *et al.* (Oct. 30, 2009), *supra* note 2.

¹³ Request for Extension of Time or Waiver of the Commission's Rules of Cornerstone SMR, Inc. (filed Mar. 20, 2009) for licenses WPOJ252, WPOJ255, WPOJ258, WPOJ334, and WPOJ335 ("Extension Request"). These licenses were among those originally challenged by Havens. We also note that Cornerstone, in its request, does not seek any extension of the license term, or any conditional relief to address the fact that their requested construction period extends beyond the license term.

¹⁴ *Id.* at 1-2.

¹⁵ *Id.* Cornerstone also argues that other licensees have faced equipment challenges, citing the Bureau's Public Notice seeking comment on a request by a 220 MHz licensee for extension. *Id.* at 2.

¹⁶ Extension Request at 3. We note that for other 220 MHz licenses, Cornerstone filed second construction notifications with supporting attachments demonstrating signal coverage of two-thirds of each area's population. See, e.g., ULS File No. 0003809531 and associated attachments.

5. In support of its extension, Cornerstone argues that it meets the standard in section 1.946(e)(1) because the availability of “necessary” equipment is beyond its control.¹⁷ Cornerstone states that it is not merely allowing market forces to dictate its compliance, in that it has taken affirmative, financial steps to remedy the equipment obstacles by providing financial support to SEA COM to develop 220 MHz equipment.¹⁸ Cornerstone adds that its “efforts have often included the construction of 220 MHz facilities for the sole purpose of fulfilling its construction obligations, which facilities provide as reliable a service as might be produced by older 220 MHz equipment to as many members of the public that might want to accept such service,” but it “wishes to employ a different business model” with facilities that are truly competitive, useful and reliable for its customers.¹⁹ Therefore, Cornerstone “seeks the earned opportunity to serve the public interest” and does not believe the current construction deadline should impede its efforts to provide a competitive service.²⁰ Cornerstone also argues that it has not met the construction deadline due to causes beyond its control and that the underlying purpose of the construction rule would not be served by denial of its request.²¹ Finally, Cornerstone contends that its situation is unique and it is unaware of other services that are plagued by a lack of available equipment.²²

6. On May 12, 2009, the Mobility Division dismissed Cornerstone’s requests for extension of time to construct for failure to remit fees properly for these filings.²³ Cornerstone did not file new extension applications with accompanying requests for relief to file after the construction deadline, but instead sought a waiver of the construction requirement in a petition accompanying its license renewal application submitted January 22, 2010.²⁴ Cornerstone argues in its waiver request that its extension request was dismissed, preventing further requests for extension provisions under section 1.946(e), thus seeking waiver of the construction requirements under section 90.767.²⁵

7. Havens filed Petitions to Deny against 25 of Cornerstone’s renewal applications (in Groups 1 and 3) arguing that Cornerstone violated section 1.2112 of the rules by not disclosing its ownership and real parties in interest relevant to its participation in Auction 72, securing licenses under the Commission’s Designated Entity bidding credits, and therefore its applications should not be granted.²⁶ Havens also argues that 21 of Cornerstone’s 25 applications should be denied because their attached waiver requests fail to meet the waiver standard outlined in section 1.925 of the Commission’s rules.²⁷ Specifically, Havens argues that the Commission’s Universal Licensing System (ULS) has long handled all licensing matters, and Cornerstone had an obligation to follow relevant FCC rules including properly filing its requests and paying its fees via ULS.²⁸ Havens contends that if Cornerstone chose to act without legal representation when it filed its original renewal and extension requests, that was its

¹⁷ Extension Request at 3.

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 6.

²² *Id.*

²³ *See, e.g.*, Notice of Dismissal, reference number 4863437 attached to ULS File No. 0003783105 (May 12, 2009).

²⁴ *See* ULS File Nos. 0004100706, 0004100718, 0004100910, 0004100916, and 0004100920.

²⁵ *See, e.g.*, Waiver of Untimely Renewal attached to ULS File No. 0004100920 at 4 (filed Jan. 22, 2010).

²⁶ Petition to Deny (Oct. 30, 2009) at 4-8; Petition to Deny (Feb. 26, 2010) at 8-15. Havens does not challenge the applications associated with ULS File Nos. 0003798879-88.

²⁷ Petition to Deny (Feb. 26, 2010) at 7.

²⁸ *Id.*

choice and is an insufficient basis for a waiver grant.²⁹ Havens also argues that the pending renewal requests and extension requests are untimely and therefore the licenses had already entered automatic termination status, thus the requests should be dismissed.³⁰ Finally, Havens notes that Cornerstone failed to file the extension requests as separate applications, and only included them as part of the renewal waiver request.³¹

8. Cornerstone responded to Havens' Petitions to Deny with a general denial of Havens' accusations, stating that its waiver requests involve administrative error in the filing of fees and nothing more.³² Cornerstone argues that this matter is between the Commission and Cornerstone, urging dismissal of Havens' petitions.³³ Cornerstone argues that Havens' assertions relate to the auction in general, are untimely and legally unsupported, and only serve to cause additional costs and wasted time to both Cornerstone and the Commission.³⁴ Cornerstone also asks the Commission to investigate Havens' character qualifications and provide sanctuary to Cornerstone from petitions filed by Havens in this and all other matters.³⁵ Havens replied to Cornerstone's Opposition arguing that it was not properly submitted and should be dismissed.³⁶ Havens also reiterated earlier arguments against Cornerstone's applications and questions about Cornerstone's ownership.³⁷

9. Because Cornerstone's response to the Bureau's September 15, 2009 return letter did not demonstrate how it met its renewal requirements for the relevant 2nd Group of applications,³⁸ the Bureau sent a letter on August 2, 2011 to both Cornerstone and its counsel, stating that apart from the procedural concerns, Cornerstone's filings and statements were insufficient for the Bureau to determine whether Cornerstone had met its substantial service requirement for each of the respective licenses.³⁹ The Bureau noted that although Cornerstone submitted information about meeting its construction requirement, Cornerstone insufficiently addressed the renewal requirement, which is separate from construction, by failing to provide any information about its services offered, numbers of customers, or details about usage over the license term.⁴⁰ Pursuant to section 308(b) of the Communications Act of 1934,⁴¹ the Bureau directed Cornerstone to provide specific responses, per license, to the following requests for information:

²⁹ *Id.*

³⁰ *Id.* at 7, 8.

³¹ *Id.* at 7.

³² Cornerstone SMR, Inc. Opposition to Petition to Deny and Motion to Strike at 2 (Cornerstone Opposition) (filed Mar. 19, 2010). We note that this filing is in response to Havens' February 26, 2010 Petition to Deny. We do not have any record in ULS of any earlier Cornerstone Opposition to explain a Havens Reply on November 25, 2009. See Warren C. Havens, Reply to Opposition to Petition to Dismiss or Deny, or in the Alternative Section 1.41 Request, and to Motion to Strike, Errata Copy (Havens Reply) (filed Nov. 25, 2009).

³³ *Id.*

³⁴ *Id.* at 3.

³⁵ *Id.* at 2.

³⁶ Havens Reply at 1-6.

³⁷ *Id.*

³⁸ See e.g., Return Letter attached to ULS File No. 0003798879.

³⁹ Letter from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, FCC to Mark Duff, Cornerstone SMR, Inc. and Robert H. Schwaninger, Jr., counsel for Cornerstone SMR, Inc. at 2-3 (Aug. 2, 2011) ("Letter of Inquiry").

⁴⁰ *Id.*

⁴¹ 47 U.S.C. § 308(b).

nature and extent of service; commercial or internal use; operational status at construction deadline; periods of non-operation; and any other supporting/favorable information.⁴²

10. On September 7, 2011, Cornerstone filed a letter that sought confidential treatment, pursuant to section 0.459 of the Commission's rules, for its responses contending that they included proprietary information involving business strategies and trade secrets.⁴³ Although Cornerstone incorporated most of its arguments and responses into that proprietary section for which it sought confidential treatment, Cornerstone also included an attachment to its response, answering the Commission's questions on a per-call sign basis, while asking that it be made available to the public.⁴⁴ In reaching our decision, we rely upon this public filing as it directly responds to our August 2, 2011 Letter of Inquiry. In its public response, Cornerstone explains that the function of each operation is to meet the construction deadline, and to serve an internal purpose for Cornerstone personnel while planning for commercial usage. Additionally, Cornerstone contends that its failure to construct certain call signs was caused by the Bureau's procedural dismissals of requests for additional time to construct.⁴⁵ Finally, Cornerstone reports that five of its call signs are in fact serving customers.⁴⁶

II. DISCUSSION

11. Waiver of Timely Renewal. With respect to the 1st Group of renewal applications which were timely filed, but dismissed for improper fee submission, we grant Cornerstone's waiver request to consider the subsequent renewal applications filed in January 2010. We disagree with Havens that Cornerstone waited almost a year to remedy the defective renewal applications. As noted above, Cornerstone timely sought reconsideration of the procedural dismissal of its renewal applications in April 2009. In January 2010, Cornerstone filed the instant pending renewal applications with a waiver of the timely filing requirement in response to a December 2009 letter from the Mobility Division.⁴⁷ More importantly, Cornerstone timely filed its initial applications before expiration, but with a defect in the associated remission of fees. Consistent with our treatment in similar cases, where a licensee has made a good faith effort to timely file its renewal applications and resolve defects after learning that the original

⁴² *Id.* at 3, citing 47 U.S.C. § 308(b).

⁴³ Letter from Robert H. Schwaninger, Jr., counsel for Cornerstone SMR, Inc. to James Shaffer, Mobility Division, Wireless Telecommunications Bureau, FCC at 1 (filed Sept. 7, 2011) ("Cornerstone Request for Confidential Treatment"), citing 47 C.F.R. § 0.459(b).

⁴⁴ *Id.* at 2.

⁴⁵ Cornerstone licenses that missed the construction deadline, after extension requests were procedurally dismissed, are WPOJ252, WPOJ255, WPOJ258, WPOJ334 and WPOJ335 (renewal File Nos. 0004100706, 0004100718, 0004100910, 0004100916 and 0004100920, respectively). Cornerstone filed the original requests for extension of time on March 20, 2009. *See* Extension Request, *supra* note 13.

⁴⁶ Cornerstone claims that the licenses that were operational by the construction deadline, and serving unaffiliated customers, are WPOJ250, WPOJ252, WPOJ259, WPOJ262 and WPOJ935 (renewal File Nos. 0004100367, 0004100706, 0004100634, 0004100680 and 0003976778, respectively). However, with respect to license WPOJ252, with pending renewal application File No. 0004100706, Cornerstone initially requested an extension of time for this license (which was procedurally dismissed for defective fee payment), but later claims that the call sign was constructed by the construction deadline. *See* Letter from Robert H. Schwaninger, Jr., counsel for Cornerstone SMR, Inc. to James Shaffer, Mobility Division, Wireless Telecommunications Bureau, FCC in response to Letter of Inquiry at 8 (filed Sept. 7, 2011) ("Cornerstone Response to Letter of Inquiry"). Wireless Telecommunications Bureau (WTB) staff contacted counsel for Cornerstone several times in March 2012 seeking clarification of this inconsistency, but never received a response.

⁴⁷ *See* Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, FCC to Robert H. Schwaninger, Jr., counsel for Cornerstone SMR, Inc. (filed Dec. 7, 2009).

attempt fell short, we find that a grant of waiver to accept the renewal applications for consideration is in the public interest.⁴⁸

12. *License Renewal Requests.* We find that Cornerstone has failed to demonstrate that it has provided a sufficient level of service to warrant license renewal for 26 of the 35 licenses at issue. Section 90.743(a) of the Commission's rules requires renewal applications to include sufficient information to demonstrate that substantial service was provided during the past license term, and that the licensee has substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended.⁴⁹ This section defines substantial service as "service that is sound, favorable, and substantially above a level of mediocre service that might minimally warrant renewal."⁵⁰ In reviewing Cornerstone's responses for each call sign, and its supporting arguments, we are guided by that rule, together with related precedent.

13. As clarified earlier, our focus is not merely whether Cornerstone met its separate construction requirements, but also whether renewal is warranted under the Commission's substantial service standard.⁵¹ We do not find Cornerstone's emphasis on good-faith efforts to secure equipment persuasive, because a licensee's success or failure at contracting or investing in the manufacture of desired equipment at desired specifications is not the basis for determining substantial service.⁵² Similarly, we have found that planned future construction and services is not material to a demonstration that a licensee has met its substantial service obligation. Rather, the substantial service standard in this instance applies to measure whether license renewal is warranted independent of compliance with construction benchmarks. Moreover, it is a results-oriented test based upon actual service, assessing how effectively a license is put to use during the license term.⁵³ Substantial service at renewal is a

⁴⁸ See *Paging Systems, Inc., Order on Reconsideration*, 26 FCC Rcd 16175, 16177 ¶ 6 (2011), citing *Paging Systems, Inc., Order*, 26 FCC Rcd 5913, 5915 ¶ 5 (2011); see also *City of Dardanelle Fire Department, Order*, 17 FCC Rcd 10901, 10902 ¶ 4 (2002), citing *Florida Power and Light Co., Order*, 15 FCC Rcd 13607 (2000); *KNTV License, Inc., Order*, 16 FCC Rcd 20440, 20442-43 ¶¶ 6-7 (2001), citing *Navopache Electric Cooperative, Inc., Order*, 16 FCC Rcd 11870 (2001).

⁴⁹ 47 C.F.R. § 90.743(a).

⁵⁰ 47 C.F.R. § 90.743(a)(1).

⁵¹ See Bureau Letter of Inquiry at 3 ("[w]hile Cornerstone submitted sufficient information to meet its construction requirement, the renewal requirements are separate").

⁵² See, e.g., *Longhorn Communications Inc.*, 26 FCC Rcd 6716 (2011). In the case of Longhorn, the licensee argued that extra time was necessary to make use of a new technology, software defined radio (SDR). In denying this request, the Commission emphasized that a "Commission auction does not constitute an endorsement by the Commission of any particular services, technologies, or products, nor does a Commission license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture." *Id.* at 6719. See also *Redwood Wireless Minnesota, LLC, Order*, 17 FCC Rcd 22416 (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 (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 (1999) (equipment installation or delivery not delayed for some unique reason and licensee failing to obtain equipment was 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).

⁵³ See, e.g., *Scott D. Reiter, Demonstration of Substantial Service for PCS Station WPTB505, Order*, 25 FCC Rcd 3974 (2010); *Chasetel Licensee Corp., Request for Extension of Broadband PCS Construction Requirements and*

(continued...)

demonstration addressing whether the radio spectrum has ultimately been put to active use in the public interest, not demonstrated merely by meeting construction benchmarks, or by a licensee's stated business goal of maintaining a license for future use.

14. Section 309(j) of the Communications Act makes clear that the purpose of performance requirements 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.”⁵⁴ Charged with implementing this provision, the Commission has adopted, in the 220 MHz service, a “bright-line” population signal coverage test, applicable to mid-term and end-of-term construction benchmarks.⁵⁵ However, at the time of a licensee's request for renewal, still implementing section 309(j), the Commission further assesses the licensee's qualification for renewal based upon actual use of the licensed spectrum. In other words, the licensee must demonstrate that the spectrum is not lying fallow and is being put to actual use in the public interest.

15. At the ten-year license renewal benchmark, Cornerstone has not demonstrated that it meets the definition of substantial service or the underlying purpose of the Commission's performance requirements. Notably, Cornerstone has failed to demonstrate that the function of most of its facilities, “to complete the construction deadline, while serving an internal purpose of being poised for further development and investment by Cornerstone,”⁵⁶ actually serves the purpose of the Commission's renewal requirements to warrant another ten-year term. Having identified two possible uses of its spectrum – internal purposes, and customer usage – Cornerstone does not identify actual internal use of its spectrum on the one hand, while lamenting unacceptable equipment and a lack commercial use on the other (with few exceptions).

16. Indeed, Cornerstone states that it was in an “untenable position of constructing facilities for which there exists no market due to the unavailability of reliable...equipment” and fails to demonstrate how such facilities provide active service to any segment of the marketplace.⁵⁷ We do not regard the construction of these facilities without the provision of actual service as meeting the Commission's substantial service standard, even where they have satisfied the end-of-term construction signal coverage requirement. Consistent with this decision, we deny the applications for renewal associated with call signs WPOJ246, WPOJ247, WPOJ248, WPOJ249, WPOJ251, WPOJ253, WPOJ254, WPOJ255, WPOJ256, WPOJ257, WPOJ258, WPOJ260, WPOJ261, WPOJ263, WPOJ264, WPOJ334, WPOJ335, WPOJ375, WPOJ378, WPOJ379, WPOJ380, WPOJ381, WPOJ382, WPOJ383, WPOJ548, WPOJ549, WPOJ550, WPOK934, WPOK936 and WPOL306. Accordingly, Havens' Petitions to Deny are moot with regard to these licenses.

17. However, we find that Cornerstone has met the substantial service standard warranting renewal of four call signs⁵⁸ where it actively serves from 2 to 11 unaffiliated customers, each with 30 to 285 end-user subscribers, using voice and data services. We find that the Havens challenges for these four renewal applications are without merit. Havens emphasizes that Form 602 requires disclosure of all

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Construction Notification for Call Sign KNL468 in Middlesboro-Harlan, KY BTA, *Order*, 17 FCC Rcd 9351 (WTB CWD 2002).

⁵⁴ 47 U.S.C. § 309(j)(4)(B).

⁵⁵ See 47 C.F.R. § 90.767(a).

⁵⁶ See Cornerstone Response to Letter of Inquiry, Attachment.

⁵⁷ See Extension Request at 2.

⁵⁸ Cornerstone reports customers for its call signs WPOJ250, WPOJ259, WPOJ262 and WPOK935.

real parties in interest, parties holding over 10 percent, all disclosable interest holders, and information on these parties including name, address and citizenship.⁵⁹ In fact, Cornerstone reports several Disclosable Interest Holders in association with the applications,⁶⁰ which are publicly available in the Commission's Universal Licensing System. We also note that the licenses at issue originally were procured by Intellicom Bidding Consortium as a Designated Entity, and subsequently assigned to Cornerstone.⁶¹ These actions were subjected to Bureau analysis, and approved.

18. Construction Extension Requests. As noted earlier, Cornerstone's applications for extension of time to construct five licenses were dismissed for failing to remit fees properly. We find that Cornerstone's subsequent waiver request of the construction requirement included in its waiver petition for license renewal⁶² is also procedurally flawed because the requests required the filing of separate applications. Section 1.913(a) of the Commission's rules requires the use of Form 601 for applications for license renewal, waiver and extensions of time, but each request must be filed under separate applications.⁶³ We have no pending applications for extension of time before us to consider as the initial applications remain dismissed.⁶⁴ Accordingly, as pointed out by Havens, there is no extension request to consider, and Cornerstone's requests for waiver of the construction requirement are procedurally defective and are dismissed.⁶⁵

19. Additionally, even if Cornerstone had properly filed applications for extension of time to construct, the factors outlined by Cornerstone would not have justified extension of the end-of-term build-out requirement.⁶⁶ While it is unfortunate that the type of equipment desired by Cornerstone was not available during its license term, ultimately it is Cornerstone's business decision to continue to wait for its desired equipment.⁶⁷ Cornerstone, after holding the licenses for several years, has failed to use its spectrum in a way that serves the public for the vast majority of its licenses. A search of the Commission's equipment database indicates that a variety of equipment has been approved for the 220 MHz service.⁶⁸ Therefore, Cornerstone has made certain business decisions relating to the use of the licenses, and the failure to timely construct the licenses is not the result of circumstances beyond its control.

20. This is consistent with our treatment of other licensees in the 220-222 MHz service, where late term extension requests were sought due to equipment difficulties. In those cases, the licensees' requests for extended relief were denied based in part upon determining that the licensees made

⁵⁹ See Petition to Deny at 9-10.

⁶⁰ See ULS File No. 0003113519, Form 602 submitted July 17, 2007.

⁶¹ See, e.g., ULS File No. 0002080426, Form 602 and Exhibits A-D submitted Feb. 2, 2004 (demonstrating DE status, including ownership interests not exceeding 10 percent as necessary); ULS File No. 0001584305, Form 603 and Exhibits 3-4 submitted Jan. 16, 2004 (certifying qualification as very small business).

⁶² See ULS File Nos. 0004100706, 0004100718, 0004100910, 0004100916, and 0004100920.

⁶³ See 47 C.F.R. § 1.913(a)(1); ULS Form 601 at 9.

⁶⁴ See *supra* ¶ 6.

⁶⁵ See *supra* note 31 and associated text.

⁶⁶ See *supra* note 13 (extension request for call signs WPOJ252, WPOJ255, WPOJ258, WPOJ334, and WPOJ335). We note that for these call signs, the initial, one-third population coverage benchmark had been met.

⁶⁷ See *supra* note 52 and associated text.

⁶⁸ A search of the equipment authorization database indicates 25 new equipment authorizations for the 220-222 MHz band between March 2004 and March 2009. The search was performed March 22, 2012 at <<http://www.fcc.gov/oet/ea/fccid>>.

business decisions to not initiate service notwithstanding an availability of equipment.⁶⁹ We note that prior to the 220 MHz auctions, the Commission stated, “[t]he Commission makes no warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a Commission licensee in this service, subject to certain conditions and regulations. A Commission auction does not constitute an endorsement by the Commission of any particular services, technologies, or products, nor does a Commission license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.”⁷⁰

21. Furthermore, a 3-year extension (or the 18-month alternative sought by Cornerstone) would not have been justified by Cornerstone’s claim that it has financially supported the development of 220 MHz narrowband equipment.⁷¹ We maintain that allowing an extension of the second construction deadline well beyond the license term to explore options, or in the hope that a particular business model may come to fruition, does not meet the waiver standard and is not in the public interest; especially where other entities have been able to construct facilities and provide service. Additionally, the requested extension beyond the license term would not have served the underlying purpose of the Commission’s performance requirements. The 220 MHz service has five-year and ten-year construction benchmarks designed to facilitate rapid use of licenses to provide services in the public interest.⁷² Cornerstone acknowledges that it has been unable to serve customers using its licenses, and has constructed facilities simply to meet its construction benchmarks.⁷³ Accordingly, granting an additional extension could result in this spectrum resource lying fallow for a 13-year period, counter to the purpose of the Commission’s performance requirements. We also do not believe that Cornerstone’s situation is sufficiently unique to meet the waiver standard. There are sufficient equipment options for 220 MHz licensees; and while Cornerstone has decided to hold out for improved equipment options in the future, other licensees are putting their spectrum to active use.

22. Finally, we note that the dismissed Extension Requests for call signs WPOJ252, WPOJ255, WPOJ258, WPOJ334, and WPOJ335, which resulted in automatic termination of the stations as of March 22, 2009 (for WPOJ252, WPOJ255 and WPOJ258) and March 23, 2009 (for WPOJ334 and WPOJ335), also render moot the corresponding renewal applications for these stations, and therefore are dismissed.

III. ORDERING CLAUSES

23. Accordingly IT IS ORDERED THAT, pursuant to Sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309(j), and Sections 1.913(a), 1.955 and 90.743 of the Commission’s Rules, 47 C.F.R. §§ 1.913(a), 1.955 and 90.743, the waiver requests for extension of time of Cornerstone SMR, Inc., File Nos. 0004100706, 0004100718, 0004100910, 0004100916 and 0004100920, ARE DISMISSED.

⁶⁹ See, e.g., Letter from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Dean S. Kozel, Longhorn Communications Inc., 26 FCC Rcd 6716 (filed May 6, 2011); Letter from Roger Noel, Chief, Mobility Division, Wireless Telecommunications Bureau to Jeffrey B. Brown, Tuchman & Brown Investment Inc. No. 2, 24 FCC Rcd 8617 (filed June 26, 2009).

⁷⁰ See Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 10953 ¶ 19.

⁷¹ See Cornerstone Extension Request at 4.

⁷² 47 C.F.R. § 90.767(a).

⁷³ See *supra* note 56 and associated text.

24. IT IS FURTHER ORDERED THAT, pursuant to Sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309(j), and Sections 1.925, 1.946, 1.955 and 90.767 of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.946, 1.955 and 90.743, the renewal applications of Cornerstone SMR, Inc., File Nos. 0004100706, 0004100718, 0004100910, 0004100916 and 0004100920, ARE DISMISSED.

25. IT IS FURTHER ORDERED THAT, pursuant to Sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309(j), and Sections 1.955 and 90.743 of the Commission's Rules, 47 C.F.R. §§ 1.955 and 90.743, the renewal applications of Cornerstone SMR, Inc., File Nos. 0004100107, 0004100194, 0004100250, 0004100301, 0004100457, 0004100515, 0004100566, 0004100590, 0004100594, 0004100664, 0004100672, 0004100686, 0004100695, 0003798880, 0003798881, 0003798882, 0003798883, 0003798884, 0003798885, 0003798886, 0003798887, 0003798888, 0003798879, 0003976777, 0003976779 and 0003976780, ARE DENIED.

26. IT IS FURTHER ORDERED THAT, pursuant to Sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309(j), and Sections 1.925 and 90.743 of the Commission's Rules, 47 C.F.R. §§ 1.925 and 90.743, the renewal applications of Cornerstone SMR, Inc., File Nos. 0004100367, 0004100634, 0004100680 and 0003976778, together with their associated Requests for Waiver of Section 90.743(a), ARE GRANTED.

27. IT IS FURTHER ORDERED THAT, pursuant to Sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309(j), and Sections 1.925 and 90.743 of the Commission's Rules, 47 C.F.R. §§ 1.925 and 90.743, the Petitions to Deny of Warren C. Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC and Skybridge Spectrum Foundation against File Nos. 0004100367, 0004100634, 0004100680 and 0003976778 ARE DENIED.

28. IT IS FURTHER ORDERED THAT, pursuant to Sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309(j), and Sections 1.913(a), 1.925 and 90.743 of the Commission's Rules, 47 C.F.R. §§ 1.913(a), 1.925 and 90.743, the Petitions to Deny of Warren C. Havens, Environmental LLC, Verde Systems LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus Holdings GB LLC and Skybridge Spectrum Foundation against File Nos. 0004100107, 0004100194, 0004100250, 0004100301, 0004100457, 0004100706, 0004100515, 0004100566, 0004100718, 0004100590, 0004100594, 0004100910, 0004100664, 0004100672, 0004100686, 0004100695, 0004100916, 0004100920, 0003976777, 0003976779 and 0003976780 ARE DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Thomas Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau