



Federal Communications Commission
Washington, D.C. 20554

February 15, 2013

Telesaurus Holdings GB, LLC
2649 Benvenue Ave., Suite 2
Berkeley, CA 94704

DA 13-234

RE: Telesaurus Holdings GB, LLC's Notification of Construction and Substantial Service Showing for the Ten-Year Construction Requirement and Renewal for Call Sign WPTI458; and Waiver in the Alternative.

Dear Mr. Havens:

This letter addresses Telesaurus Holdings GB, LLC's (THL) October 7, 2011, Notification of Construction and Substantial Service Showing for the Ten-Year Construction Requirement¹ and Renewal² with respect to WPTI458, VHF public coast (VPC) Station located in the inland VPC Station Area (VPCSA) 26, Nebraska - Wyoming; as well as its contingent request for Waiver in the Alternative (Waiver Request).³ For the reasons that follow, we find that THL has not met its ten-year construction requirement for call sign WPTI458. We also deny THL's Waiver Request. Because THL failed to meet the construction requirements for WPTI458 and we deny its contingent Waiver Request, authorization for WPTI458 automatically terminated as of October 9, 2011 pursuant to Sections 1.946(c), 1.955(a)(2) and 80.49(a)(1) of the Commission's rules.⁴

Background. For maritime VPCSA's, the Commission has stated that VPC licensees must demonstrate that they are providing substantial service within five years of the initial license grant, and again within ten years of the initial license grant.⁵ Substantial service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. When the Commission established the VPC construction rules, it also established a "safe harbor" provision, whereby VPC licensees could satisfy the five-year construction requirement by demonstrating coverage to one-third of the major waterway(s) in the service area, and coverage to two-thirds of the major waterway(s) in the service area for the ten-year construction requirement.⁶ For inland VPCSA's, the Commission has stated that the safe harbor for the five-year construction requirement can be satisfied by coverage to one-third of the population in the service area, and by coverage to two-thirds of the population in the service area for the ten-year construction requirement.⁷ If a VPC licensee fails to

¹ FCC File No. 0004905585 (filed Oct 7, 2011) (Construction Notification).

² FCC File No. 0004905586 (filed Oct. 7, 2011) (Renewal Application).

³ See Waiver Request in the Alternative (Waiver Request), attached to FCC File No. 0004905595.

⁴ 47 C.F.R. §§ 1.946(c), 1.955(a)(2) and 80.49(a)(1).

⁵ See 47 C.F.R. § 80.49(a)(1).

⁶ Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd at 19870 ¶ 34 (1998) (*Third Report and Order*).

⁷ *Id.* at 19871 ¶ 36.

meet its construction requirements, then the authorization automatically terminates as of the construction deadline.⁸

THL's license was granted on October 9, 2001, with a five-year construction deadline of October 9, 2006, and ten-year construction deadline of October 9, 2011. On October 7, 2011, THL timely filed a Notification of Construction and Substantial Service Showing for station WPTI458 indicating that a transmitter was operational providing coverage to 42% of the population for the licensing area.⁹ THL states that the station is located in Scottsbluff, NE, the only significantly sized town in the license area, at a local two-way radio company site and is providing coverage to as much of the geographical area as possible. THL states it is limited in reaching the necessary coverage because it has been unable to negotiate agreements to exceed the 5 dBu signal strength limit at neighboring VPC licensees' borders.¹⁰ THL also argues that constructing additional sites with low power and highly directional antennas would provide more coverage at the borders, but that is impractical because it would greatly increase the cost of construction and operation of the system.¹¹

Beyond the population coverage achieved by the Scottsbluff transmitter, THL also argues that there are other factors that demonstrate that it is providing substantial service for WPTI458. Specifically, THL contends that making its service available at no cost to firefighters and governments for smart transportation, energy, and environmental protection should be deemed as substantial service.¹² THL requests that this be accepted as providing substantial service for the purposes of meeting the License's second construction milestone and renewal obligation.¹³

If its substantial service demonstration is not accepted by the Commission, THL seeks a waiver of the construction requirements in section 80.49(a)(1).¹⁴ THL argues that the small area and tight boundaries of the VPC license and relatively rural nature of much of the license area creates a unique circumstance that hinders its ability to meet its construction requirements and warrants a waiver. THL contends that covering an "additional 24.6% of the population in the license area would require several additional low sites, extremely low power, highly directional antennas, etc. that would not provide additional practical or cost effective operations and service."¹⁵ THL further argues that its reasons to justify substantial service also justify its waiver request and a grant of a waiver is in the public interest. Finally, THL notes that it continues to make its spectrum available to the Federal Government and local and county fire departments, including the Forestry Conservation Communications Association and the National Interagency Fire Center in Boise, ID.¹⁶

Ten-year Construction Requirement. We find that THL has not demonstrated that substantial service was provided by station WPTI458 for the ten-year construction benchmark period. THL missed

⁸ 47 C.F.R. §§ 1.946(c), 1.955(a)(2) and 80.49(a)(1).

⁹ Construction Notification, Exhibit 1 at 2.

¹⁰ Section 80.773(c) of the Commission's Rules specifies that VPC geographic area licensees cannot exceed field strength of +5 dBu at their service area boundaries, unless all affected geographic licensees agree to higher field strength.

¹¹ Construction Notification at 2.

¹² *Id.* at 1-2.

¹³ *Id.* at 1-2.

¹⁴ Waiver Request at 2.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 2.

meeting the 2/3rd population coverage safe harbor established in the *Third Report and Order* for VPC licenses by 24.6% of the market population for the licensing area.¹⁷ For this reason we find the coverage to be insufficient to meet the ten-year construction requirement. The Commission by doubling the safe-harbor example clearly intended that the ten-year coverage requirement, including a substantial service standard, encourage greater provision of service across the license area.

Further, THL's arguments as to why greater population coverage could not be achieved do not warrant a finding of substantial service. Specifically, all VPC licensees are expected to perform due diligence prior to obtaining a license; therefore, the 5 dBu signal strength limit at the service area boundary, the rural nature of the market, and the required construction requirements should have been understood by THL before obtaining WPTI458. Additionally, THL's argument that additional transmitters are not practical or cost effective fails to warrant relief of its construction requirements. THL made a business decision to limit its deployment to one transmitter and such decisions do not relieve a licensee of their obligation to meet regulatory requirements. Finally, we find THL's contention that it offers its spectrum to government entities is insufficient to demonstrate that substantial service was provided over the license term. THL offers no demonstration or evidence that any government entity operated under WPTI458 for any of the purposes outlined by THL. A mere suggestion of operations or service without actual operations or service for such public interest operations does not warrant a finding of substantial service.

Request for Waiver. 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.¹⁸ As discussed more fully below, we conclude that THL has failed to make the requisite showing, and we therefore deny its waiver request.

We conclude that waiving THL's substantial service obligation would be inconsistent with the underlying purpose of the Commission's construction requirements, which is to promote efficient use of the spectrum; encourage the provision of service to rural, remote, and insular areas; and prevent the warehousing of spectrum.¹⁹ As discussed above, we are not persuaded that THL's current level of construction and coverage should be construed as "substantial service" to meet the ten-year construction requirement. THL can certainly achieve higher levels of signal coverage if it is willing to deploy additional transmitters. Further, its choice of the location of the current tower, the type of equipment deployed and its inability to negotiate higher signal level agreements at the license boundary do not qualify as unique factors that would make application of the rule inequitable, unduly burdensome or contrary to the public interest. THL's argument that it cannot achieve higher population coverage because it is costly to deploy low power sites in small outlying communities is irrelevant and does not warrant a waiver because all VPC licensees must meet their regulatory requirements and make business decisions on how to deploy their systems. Further, THL's assertion that it makes WPTI458 available for firefighting, and other governmental uses, does not warrant relief. While these operations could be applied towards demonstration that the construction requirements have been met, THL has not

¹⁷ Construction Notification, Exhibit 1 at 2.

¹⁸ 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, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 5019 (1994), *citing* *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁹ *See Third Report and Order*, 13 FCC Rcd at 19870 ¶ 33 (1998).

demonstrated that facilities are deployed and operated in a meaningful fashion for public safety applications. Finally, THL offers no near-term plan to expand coverage in the market, so the majority of the market would remain unserved if a waiver is granted.

In light of our decision to deny THL's request for waiver of the construction requirements, THL's license for Station WPTI458 automatically terminated as of October 9, 2011.²⁰ Further, we dismiss, as moot, the Renewal Application for WPTI458.

Accordingly, IT IS ORDERED that, 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, 1.925, 1.946 and 80.49(a)(1) of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.925, 1.946, 80.49(a)(1) the Telesaurus Holdings GB, LLC Notification of Construction and Substantial Service Showing for the Ten-Year Construction Requirement for Call Sign WPTI458, FCC File No. 0004905585, filed on October 7, 2011, IS HEREBY DISMISSED. IT IS FURTHER ORDERED that the "Request for Waiver in the Alternative, FCC File No. 0004905585, filed June 29, 2012, IS DENIED. IT IS FURTHER ORDERED that the Renewal Application for Call Sign WPTI458, FCC File No. 0004905586, IS DISMISSED as moot.

IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.955(a)(2) of the Commission's Rules, 47 C.F.R. § 1.955(a)(2), that the Universal Licensing System SHALL BE UPDATED to reflect that the licenses issued to Telesaurus Holdings GB, LLC for VHF Public Coast Station WPTI458 TERMINATED as of October 9, 2011.

Sincerely,

Thomas Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

²⁰ 47 C.F.R. §§ 1.946(c), 1.955(a)(2) and 80.49(a)(1).