

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

In the Matter of)
)
Gilpin County Sheriff’s Office, Gilpin County,)
Colorado)
)
Request for Waiver of Section 1.946(d) of the)
Commission’s Rules)

ORDER

Adopted: January 6, 2014

Released: January 6, 2014

By the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION.

1. In this Order, we address the request for waiver filed by Gilpin County Sheriff’s Office, Gilpin County, Colorado (Gilpin County) requesting an extension of time to construct VHF public coast station (VPC) Channel 25 (*i.e.* 157.250 MHz and 161.850 MHz) at various locations licensed under call sign WQPC909.¹ For the reasons stated below, we deny Gilpin County’s waiver request.

II. BACKGROUND.

2. On February 9, 2009, Gilpin County filed an application for VPC Channels 25 and 84 to deploy a regional system with Clear Creek County, Colorado, an adjacent county.² By letter dated February 25, 2009, the Licensing Branch dismissed Gilpin County’s application without prejudice, effective February 24, 2009, because “the requested channels are no longer assigned to the Public Safety Pool.”³ On March 2, 2009, Gilpin County filed a Petition for Reconsideration seeking reinstatement of its application.⁴ Gilpin County noted that, although the Commission had removed the public safety allocation from Channel 84, in the Automatic Identification System (AIS) proceeding,⁵ it retained the

¹ See Letter from Steve Watson, ENP, Communications Manager/OEM Director, Gilpin County Sheriff’s Office, Gilpin County, Colorado to FCC (dated May 15, 2013) (Waiver Request) *re* WQPC909.

² See FCC File No. 0003731945. Channel 84 consists of the frequency pair 157.225 and 161.825 MHz. Channel 25 consists of the frequency pair 157.250 and 161.850 MHz. See 47 C.F.R. §§ 80.371(c)(1)(i), 90.20(g)(2).

³ Letter from Public Safety and Homeland Security Bureau, FCC, Gettysburg, PA, to Steven Watson, County of Gilpin, Colorado (Feb. 25, 2009).

⁴ Petition for Reconsideration, filed March 2, 2009 (Petition).

⁵ In that proceeding, the Commission allocated Channel 87B for AIS, and removed the public safety allocation from Channel 84 so that Channel 84 could serve as replacement spectrum for non-AIS licensees displaced from Channel 87B. Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, WT Docket No. 04-344, *Second Report and Order*, 23 FCC Rcd 13711 (2008); *Erratum*, 24 FCC Rcd 3241, 3244-45 (2009); *recon. denied on other grounds*, Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, WT Docket No. 04-344, *Memorandum Opinion and Order*, 26 FCC Rcd 8122 (2011).

public safety allocation for Channel 25.⁶ Thus, Gilpin County pointed out, Channel 25 was still available for Gilpin County's use.⁷

3. On April 9, 2012, we granted Gilpin County's Petition with respect to Channel 25.⁸ The licensing staff then granted Gilpin County's application for Channel 25 on April 10, 2012 under call sign WQPC909.⁹ Accordingly, the Commission's rules required Gilpin County to construct Channel 25 by April 10, 2013 or risk automatic termination of its authorization for Channel 25.¹⁰ On November 20, 2012, Gilpin County added frequency 151.415 MHz to call sign WQPC909.¹¹

4. On May 15, 2013, the Commission's licensing staff informed Gilpin County that the Universal Licensing System had placed the authorization for Channel 25 in a termination pending status because Gilpin County failed to meet the April 10, 2013 construction deadline.¹² The staff advised that if Gilpin County "met its construction or coverage requirement, it has 30 days from the date of the Public Notice to file a petition for reconsideration, [...] showing that it met the construction or coverage deadline."¹³

5. On May 15, 2013, Gilpin County filed the above-captioned Request for Waiver of Section 1.946(d) of the Commission's Rules¹⁴ "for late filing of the buildout status of the frequencies granted on the license WQPC909."¹⁵ Gilpin County states that it "has been in the process of transition to a Narrowband VHF voice radio system and the decommissioning of its existing wideband VHF voice radio system[.]"¹⁶ It claims that "[t]he new system has been part of a 5 year process which is in the final phase - construction."¹⁷ Gilpin County submits that the information contained in the Waiver Request "was submitted, in part, as the request for waiver of the January 31, 2012 deadline for private land mobile radio services in the 150-174 MHz and 421-512 MHz (VHF/UHF) bands to migrate to narrowband (12.5 kHz or narrower) technology filed by the [C]onsortium [*i.e.* Clear Creek County, City of Black Hawk, Evergreen Fire and Rescue and Gilpin County, Colorado]."¹⁸

⁶ See Petition at 1.

⁷ *Id.*

⁸ See Gilpin County, Colorado, *Order*, 27 FCC Red 3813 (PSHSB 2012). We denied Gilpin County's Petition with respect to Channel 84. *Id.*

⁹ See File No. 0003731945.

¹⁰ 47 C.F.R. §§ 1.946(c); 1.955(a)(2); 90.155(a).

¹¹ See FCC File No. 0005377618 (filed Sep. 9, 2012).

¹² See FCC Reference No. 5592266 (dated May 15, 2013) *re* WQPC909.

¹³ *Id.*

¹⁴ 47 C.F.R. § 1.946(d) (licensee notification of construction compliance).

¹⁵ Waiver Request at 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

6. We granted the Consortium's narrowbanding waiver request until December 31, 2013.¹⁹ The Consortium requested a second narrowbanding waiver, which we granted until May 31, 2014.²⁰ With regard to the current status of the VHF simulcast narrowband system, the Consortium stated that Gilpin County is "now operating in narrowband."²¹

7. On November 20, 2013, Gilpin County notified the licensing staff that it timely constructed frequency 151.415 MHz on October 1, 2013.²² It did not, however, state that it had constructed Channel 25. Thus, to date, Gilpin County has never filed a construction notification for Channel 25.

III. DISCUSSION.

8. In reviewing Gilpin County's Waiver Request, we find no basis for extending the construction deadline or waiving automatic cancellation of the authorization for Channel 25. Pursuant to sections 1.946(c), 1.955(a)(2) and 90.155(a) of the Commission's rules, a license terminates automatically as of the construction deadline if the licensee fails to meet its construction requirement,²³ unless the Commission grants a request for extension of the construction period²⁴ or otherwise waives the construction requirement. An extension of time to complete construction may be granted, pursuant to section 1.946(e) of the Commission's rules, only if the licensee shows that the failure to complete construction is due to causes beyond its control.²⁵ Accordingly, because Gilpin County has neither constructed by the deadline, nor shown good cause for an extension, its license for Channel 25 automatically terminated as of the construction deadline (*i.e.* April 10, 2013).

9. A party seeking waiver of a Commission rule must show that "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest [...]"²⁶ Alternatively, a party must show that "[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative."²⁷ When seeking to deviate from the general rule, an applicant faces a heavy burden.²⁸ In

¹⁹ See Letter from Zenji Nakazawa, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, to Captain Randy Long, Clear Creek County Sheriff's Office (Dec. 17, 2012) (Waiver Letter) *re* call signs, KNID389, WPWM996, WPLU575, WPXQ361, WPVC357, and WQKV947.

²⁰ See Email from Charles Craig, Colorado North Central Region to FCC (dated Dec. 19, 2013) *re* call signs, KNID389, WPWM996, WPLU575, WPXQ361, WPVC357, and WQKV947.

²¹ *Id.*

²² See FCC File No. 0006021840 (filed Nov. 20, 2013).

²³ 47 C.F.R. §§ 1.946(c), 1.955(a)(2), 90.155(a). See, e.g., *National Science and Technology Network, Inc. v. FCC*, 397 F.3d 1013 (D.C. Cir. 2005).

²⁴ 47 C.F.R. §§ 1.946(e); 90.155(g) (extension request must be filed before the end of the construction period).

²⁵ 47 C.F.R. § 1.946(e). Section 1.946(e) also lists specific circumstances that would not warrant an extension of time to complete construction, including, for example, delays caused by a failure to obtain financing. 47 C.F.R. §§ 1.946(e)(2)-(3). See 47 C.F.R. § 90.155(g).

²⁶ 47 C.F.R. § 1.925(b)(3)(i).

²⁷ 47 C.F.R. § 1.925(b)(3)(ii).

²⁸ See *Wait Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

order to obtain a waiver, an applicant must plead with particularity the facts and circumstances which warrant such action.²⁹

10. Here, Gilpin County did not complete construction of Channel 25 within twelve months from the date that its authorization was granted, as required by the Commission's rules, and did not request an extension of the deadline within those twelve months. Therefore the authorization for Channel 25 canceled automatically after one year. Gilpin County now – well after the license for Channel 25 automatically terminated – asks that we retroactively waive the automatic termination and grant it an extension of the construction period. But Gilpin County fails to plead with any particularity the facts and circumstances that would warrant a waiver of the automatic termination of its license for Channel 25.

11. Instead, Gilpin County principally relies on the Consortium's request for waiver of the narrowbanding rules to justify a waiver of the automatic termination of Channel 25. The Consortium's waiver request focused on the delays in transitioning the Consortium's independently constructed wideband facilities to a single regional narrowband system. It did not treat Gilpin County's failure to construct its Channel 25 facilities.

12. We are not persuaded by Gilpin County's attempt to link the automatic termination of its license for channel 25 to the Consortium's request for a narrowbanding waiver. First, the Consortium's narrowbanding waiver requests make no mention of Gilpin County's license, call sign WQPC909. The absence of WQPC909 from the narrowbanding waiver request is unremarkable because WQPC909 required no narrowbanding waiver – the station was already authorized for narrowband operation. Second, the Consortium's most recent narrowbanding waiver request stated that Gilpin County had already transitioned to and “is operating in VHF narrowband.”³⁰ Thus, again, Gilpin County's facilities required no narrowbanding waiver and thus had no nexus to the Consortium's waiver request on which Gilpin County now attempts to rely. Finally, Gilpin County offers no explanation of why it failed timely to construct its Channel 25 facilities, much less demonstrate that such failure was the result of circumstances outside its control.

13. Based on the foregoing, we find that Gilpin County's request does not warrant an extension of time to construct Channel 25 and does not satisfy the criteria for a waiver of the automatic license cancellation provision of the Commission's construction rule. We therefore deny the Waiver Request and find that Gilpin County's authorization for Channel 25 automatically terminated, pursuant to sections 1.946(c), 1.955(a)(2), and 90.155(a) of the Commission's rules, on April 10, 2013. In light of the automatic termination of the subject authorization for Channel 25, Gilpin County may seek to license Channel 25 by filing an application for license modification of WQPC909 or filing for Special Temporary Authorization (STA) pending the submission and grant of a modification application.³¹

²⁹ *Id.* citing *Rio Grande Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968).

³⁰ *See supra* n. 20.

³¹ 47 C.F.R. § 1.931.

IV. CONCLUSION AND ORDERING CLAUSES.

14. ACCORDINGLY, IT IS ORDERED, that the request for waiver of the automatic license cancellation of Channel 25 licensed under Call Sign WQPC909, submitted by Gilpin County, Colorado, IS DENIED.

15. This action is taken pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau