

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

In the Matter of)
)
COUNTY OF SPARTANBURG, SOUTH)
CAROLINA)
)
Licensee of Trunked 800 MHz Public Safety)
Station WPGT606)

ORDER

Adopted: February 19, 2014

Released: February 19, 2014

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

I. INTRODUCTION.

1. On January 30, 2013, the County of Spartanburg, South Carolina (Spartanburg) filed a request for waiver¹ of Section 1.946(d)² of the Commission’s rules which provides that:

A licensee who commences service or operations within the construction period or meets its coverage or substantial services obligations within the coverage period must notify the Commission by filing FCC Form 601. The notification must be filed within 15 days of the expiration of the applicable construction or coverage period. Where the authorization is site-specific, if service or operations have begun using some, but not all, of the authorized transmitters, the notification must show to which specific transmitters it applies.

2. Through what it describes as “administrative oversight” Spartanburg failed to file a timely construction notice for that portion of its license³ that authorizes operation on frequency 807.4625 MHz at location 6 (the frequency). Accordingly, the frequency entered into the Commission’s “Auto-Term” process and that portion of the license authorizing operation on the frequency expired by operation of the Commission’s rules.⁴ Spartanburg requests a waiver of Section 1.946(d) to file the required construction notification “outside the deadline.”⁵ For the reasons stated below, we deny the request.

¹ See Letter from Fred D Thompson, Communications Director, County of Spartanburg to FCC (filed Jan. 30, 2013) (Waiver Request).

² 47 C.F.R. § 1.946(d).

³ Call sign WPGT606.

⁴ 47 C.F.R. § 1.946(c) (“If a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically (in whole or in part as set forth in the service rules), without specific Commission action, on the date the construction or coverage period expires.”)

⁵ Waiver Request at 1.

II. BACKGROUND.

3. On October 25, 2011 the Commission granted Spartanburg's application to add several new frequencies to location 6 under call sign WPGT606.⁶ On July 24, 2012, the Public Safety and Homeland Security Bureau (Bureau) sent Spartanburg a reminder notice advising Spartanburg of its October 25, 2012 deadline to construct its frequencies.⁷ Spartanburg filed a construction notification on September 21, 2012.⁸ This notification, however, failed to include the frequency. Spartanburg did not update the notice before the end of the 15 day construction notification period.⁹

4. On November 28, 2012, by Public Notice, the Commission notified Spartanburg that the frequency had been placed in a Termination Pending status.¹⁰ The Commission advised Spartanburg that it had 30 days from the date of the Public Notice (*i.e.* until December 28, 2012) to file a petition for reconsideration demonstrating that it timely met the construction deadline.¹¹

5. The December 28, 2012 deadline passed without Spartanburg filing a petition for reconsideration. On January 30, 2013, Spartanburg filed its waiver request stating that it had constructed the frequency before the October 25, 2012 deadline, but failed to file the required construction notification due to an "administrative oversight."¹²

III. DISCUSSION.

6. Section 1.925 of the Commission's Rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹³ When seeking to deviate from the general rule, an applicant faces a heavy burden.¹⁴ In order to obtain a waiver, an applicant must plead with particularity the facts and circumstances which warrant such action.¹⁵ In reviewing Spartanburg's waiver request, we find no basis for granting the requested waiver.

7. The Commission has explained that "the purpose of our construction notification procedure should be to verify whether licensees have in fact met their construction and coverage obligations, not to terminate licenses for legitimately operating facilities based on a failure to notify by the licensee that

⁶ See FCC File No. 0004800798 (filed Jul. 19, 2011).

⁷ See Construction/Coverage Deadline Reminder Notice Reference No. 5415800 (dated Jul. 24, 2012).

⁸ See FCC File No. 0005406525 (filed Sept. 21, 2012).

⁹ 47 C.F.R. § 1.946(d).

¹⁰ See Public Safety and Homeland Security Bureau Site Based Licenses Termination Pending Public Notice, Report No. 8267, *Public Notice* (PSHSB Nov. 28, 2012); Notice of License Termination Pending Status Reference No. 5488888 (dated Nov. 28, 2012).

¹¹ *Id.*

¹² Waiver Request at 1.

¹³ 47 C.F.R. § 1.925(b)(3)(i-ii).

¹⁴ See *Wait Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹⁵ *Id.* citing *Rio Grande Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968).

could be the result of a mailing error.”¹⁶ “Nevertheless, [the Commission stated] if a licensee fails to confirm timely construction, we believe it is reasonable to initiate the license termination process[.]”¹⁷ Under this process, when the Commission fails to receive timely confirmation of construction from the licensee, the Commission’s Universal Licensing System (ULS) generates a letter to the licensee and issues a Public Notice thirty days before the termination becomes final.¹⁸ “This period provides a licensee that has timely met its construction or coverage obligations with additional notice and the opportunity to prevent termination of its license by submitting documentation that it has timely constructed.”¹⁹ In order to implement this mandate the Wireless Telecommunications Bureau deployed the “Auto-Term” process, whereby licensees have the opportunity to request a waiver of the construction notification requirement and to file a petition for reconsideration demonstrating construction.²⁰

8. Spartanburg has failed to show that the underlying purpose of the construction notification procedure would not be served were its waiver request granted. Spartanburg has had ample opportunity to confirm that it met its construction obligation and preserve its authorization for the frequency, but failed to do so. After the construction notification deadline expired, the Commission’s procedures afforded Spartanburg the opportunity to request a waiver. Spartanburg did not request such a waiver and the authorization for the frequency was placed in termination pending status, which afforded Spartanburg notice and a final opportunity to rebut the presumption that it failed to construct the frequency.

9. Spartanburg does not explain its failure to file a timely petition for reconsideration demonstrating that it constructed the frequency. While an “administrative oversight” may explain Spartanburg’s initial incomplete construction notification, it does not justify Spartanburg’s failure – after notice – to file the requisite petition. Additionally, Spartanburg does not show that its inadvertence constitutes a unique or unusual circumstance that renders application of the rules inequitable, unduly burdensome, contrary to the public interest, or leaves Spartanburg with no reasonable alternative.²¹ Because the construction notification period and the reconsideration period both expired without any filing from Spartanburg, the authorization for the frequency automatically terminated and the termination

¹⁶ See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95 and 101 of the Commission’s Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21027, 21076 ¶ 106 (1998).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 21076-77 ¶ 106.

²⁰ “Any late-filed construction notification must include a request for waiver of Section 1.946(d) and any other applicable rule section(s) setting out the requirements for filing notifications.” See Wireless Telecommunications Bureau Announces the Deployment of “Auto Term,” the Automated Feature in its Universal Licensing System that Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, *Public Notice*, 21 FCC Rcd 163, 167 (WTB 2006). “The waiver request must certify that while the licensee did not timely file its [construction notification] with the Commission, it did meet the construction or coverage requirement and provide the date by which the licensee met that requirement.” *Id.* “Once ULS places the license, location, or frequency into ‘Termination Pending’ status, however, a licensee will be unable to file construction notifications or applications associated with the license, location, or frequency as discussed in detail below.” *Id.* “At this point, the licensee will be unable to submit a late-filed construction notification and is limited to the Petition for Reconsideration process [...] if it wants to show that it did timely meet the construction or coverage requirement.” *Id.* “In the absence of a timely filed Petition for Reconsideration, the license termination becomes final[.]” *Id.* at 168.

²¹ See, e.g., Paging Systems, *Memorandum Opinion and Order*, 25 FCC Rcd 450 (2009) (“mere inadvertence ordinarily would not constitute “unique or unusual circumstances” meriting grant of a waiver”).

became final.²² If Spartanburg wishes to obtain a valid authorization for the frequency, it must file a properly coordinated modification application. If Spartanburg wishes to use the frequency until it receives a modified authorization, it must immediately obtain special temporary authority to do so.²³

IV. ORDERING CLAUSES.

10. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the Request for Waiver filed by the County of Spartanburg, South Carolina on January 30, 2013 IS DENIED.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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

²² See, e.g., *Range Fuels, Order*, 28 FCC Rcd 231, 232-34 (WTB 2013) (finding that license terminated automatically after the construction and reconsideration periods expired without notice from licensee).

²³ 47 C.F.R. § 1.931.