



Federal Communications Commission
Washington, D.C. 20554

April 8, 2014

BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED

DA 14-473

Mr. Vijay Revankar
The Port Authority of New York and New Jersey
2 Gateway Center, 16SW
Newark, NJ 07102

Re: The Port Authority of New York and New Jersey
Requests for Waiver to Permit Untimely Filing and
to Extend the Construction Period For
Station WQPK961; File No. 0006191959
RS – Land Mobile Radiolocation

Dear Mr. Revankar:

On March 10, 2014, The Port Authority of New York and New Jersey (the Port Authority) filed a request to waive the deadline for filing a request for extension of time to complete construction of its Land Mobile Radiolocation Station WQPK961 (waiver request), and a request to extend the construction period for the same station to October 31, 2014 (extension request).¹ For the reasons stated below, we deny the Port Authority's waiver request and dismiss the extension request as moot.

The Mobility Division (MD) granted the Port Authority a license for Station WQPK961 on June 18, 2012.² Section 90.155 of the Commission's rules requires that all stations authorized under Part 90, including Station WQPK961, be placed into operation within twelve (12) months from the date of grant or the authorization cancels automatically.³ We note that the Port Authority previously requested and was granted an extension of time to construct Station WQPK961 that extended the construction deadline to February 13, 2014.⁴ Therefore, Commission rules required the Port Authority to construct Station WQPK961 by February 13, 2014, and to file its construction notification within 15 days of that date.⁵ On March 10, 2014,

¹ FCC File No. 0006191959 (filed March 10, 2014) (waiver request) (extension request).

² FCC File No. 0005153622 (filed Apr. 6, 2012).

³ 47 C.F.R. § 90.155(a); *see also* 47 C.F.R. § 1.946(c).

⁴ FCC File No. 000582685 (filed June 20, 2013). Furthermore, three months before the expiration of the new construction period deadline, the Commission's Universal Licensing System (ULS) issued letters to the Port Authority and to Raytheon IDS, the Port Authority's contact-of-record, reminding the licensee that the construction period for Station WQPK961 was about to expire and that the licensee had to submit a construction notification no later than 15 days after the construction period. *See* Construction/Coverage Deadline Reminder Notice to the Port Authority, Ref. No. 5683367 (Sent Nov. 13, 2013); Construction Coverage Deadline Reminder Notice to Raytheon IDS, Ref. No. 5683368 (Sent Nov. 13, 2013).

⁵ Section 1.946(d) of the Commission's rules requires a licensee who commences service within its construction period to notify the Commission within 15 days of the expiration of the applicable construction deadline. 47 C.F.R. § 1.946(d).

twenty-five days after the construction period expired, the Port Authority submitted the waiver request and extension request at issue.

Section 1.946(e) permits a licensee to request an extension of a construction period if the failure to construct is due to an involuntary loss of its site or other causes beyond its control, but the request must be filed before the expiration of the construction period.⁶ If a licensee does not file a request to extend the construction period before its expiration, a waiver from Section 1.946(e) to permit untimely filing may be granted, pursuant to section 1.925(b)(3) 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 of 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, that application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁷ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.⁸

Because the Port Authority filed its extension request after the expiration of the construction period, we must first decide whether to grant the Port Authority's waiver request. The Port Authority states that it did not timely file its extension request for station WQPK61 before the end of the construction period "due to an oversight" stemming from changes in personnel while remedying an environmental permit violation, and the failure of similar equipment elsewhere in the air transportation facility's property.⁹ This administrative oversight is not an adequate justification under either prong of Section 1.925(b)(3) for the Commission to grant the Port Authority's waiver request. The Port Authority makes no showing that the underlying purpose of Section 1.946(e) would not be served or would be frustrated by its application to the present case, nor has the Port Authority demonstrated that the late filing of the extension request stems from unique or unusual circumstances. The licensee is solely responsible for complying with its construction requirements.¹⁰ Inattention to Commission rules due to oversight is not a compelling basis for a waiver.¹¹ Furthermore, we note that the Commission has emphasized that requiring licensees to file extension requests on a timely basis

⁶ 47 C.F.R. § 1.946(e).

⁷ 47 C.F.R. § 1.925(b)(3).

⁸ *See, e.g.,* WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing* Rio Grande Family Radio Fellowship, Inc. v. FCC, 406 F.2d 664, 666 (D.C. Cir. 1968)); *see also* In the Matter of Birach Broad. Corp., *Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 ¶ 6 (2003).

⁹ Waiver request at 1.

¹⁰ In the Matter of Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket 96-188, 13 FCC Rcd. 21027, 21075 ¶ 104 (1998); *See also, e.g.,* In the Matter of Instapage Network, LTD., *Order on Reconsideration*, 17 FCC Rcd. 19083, 19091 ¶ 16 (2002) ("Instapage") ("It is important that licensees take responsibility for their compliance with the Commission's rules").

¹¹ *See, e.g.,* Instapage at 19094 ¶ 22. *See also* Empire Broad. Corp., *Memorandum Opinion and Order*, 25 FCC2d 68, 69 ¶ 4 (1970) (mere oversight or failure to be aware of the Commission's requirements will not excuse a licensee from its obligation to operate in compliance with the Commission's Rules).

serves important policy objectives and has upheld the dismissal of untimely requests for extension.¹² Therefore, because the Port Authority has failed to satisfy the criteria for grant of a waiver, we deny its waiver request.

We now address the Port Authority's extension request, which asks the Commission to extend the construction deadline for Station WQPK961 to October 31, 2014. Although the Port Authority provides several reasons in support of its extension request – including a stop work order during months in which construction would have taken place, harsh winter conditions, and damage to the radio unit meant to be used in the WQPK961 operation¹³ – we do not reach the merits of the Port Authority's claims. Because the Port Authority failed to timely file its extension request and we have denied its waiver request, the Port Authority's authorization terminated automatically effective February 13, 2014, the date the construction period expired. Therefore, we dismiss the Port Authority's extension request as moot.

This action is taken without prejudice, so the Port Authority may file an application for a new license. If you have any questions or need further information on this matter, you may contact Thomas Derenge at (202) 418-2451.

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 90.155 and of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.925, 1.946, 90.155, we DENY the Port Authority's waiver request and DISMISS its extension request, FCC File No. 0006191959, filed on March 10, 2014, to the extent set forth in this letter.

FEDERAL COMMUNICATIONS
COMMISSION

Thomas P Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹² See Nathan Sherman Enterprises, Inc., Lubbock SMR, Inc., S&C Investments, Inc., Triangle Communications, Inc., Mobilecom One, L.L.C., Hawaiian Wireless, Inc., HBS Communications, Inc., SRI, Inc. and Spectrum Resources of the Northeast, Inc., *Order*, 16 FCC Red 11150, 11152 ¶ 6 (2001) (“As a general matter, allowing the filing of untimely [construction] extension requests . . . would undermine orderly and efficient spectrum management, lead to administrative uncertainty and delay, and hinder [the Commission's] ability to relicense scarce spectrum resources to other licensees who are ready and able to construct”).

¹³ Waiver request at 1-2.