



Federal Communications Commission  
Washington, D.C. 20554

November 22, 2017

DA 17-1139

Elizabeth R. Sachs, Esq.  
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Re: Cobb Electric Membership Corporation Further Construction Extension Requests  
Call Signs WQRJ898, WQRJ899, WQRJ900, WQRJ901, WQRJ902,  
WQRJ903, and WQRJ904

Dear Ms. Sachs,

This letter addresses the requests filed by Cobb Electric Membership Corporation (Cobb EMC) asking us to extend its paging construction deadline from April 30, 2017, to December 31, 2017, for the above-captioned Part 22 Economic Area paging licenses, WQRJ898, WQRJ899, WQRJ900, WQRJ901, WQRJ902, WQRJ903, and WQRJ904 (Licenses).<sup>1</sup> On November 17, 2016, we granted Cobb EMC's original request<sup>2</sup> to extend the construction deadline from November 3, 2015, to April 30, 2017, for the Licenses.<sup>3</sup> Cobb EMC now requests a brief extension of the April 30, 2017 deadline. For the following reasons, including the unique circumstances that are present in this case, we find it in the public interest to grant Cobb EMC's request, to the extent described below, and change the construction deadline from April 30, 2017, to December 31, 2017.

### Background

Section 22.503(k) of the Commission's rules sets forth the coverage requirements for geographic area paging licenses.<sup>4</sup> In particular, no later than three years after the initial grant of the license, a geographic area paging licensee must construct sufficient facilities to cover one-third of the population in the paging geographic area.<sup>5</sup> Alternatively, the licensee may notify the Commission at the end of the three-year period that it plans to provide substantial service no later than five years after the initial grant of the license.<sup>6</sup> No later than five years after initial grant, the licensee must construct sufficient facilities

<sup>1</sup> Cobb EMC Request for Further Construction Extension Or, In the Alternative, Request for Waiver Stations: WQRJ898/899/900/901/902/903/904, ULS File Nos. 0007750898 (WQRJ898), 0007750907 (WQRJ899), 0007750935 (WQRJ900), 0007750938 (WQRJ901), 0007750949 (WQRJ902), 0007750956 (WQRJ903), and 0007750961 (WQRJ904) (filed Apr. 28, 2017) (Further Waiver Requests). The licensee originally filed these requests on April 4, 2017. Due to an administrative error, those applications were dismissed on April 25, 2017, for failure to submit the filing fee on a timely basis and replaced with the Further Waiver Requests referenced here.

<sup>2</sup> Cobb EMC Request for Construction Extension and Waiver of FCC Rule Sections 1.946(e) and 22.503(k) Stations: WQRJ898/899/900/901/902/903/904, ULS File Nos. 0007529140 (WQRJ898), 0007529141 (WQRJ899), 0007529142 (WQRJ900), 0007529143 (WQRJ901), 0007529144 (WQRJ902), 0007529145 (WQRJ903), and 0007529146 (WQRJ904) (filed Nov. 1, 2016) (Waiver Requests).

<sup>3</sup> Letter from Keith Harper, Associate Chief, Mobility Division, Wireless Telecommunications Bureau, to Elizabeth R. Sachs, Counsel for Cobb EMC (WTB MD rel. Nov. 17, 2016) (Waiver Grant).

<sup>4</sup> 47 CFR § 22.503(k).

<sup>5</sup> 47 CFR § 22.503(k)(1).

<sup>6</sup> *Id.*

to cover two-thirds of the population or demonstrate that it is providing substantial service in the paging geographic area.<sup>7</sup>

Cobb EMC's three-year construction deadline for the Licenses was November 3, 2013, and the five-year construction deadline was November 3, 2015. In this case, Cobb EMC elected, at the three-year deadline, to demonstrate substantial service at the five-year deadline. On November 18, 2015, Cobb EMC filed construction notifications for each of its Licenses.<sup>8</sup> In its notifications, Cobb EMC described the service provided<sup>9</sup> and demonstrated that it was providing substantial service in the relevant paging geographic area.<sup>10</sup> Cobb EMC, however, stated in its construction notifications that its system was using "Hytera ACCESSNET TETRA equipment."<sup>11</sup> This was problematic because the Commission had not yet authorized use of Terrestrial Trunked Radio (TETRA) technology in any of the Part 22 paging bands because TETRA technology may not conform to its Part 22 technical rules.<sup>12</sup>

As explained in the Waiver Grant, the Commission's rules permit the use of TETRA equipment by Part 90 entities,<sup>13</sup> and the original equipment certifications obtained by the equipment manufacturer, Hytera, from the Telecommunication Certification Body (TCB)<sup>14</sup> authorized the equipment for use with Part 90 operations.<sup>15</sup> Subsequent to the original equipment authorizations, Hytera sought and received Class II Permissive Changes to add Part 22 to its existing three equipment certifications.<sup>16</sup> Commission Class II Permissive Change rules require the equipment authorization grantee to "supply the Commission with complete information and the results of tests of the characteristics affected by such change."<sup>17</sup>

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<sup>7</sup> *Id.* § 22.503(k)(2) and (3). The Commission's rules define "substantial service" as service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal. *Id.* § 22.503(k)(3).

<sup>8</sup> ULS File No. 0007031872 (WQRJ898), 0007031874 (WQRJ899), 0007031875 (WQRJ900), 0007031876 (WQRJ901), 0007031878 (WQRJ902), 0007031879 (WQRJ903), and 0007031880 (WQRJ904), Attach. "Substantial Service Showing Auction #87" (filed Nov. 18, 2015) (*Substantial Service Showings*); see 47 CFR § 1.946(d) (providing that a licensee that meets its coverage obligations within the coverage period must notify the Commission within 15 days of the expiration of the applicable coverage period).

<sup>9</sup> *Substantial Service Showings* at 1-2.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.*

<sup>12</sup> See Waiver Grant at 2-5.

<sup>13</sup> *Id.* at 2-3.

<sup>14</sup> In 1998, the Commission began allowing accredited independent certification bodies, called Telecommunication Certification Bodies (TCBs), to approve most types of equipment that require certification. It established the TCB program to provide manufacturers with an alternative to obtaining certification from the Commission, and to facilitate the more rapid introduction of RF equipment into the market. TCBs approve equipment under the certification procedure based on review of an application that provides test reports and all of the other information specified in Part 2 which demonstrate compliance with all the applicable rules. *Amendment of Parts 0, 1, 2, 15 and 18 of the Commission's Rules Regarding Authorization of Radiofrequency Equipment*, Notice of Proposed Rulemaking, 30 FCC Rcd 7725, 7729, para. 7 (2015).

<sup>15</sup> FCC ID ZW4TIB500400 was granted to Hytera Mobilfunk GmbH on December 23, 2011; FCC ID YAJvIMT680F4 was granted to Hytera Communications Corporation Ltd. on June 20, 2012; and FCC ID YAMPT580HF4 was granted to Hytera Communications Corporation Ltd. on June 27, 2012.

<sup>16</sup> TCB granted the Class II Permissive Change to FCC ID ZW4TIB500400 on September 26, 2013; and to FCC IDs YAMMT680F4 and YAMPT580HF4 on August 1, 2013.

<sup>17</sup> 47 CFR § 2.1043(b)(2). See Waiver Grant at 4-5.

Hytera, however, did not address the discrepancy between TETRA equipment operations and the Commission's Part 22 rules in its Class II Permissive Change applications. Consequently, the fact that TETRA equipment may exceed the Part 22 occupied bandwidth and emission limits was not reviewed by the TCB. Because Cobb EMC was using Hytera TETRA equipment in its Part 22 geographic area paging system and because Hytera had not provided any information showing its equipment complies with Part 22 technical standards, the Mobility Division, Wireless Telecommunications Bureau (Division) was unable to determine whether Cobb EMC's system was operating lawfully. Accordingly, we were unable to accept Cobb EMC's pending construction notifications for the Licenses, despite Cobb EMC's good faith reliance that the Hytera TETRA equipment was properly certified for use on Part 22 frequencies.

After Division staff advised Cobb EMC of the situation, the licensee engaged another vendor to replace its TETRA equipment with "properly certified Part 22 equipment,"<sup>18</sup> and requested a waiver and extension of time to April 30, 2017, to deploy the replacement equipment.

### **November 2016 Waiver Grant**

After carefully reviewing the totality of the circumstances in this case, we found that it would not be in the public interest to deny Cobb EMC's waiver requests, given its good faith efforts to comply with the Commission's construction requirements.<sup>19</sup> In granting the licensee's requests, we noted that Cobb EMC had fully constructed and was operating facilities using the spectrum authorized under the Licenses.<sup>20</sup> We found that Cobb EMC had demonstrated, through the timely construction of its multi-site system, that it intended to meet the Commission's paging coverage requirements and attempted in good faith to comply with Commission rules.<sup>21</sup> We also noted that not only had Cobb EMC constructed a system under the Licenses, but also that it had complied with the Commission's regulatory requirements by submitting its three-year and five-year construction notifications for its Licenses in a timely manner.<sup>22</sup>

Additionally, we found that, as soon as it became aware of the problem with its equipment, Cobb EMC began working diligently and taking proactive steps to resolve the issue by replacing the "problematic equipment with equipment that the FCC has confirmed is fully compliant with its requirements."<sup>23</sup> Cobb EMC explained that "[d]rive testing of the current system is underway, and an order will be placed as soon as that testing confirms exactly what equipment needs to be purchased."<sup>24</sup> At that point, Cobb EMC stated that it "will know whether there will be any changes to the system configuration that will require the submission of revised technical data regarding its build-out and an updated substantial service showing."<sup>25</sup> While Cobb EMC expected the new system to be deployed no later than March 31, 2017, it requested an extension until April 30, 2017, in the event there was a delay because of unanticipated circumstances.<sup>26</sup>

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<sup>18</sup> Waiver Requests at 1.

<sup>19</sup> Waiver Grant at 6.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Waiver Requests at 2.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Finally, we found that, while every Commission licensee is responsible for ensuring that it is operating FCC-certified equipment in a manner that complies with Commission technical rules, a waiver and extension of the construction deadline in this case for Cobb EMC's Licenses would not frustrate the underlying purpose of the Commission's paging construction requirements and that it would be inequitable, unduly burdensome, and contrary to the public interest to deny the waiver requests.<sup>27</sup> Therefore, we extended the construction deadline for the Licenses to April 30, 2017.

## Discussion

Requests to waive Commission rules must "meet a high hurdle at the starting gate."<sup>28</sup> In determining whether that standard is met, we must evaluate each case based on the specific circumstances it presents. It is well-established that the Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest,<sup>29</sup> and it may take into account unique considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>30</sup> The Commission may grant a waiver pursuant to Section 1.925(b)(3) of the Commission's rules when: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the 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.<sup>31</sup>

In the pending requests, Cobb EMC states that a further extension of time is needed until December 31, 2017, to ensure that its system is fully installed and operational, reiterating the public benefit that its system is supporting, i.e., the production and delivery of energy services to more than 180,000 residential and commercial cooperative members.<sup>32</sup> Cobb EMC explains that several factors have contributed to a delay in final system implementation.<sup>33</sup> The licensee states that the drive testing mentioned in the initial waiver requests revealed that the "single omni-directional receive antennas" installed by Hytera had to be replaced with arrays of "three-panel antennas" to ensure reliable coverage. As a result, the licensee explains, it had to replace the antennas, obtain new approvals from the tower owners, and change the base station equipment as well.<sup>34</sup> Further, the licensee contends that Hytera's acquisition of Sepura, the licensee's new equipment vendor, delayed the timing of the finalization of the new equipment purchase.<sup>35</sup> Because of these factors, Cobb EMC predicts that the processes of shipping, testing, and system acceptance will take until at least mid to late Fall 2017.<sup>36</sup> In order to allow for any

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<sup>27</sup> Waiver Grant at 7.

<sup>28</sup> See *WAIT Radio v. FCC*, 459 F.2d 1203, 1207 (D.C. Cir. 1972).

<sup>29</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>30</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>31</sup> 47 CFR § 1.925(b)(3).

<sup>32</sup> Further Waiver Requests at 1.

<sup>33</sup> *Id.* at 2.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

additional unforeseen issues causing delay, the licensee requests an extension – of approximately eight months – to December 31, 2017.<sup>37</sup>

Cobb EMC claims that a further extension is appropriate under both prongs of the Commission’s waiver standard.<sup>38</sup> First, the licensee argues that the purpose of the rule would not be served by its application in this instance because it is clear that the licensee is using, not stockpiling, its spectrum and had deployed a system “that it had every reason to believe was compliant with FCC equipment requirements prior to the FCC’s build-out deadline.”<sup>39</sup> Moreover, Cobb EMC contends, relief is clearly in the public interest because the licensee’s system is essential in the production and delivery of electric service to the cooperative’s members.<sup>40</sup> Lastly, the licensee argues that circumstances of this case are unusual in that the Commission granted an equipment certification in error, and but for the erroneous certification, Cobb EMC’s build-out would have been timely.<sup>41</sup>

We find that an adjustment to Cobb EMC’s existing waiver to allow a brief period of additional time for the licensee to complete construction and file updated construction notifications is in the public interest, given the licensee’s continued diligence and good faith efforts to comply with Commission rules. Indeed, the public interest in granting Cobb EMC’s original waiver requests remains significant and continues to apply as the licensee works through issues that stem from the erroneous equipment certification explained in detail in our original waiver grant.<sup>42</sup> When the licensee’s drive testing revealed that new antennas and other equipment were required in order for its system to be reliable – a possibility that we noted in our grant of the initial waiver requests<sup>43</sup> – Cobb EMC explains that it “has proceeded with all reasonable speed since then” in deploying a system that meets its operating requirements.<sup>44</sup> Not only did the licensee have to purchase new antennas, but also base station equipment, pushing back the anticipated dates for equipment delivery from Spain to July 2017 and system acceptance to mid to late Fall 2017.<sup>45</sup>

Since the discovery of the equipment issues, Cobb EMC has continued to demonstrate diligence and taken additional proactive steps to rectify its equipment problems in order to ensure a fully functioning and reliable electric delivery system that will satisfy our substantial service requirement. Considering the facts of this particular case, we find that a modification of the licensee’s existing waiver would not frustrate the underlying purpose of the Commission’s paging construction requirements and that it would be inequitable, unduly burdensome, and contrary to the public interest to deny the instant waiver requests. In line with our modified extension of time to December 31, 2017, we require Cobb EMC to file updated notifications of construction in ULS, demonstrating that it is providing substantial service by December 31, 2017, for each of its Licenses. We expect Cobb EMC to work diligently to

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<sup>37</sup> *Id.* at 3.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 3-4.

<sup>41</sup> *Id.* at 4.

<sup>42</sup> *See* Waiver Grant at 6-7.

<sup>43</sup> *Id.* at 6.

<sup>44</sup> Further Waiver Requests at 2.

<sup>45</sup> *Id.* Cobb EMC notes in its requests that it cannot be certain that additional issues will not arise before final system acceptance, and therefore, it requests an extension until December 31, 2017 “to avoid further expenditures of its and the Commission’s time addressing extension requests.” *Id.* at 3.

complete construction and submit its construction notifications and remind the licensee that failure to construct as required and to file construction notifications for its Licenses by the deadline specified will result in automatic termination of the Licenses.

For the reasons stated above, we hereby grant Cobb EMC's requests to further extend the construction deadline for the Licenses until December 31, 2017, and deny all alternative requests for waiver relief.

Accordingly, IT IS 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 Sections 0.131, 0.331, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, the requests filed by Cobb Electric Membership Corporation on April 28, 2017, to waive and extend to December 31, 2017, the construction deadlines for call signs WQRJ898, WQRJ899, WQRJ900, WQRJ901, WQRJ902, WQRJ903, and WQRJ904, ARE GRANTED.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

Sincerely,

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