

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

In the Matter of)
)
TOWNSHIP OF MOUNT OLIVE, NEW) File No. 0007931874
JERSEY)
)
Request for Waiver)

ORDER

Adopted: November 15, 2018

Released: November 15, 2018

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

I. INTRODUCTION

1. Mount Olive Township, New Jersey (Mount Olive) filed a request for waiver (Waiver Request) to permit the acceptance of its untimely request for extension of time (Extension Request) to construct certain VHF facilities at locations licensed under Mount Olive’s conventional public safety pool call sign WQEA454.1 We deny the Waiver Request.2

II. BACKGROUND

2. The construction deadline for the VHF frequencies was September 6, 2017.3 On June 6, 2017, the Universal Licensing System (ULS) sent a construction reminder letter to Mount Olive for the VHF frequencies.4 On September 13, 2017, Mount Olive’s extension request was dismissed because, contrary to Section 1.946(e) of the Commission’s rules, Mount Olive did not submit the request before the construction deadline expired.5

3. On September 19, 2017, Mount Olive filed a second extension request and sought waiver of Section 1.946(e) of the Commission’s rules.6 In its Waiver Request, Mount Olive argues that a contract dispute with its vendor was a circumstance outside Mount Olive’s control that led to construction

1 See Letter from Sergeant Eric Anthony, Mount Olive Township Police Department, (dated Sept. 19, 2017) (Waiver Request), and Letter from Sergeant Eric Anthony, Mount Olive Township Police Department, (dated Sept. 19, 2017) (Extension Request) attached to FCC File No. 0007931874 (filed Sept. 19, 2017). We treat the Waiver Request and Extension Request as one consolidated request for waiver of Section 1.946 of the Commission’s rules.

2 We update the Commission’s records to reflect termination of the authorizations for the frequencies and locations for call sign WQEA454. The frequencies are (1) 156.1200 MHz at locations 5, 8, 9 and 10, (2) 156.0600 MHz at locations 5, 7 and 8, (3) 151.2275 MHz at location 7, (4) 153.8750 MHz at location 7, (5) 156.1800 MHz at locations 8, 9 and 10.

3 47 CFR §§ 1.955, 90.155.

4 Construction/Coverage Deadline Reminder Notice, Reference No. 6265619 (dated June 6, 2017).

5 See Notice of Dismissal, Public Safety and Homeland Security Bureau (PSHSB) Policy and Licensing Division, Reference No. 6294427 (Sept. 13, 2017) citing 47 CFR § 1.946(e).

6 Waiver Request at 1 citing 47 CFR § 1.946(e).

delays.⁷ Mount Olive states that its initial vendor notified Mount Olive on September 28, 2016, that the vendor could not complete the project as originally bid.⁸ Subsequently, Mount Olive terminated its contract with that vendor on June 27, 2017.⁹ Mount Olive then solicited bids for new vendors in July and August 2017 and awarded a new contract on September 1, 2017, five days before the September 6, 2017, construction deadline.¹⁰

III. DISCUSSION

4. 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 [...]”¹¹ 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.”¹² When seeking to deviate from the general rule, an applicant faces a heavy burden.¹³ In order to obtain a waiver, an applicant must plead with particularity the facts and circumstances which warrant such action.¹⁴

5. We find no basis for extending the construction deadline or waiving automatic cancellation of the frequencies authorized under call sign WQEA454. Once the original vendor had defaulted, Mount Olive timely could have requested an extension of time up and through the time that it awarded a new vendor a contract. The Commission has emphasized that requiring licensees to file extension requests on a timely basis serves important policy objectives and thus has upheld the dismissal of untimely requests for extension.¹⁵ We find, therefore, that the underlying purpose of Section 1.946(e) is being served – not frustrated – by denial of Mount Olive’s waiver request. We also find that the vendor default does not render application of the rule inequitable, unduly burdensome, contrary to the public interest, or that Mount Olive lacked a reasonable alternative. Its alternative, which it failed to exercise, was to file an extension request before its construction deadline expired. Thus, we find that Mount Olive’s authorization for the frequencies and locations at issue terminated on the construction deadline - September 6, 2017.¹⁶

6. Accordingly, we deny Mount Olive’s Waiver Request. If Mount Olive wishes to operate the terminated facilities, it must file a properly frequency coordinated application on FCC Form 601, in accordance with all applicable Commission Rules, to reauthorize the facilities. Moreover, if Mount Olive

⁷ Waiver Request at 1-2; Waiver Request Exh. D, Email Correspondence Between Northeast Communications and Mount Olive Township; Waiver Request Exh. E, Mount Olive Township Resolution Terminating Contract with Northeast Communications.

⁸ Waiver Request at 1-2.

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ 47 CFR § 1.925(b)(3)(i).

¹² 47 CFR § 1.925(b)(3)(ii).

¹³ See *Wait Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹⁴ *Id.* citing *Rio Grande Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968).

¹⁵ See, e.g., *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 Rcd 11150 (2001) (“As a general matter, allowing the filing of untimely 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”).

¹⁶ 47 CFR §§ 1.946, 1.955, 90.155.

needs to operate while its application is being prepared and coordinated, it may file requests for special temporary authority pursuant to Section 1.931 of the Commission's rules.¹⁷

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), and Sections 1.925 and 1.946 of the Commission's rules, 47 CFR §§ 1.925 and 1.946, that the Request for a Waiver to Section 1.946 filed September 19, 2017 by the Township of Mount Olive, New Jersey, IS DENIED and the extension request FCC File No. 0007931874 IS DISMISSED.

8. IT IS FURTHER ORDERED that the licensing staff of the Policy and Licensing Division SHALL TERMINATE the authorization for the following frequencies (1) 156.1200 MHz at locations 5, 8, 9 and 10, (2) 156.0600 MHz at locations 5, 7 and 8, (3) 151.2275 MHz at location 7, (4) 153.8750 MHz at location 7, (5) 156.1800 MHz at locations 8, 9 and 10, previously licensed under call sign WQEA454 in accordance with this Order and the Commission's rules.

9. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁷ 47 CFR § 1.931.