DA 18-14

Mr. Doug Neal

OTZ Telecommunications, Inc.

P.O. Box 324

346 Tundra Way

Kotzebue, AK 99752

**RE: OTZ Telecommunications, Inc.’s Request for Extension of Construction Deadline**

**Call Sign KNKR318; ULS File No. 0007906977**

Dear Mr. Neal:

For the reasons stated below, we deny the request of OTZ Telecommunications, Inc., (OTZ) for an additional one-year extension of time to comply with its construction requirement.[[1]](#footnote-2) We find that the record before us does not support a grant of OTZ’s request for additional time to meet its construction requirements for the Ambler location of its Cellular Radiotelephone Service (cellular) A Block license, Call Sign KNKR318.

***Background***

In 1997, OTZ was authorized to provide cellular service in the Alaska 1 – Wade Hampton Cellular Market Area (CMA315) under Call Sign KNKR318.[[2]](#footnote-3) In 2007, OTZ applied to add ten locations in various remote communities, including the village of Ambler, to Call Sign KNKR318.[[3]](#footnote-4) Under the Commission’s Phase II Cellular Unserved licensing rules, a licensee must complete construction within one year.[[4]](#footnote-5) However, in light of the unique challenges in constructing cellular facilities in these far-flung Alaskan communities, OTZ sought and received a four-year period to build the new sites.[[5]](#footnote-6) OTZ completed construction at two locations in 2009, and received several extensions that allowed OTZ to complete construction at seven locations in 2016, including upgrading its network and infrastructure to provide LTE coverage.[[6]](#footnote-7) Ambler is the last of the requested locations that has not been constructed.[[7]](#footnote-8) On August 15, 2016, OTZ requested a further extension. It argued that, while it was able to complete final construction of seven other sites in 2016, it would require an additional year to complete construction at the Ambler location.[[8]](#footnote-9) OTZ further argued that, in addition to experiencing other difficulties associated with constructing facilities in Alaska, acquiring a suitable site in Ambler took longer than for other locations due to difficulties in locating a site that would not interfere with sensitive Tribal assets.[[9]](#footnote-10) OTZ claimed that it could complete the Ambler construction if it were allowed an additional year to build.[[10]](#footnote-11) On February 10, 2017, the Mobility Division of the Wireless Telecommunications Bureau granted OTZ an extension of time until September 30, 2017, to complete construction of the Ambler site, noting the challenges in constructing facilities in Alaska as well as the progress that OTZ made in constructing its other sites, and finding that an additional year would be ample time to finish construction.[[11]](#footnote-12)

*Request for Extension*. On August 28, 2017, OTZ filed the instant Extension Request. It asked the Mobility Division to grant it an additional one-year extension of the construction deadline pursuant to Section 1.946(e), making the new construction deadline September 30, 2018.[[12]](#footnote-13) OTZ maintains that it has pursued construction aggressively in Ambler, but was unable to complete construction due to unforeseeable delays and challenges that were completely outside of its control.[[13]](#footnote-14) OTZ claims that unusual challenges to construction in this unique and isolated region are completely beyond its control, including a limited season during which construction can occur, and accessibility and transportation challenges.[[14]](#footnote-15) OTZ further claims that it faced difficulties in securing a suitable location and negotiating a reasonable agreement with the village of Ambler and the Kotzebue IRA Council which caused an unexpected delay.[[15]](#footnote-16) In addition, OTZ asserts that it faced an unforeseeable delay in designing and shipping a building to the village to use for the site.[[16]](#footnote-17) Finally, OTZ notes that preparation of the site and construction of the concrete pad took a significant portion of the 2017 construction season.[[17]](#footnote-18)

***Discussion***

Licensees may seek an extension of time to construct under Section 1.946(e).[[18]](#footnote-19) Under Section 1.946(e)(1), the Commission may grant an extension of time where a licensee demonstrates that the failure to complete construction is due to causes beyond the carrier’s control.[[19]](#footnote-20) Section 1.946(e)(2) states that extension requests will not be granted for failure to meet the construction deadline due to delays caused by a failure to obtain a site or order equipment in a timely manner.[[20]](#footnote-21) We note that extension standards must be applied in consideration of Section 309(j) of the Communications Act, which states that the Commission shall include performance requirements to ensure prompt delivery of services, to prevent stockpiling and warehousing of spectrum by licensees, and to promote investment and deployment of new technologies and services.[[21]](#footnote-22)

Although we have previously found it appropriate to provide OTZ relief with respect to this license, OTZ fails to demonstrate why a further extension of time under Section 1.946 is warranted in the present circumstance.[[22]](#footnote-23) As noted above, in addition to challenges generally associated with operating in Alaska, OTZ provides three reasons that the construction was not completed by September 30, 2017: 1) difficulties negotiating the site lease with the Village of Ambler and the Kotzebue IRA Council; 2) difficulties completing the site work; and, 3) difficulties having the building delivered to Ambler.[[23]](#footnote-24) The circumstances OTZ has described, however, are neither unforeseeable nor beyond its control.

The Commission has consistently found that voluntary business decisions related to site selection are not circumstances beyond the licensee's control within the meaning of Section 1.946 and, as such, do not constitute a valid basis for regulatory relief.[[24]](#footnote-25) Therefore, the difficulties that OTZ faced in negotiating a site lease with the City of Ambler and the Kotzebue IRA Council are not circumstances beyond its control, as site selection is generally viewed as a voluntary business decision not warranting relief.[[25]](#footnote-26) While we recognize the difficulties that may be associated with acquiring and constructing a site that does not interfere with Tribal assets, OTZ has been aware of the need to acquire an appropriate site since it was first authorized to build the Ambler location in 2007; OTZ has not explained why it could not have taken necessary steps earlier in the process.

We also find that OTZ’s difficulties in completing the site work in a timely manner was due to its own lack of diligence. OTZ states that the construction season lasts only two to three months of the year due to extreme winter temperature and prevalent permafrost.[[26]](#footnote-27) Notwithstanding the very brief construction season, OTZ successfully completed construction at nine other sites in the Northwest Arctic Borough between 2009 and 2016.[[27]](#footnote-28) Therefore, OTZ should be familiar with the challenges this area poses for construction and how to deploy facilities in light of such difficulties. Despite OTZ’s years of experience and its knowledge of the limited construction season, however, OTZ did not submit building and shipping purchase orders until August 4, 2017 and August 10, 2017, respectively.[[28]](#footnote-29) OTZ entered into a long-term lease regarding the Ambler site on May 9, 2017;[[29]](#footnote-30) therefore, siting of OTZ’s facilities was resolved weeks before the construction season commenced and would not have posed a delay in completing construction by the September 30, 2017 deadline. Nor is there any other circumstance presented in the record that prevented OTZ from placing its orders earlier or moving forward with its site work. Instead, it was OTZ’s failure to submit the building and shipping orders and to begin site work until the construction season was almost over that led to OTZ’s failure to complete construction. These circumstances were well within OTZ’s control and thus do not constitute a basis for relief under Section 1.946(e).[[30]](#footnote-31)

We likewise reject OTZ’s argument that difficulty and unforeseeable delay with delivering the building to Ambler contributed to delayed construction.[[31]](#footnote-32) Other than stating that it considered having the building delivered by barge but ultimately settled on air cargo, OTZ provides no examples of difficulty or unforeseeable delay that it faced in having the building delivered.[[32]](#footnote-33) Instead, OTZ did not order the structure or arrange for shipment until late into the construction season, indicating that the delay in receiving the materials was due to OTZ’s own actions.[[33]](#footnote-34) As noted, the Commission has previously denied extension requests for difficulties relating to equipment procurement.[[34]](#footnote-35)

We therefore decline to grant OTZ a further extension of time to construct the Ambler site. We find that relief under Section 1.946(e) is not warranted because OTZ has failed to demonstrate a situation that was unforeseen or outside of its control. Although we understand the difficulties inherent in providing service to remote areas of Alaska and previously have granted relief which took into account such challenges,[[35]](#footnote-36) we reiterate that the Ambler site was first authorized in 2007. OTZ has had several years to plan, develop, and deploy facilities at this location, and OTZ’s lack of progress in completing construction at this site – particularly in light of the relief previously provided to build this location – leads us to conclude that further relief should not be granted. Accordingly, we find that the authorization for the Ambler site for Call Sign KNKR318 automatically terminated due to OTZ’s failure to construct by its September 30, 2017 construction deadline.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 303(r) and Sections 1.946 of the Commission’s rules, 47 CFR § 1.946, the Request by OTZ Telecommunications, Inc., for Extension of Construction Deadline IS HEREBY DENIED. OTZ Telecommunications, Inc.’s authorization for the Ambler location of Call Sign KNKR318 automatically terminated on September 30, 2017.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

Sincerely,

Roger S. Noel

Chief, Mobility Division

Wireless Telecommunications Bureau

1. OTZ Telecommunications, Inc., Request and Justification for Extension of Construction deadline, Call Sign KNKR318, ULS File No. 0007906977 (filed Aug. 28, 2017) (Extension Request). [↑](#footnote-ref-2)
2. Extension Request at 2. OTZ is a wholly-owned subsidiary of OTZ Telephone Cooperative, Inc., which provides local exchange service throughout the Northwest Arctic Borough of Alaska. [↑](#footnote-ref-3)
3. *See* OTZ Telecommunications, Inc., Request for Waiver and Extension of Time to Construct, Call Sign KNKR318, ULS File No. 003079437 (filed June 20, 2007); Amended on June 26, 2007 and June 27, 2007. [↑](#footnote-ref-4)
4. 47 CFR § 22.946. [↑](#footnote-ref-5)
5. Letter from Michael Ferrante, Mobility Division, Wireless Telecommunications Bureau, to Stefan M. Lopatkiewicz, Counsel to OTZ Telecommunications, Inc., Letter Order, 22 FCC Rcd 16273 (WTB MD 2007). [↑](#footnote-ref-6)
6. *See* ULS File Nos. 0007474182 (filed Sep. 28, 2016); 0007471513 (filed Sep. 26, 2016); 0007468113 (filed Sep. 22, 2016); 0007373182 (filed Aug. 10, 2016); 0004023935 (filed Nov. 16, 2009). *See also* Letter from Thomas Derenge, Mobility Division, Wireless Telecommunications Bureau, to Doug Neal, OTZ Telecommunications, Inc., (WTB MD rel. Oct. 7, 2014) (2014 Letter Order); Letter from Thomas Derenge, Mobility Division, Wireless Telecommunications Bureau, to Doug Neal, OTZ Telecommunications, Inc., (WTB MD rel. May 31, 2011); *see also* ULS File Nos. 0005826406 (granted July 30, 2013) and 0005222392 (granted Aug. 27, 2012). In granting the prior relief, the Division was persuaded that OTZ had demonstrated unique circumstances warranting additional time to construct. [↑](#footnote-ref-7)
7. Extension Request at 6. [↑](#footnote-ref-8)
8. OTZ Telecommunications, Inc., Request and Justification for Extension of Construction deadline, Call Sign KNKR318, citing 47 CFR § 1.946, ULS File No. 0007394344 (filed Aug. 15, 2017) (OTZ 2014 Extension Request). [↑](#footnote-ref-9)
9. OTZ 2014 Extension Request at 6. [↑](#footnote-ref-10)
10. *Id.* at 3. [↑](#footnote-ref-11)
11. *See* Letter from Thomas Derenge, Mobility Division, Wireless Telecommunications Bureau, to Doug Neal, OTZ Telecommunications, Inc. (WTB MD rel. Feb. 10, 2017) at 2. [↑](#footnote-ref-12)
12. *See* Extension Request. [↑](#footnote-ref-13)
13. Extension Request at 1, 4, 6. [↑](#footnote-ref-14)
14. Extension Request at 1, 4, 6. [↑](#footnote-ref-15)
15. Extension Request at 6. OTZ notes that the Native Village of Kotzebue is the Federally-recognized Tribal government representing the Qikiktagrukmiut, the original inhabitants of the area of northwest Alaska surrounding modern day Kotzebue (Qikiktagruk). The Tribe, a sovereign entity, is commonly called the Kotzebue IRA due to its organization pursuant to the 1934 Indian Reorganization Act and as amended for Alaska in 1936. *See* Extension Request at 1, citing the Native Village of Kotzebue website, http://www.kotzebueira.org/. [↑](#footnote-ref-16)
16. Extension Request at 6. [↑](#footnote-ref-17)
17. Extension Request at 6. We note that the Extension Request states that “[t]he preparation of the site and establishment of the concrete pad took a significant portion of the 2016 construction season.” However, it appears that OTZ was referring to the 2017, rather than 2016, construction season. [↑](#footnote-ref-18)
18. 47 CFR. § 1.946(e). [↑](#footnote-ref-19)
19. 47 CFR § 1.946(e)(1). [↑](#footnote-ref-20)
20. 47 CFR § 1.946(e)(2). [↑](#footnote-ref-21)
21. *See* 47 U.S.C. § 309(j)(4)(B). [↑](#footnote-ref-22)
22. 47 CFR § 1.946(e)(1). [↑](#footnote-ref-23)
23. Extension Request at 3. [↑](#footnote-ref-24)
24. *See, e.g.*, *Business Radio Communications Systems, Inc.*, 102 FCC 2d 714 (1985) (construction delay caused by zoning challenge not a circumstance beyond licensee's control); *Texas Two-Way, Inc.*, 98 FCC 2d 1300 (1984), *aff'd sub nom.*, *Texas Two-Way, Inc. v. FCC*, 762 F.2d 138 (D.C. Cir. 1985) (licensee is responsible for delay resulting from interference caused by construction adjacent to construction site because site selection was an independent business decision). [↑](#footnote-ref-25)
25. *See* *Business Radio*, 102 FCC 2d at 714 (construction delay caused by zoning challenge not a circumstance beyond licensee's control); *Texas Two-Way*, 98 FCC 2d at 1300, *aff'd sub nom.*, *Texas Two-Way*, 762 F.2d at 138 (licensee is responsible for delay resulting from interference caused by construction adjacent to construction site because site selection was an independent business decision). [↑](#footnote-ref-26)
26. Extension Request at 4. [↑](#footnote-ref-27)
27. *See* Required Notification, ULS File Nos. 0007474182 (filed Sep. 28, 2016); 0007471513 (filed Sep. 26, 2016); 0007468113 (filed Sep. 22, 2016); 0007373182 (filed Aug. 10, 2016); 0004023935 (filed Nov. 16, 2009). [↑](#footnote-ref-28)
28. *See* Extension Request Exhibit 2, Building PO (Building PO); Extension Request Exhibit 3, Air Cargo PO (Air Cargo PO). [↑](#footnote-ref-29)
29. *See* Extension Request Exhibit 1, Lease (Lease). [↑](#footnote-ref-30)
30. *See, e.g.*, *Intelligent Transp. and Monitoring Wireless, LLC*, Order, 31 FCC Rcd 11528, 11531-40, paras. 10-27 (WTB 2016) (*Intelligent Transp. Order*) (denying extension request for various reasons including delayed purchase of equipment until close to the construction deadline); *Eldorado Commc’ns, LLC*, Order, 17 FCC Rcd 24613, 24616-19, paras. 7-13 (WTB 2002) (*Eldorado Order*) (denying extension request in part given licensee’s delays in ordering equipment); *Bristol MAS Partners*, Order, 14 FCC Rcd 5007 (WTB PSPWD 1999) (*Bristol Order*) (equipment installation or delivery not delayed for some unique reason and licensee failing to obtain equipment was business decision). [↑](#footnote-ref-31)
31. Extension Request at 3, 6. [↑](#footnote-ref-32)
32. Extension Request at 3. [↑](#footnote-ref-33)
33. *See* Extension Request, Exhibits 2 and 3 (Building PO and Air Cargo PO). [↑](#footnote-ref-34)
34. *See supra* note 30. [↑](#footnote-ref-35)
35. *See e.g.* Letter from Roger S. Noel, Mobility Division, Wireless Telecommunications Bureau, to Cindy Hall, The Alaska Wireless Network, LLC, Letter Order, 32 FCC Rcd 4728 (WTB MD 2017) (granting relief regarding construction metrics in light of the unique challenges of serving Alaska); Letter from Roger S. Noel, Mobility Division, Wireless Telecommunications Bureau, to Robert Vitanza, AT&T Service, Inc., Letter Order, 32 FCC Rcd 512 (WTB MD 2017) (noting Alaska's vast size, lack of backhaul and other infrastructure, its sparse population distribution, and difficult geographic and weather conditions). Application for Review of the Rural Wireless Association, Inc., WT Docket No. 16-335 (filed Feb. 17, 2017) (pending). *See also Connect America Fund; Universal Service Reform — Mobility Fund; Connect America Fund - Alaska Plan,* Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10162, para. 72 (2016) (citing *Connect America Fund et al.,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17829, para. 507 (2011), *aff'd sub nom.* FCC 11-161, 753 F.3d 1015 (10th Cir. 2014)) (noting the challenges that licensees in Alaska face due to “remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season). [↑](#footnote-ref-36)