

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

In the Matter of
Saint Lawrence County, New York
Request for Waiver of Section 1.946 of the
Commission's Rules

ORDER ON RECONSIDERATION

Adopted: May 24, 2019

Released: May 24, 2019

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

I. INTRODUCTION

1. Saint Lawrence County, New York (the County) filed a Petition for Reconsideration (Petition) of a notice of termination of its license, Call Sign WQZG446. The County also requested that the Commission make the buildout deadline for license WQZG446 consistent with other authorizations and applications that comprise an integrated system that the County is constructing. We treat this latter request as one for extended implementation pursuant to Sections 90.155 and 90.629 of the Commission's rules. For the reasons stated below we deny the County's Petition and dismiss its request for extended implementation.

II. BACKGROUND

2. On November 7, 2018 the Bureau notified the County that it had placed WQZG446 on Termination Pending status because the County failed to meet the construction and construction notification requirements required by the Commission's rules. The Bureau's records indicated that the County did not file the required Notification of Construction, which was due within 15 days after the construction deadline, or request an extension of time, which request was due before the expiration of the construction deadline. The Bureau noted that "[i]f a licensee does not file the Required Notification or Extension of Time request, we presume that the license or license component has not been constructed. . . ." As a result, the Commission's Universal Licensing System (ULS) placed the County's license for Call Sign WQZG446 in Termination Pending status.

1 Petition for Reconsideration filed November 20, 2018 by Saint Lawrence County, as amended December 3, 2018 (Respectively Petition for Reconsideration and Amendment). See also 47 CFR § 90.551.

2 Amendment at 2.

3 47 CFR §§ 90.155, 90.629.

4 See Auto Termination Letter, Reference Number: 6423642 (dated Nov. 7, 2018) (Auto Termination Letter). As a condition of its authorization, the Commission's rules required the County to construct Call Sign WQZG446 by Sept. 30, 2018. 47 C.F.R. §§ 1.946; 90.155(a).

5 47 CFR § 1.946(d).

6 47 CFR § 1.946(e).

7 See Auto Termination Letter.

3. In its petition for reconsideration and extended implementation request, the County states that it incorrectly assumed that the Commission would, *sua sponte*, extend the County's extended implementation until 2020.<sup>9</sup> The County states that WQZG446 along with several other authorizations comprise a new system St. Lawrence County is procuring.<sup>10</sup> The County argues that the Commission should treat the upgraded system, which consists of two FCC Part 90 licenses and one pending application, as a single system when evaluating the public interest aspects of its petition.<sup>11</sup>

4. The County argues that granting its Petition for Reconsideration (Petition) is in the public interest for the following reasons:<sup>12</sup>

- The authorization involved is part of a larger system that is still active in the licensing process.
- The situation arose from a simple mistake of rule, extenuated by the approval timelines.
- Grant of the Petition would result in a correction of the County's mistake and return this authorization to consistency with the others.
- Grant of the Petition would result in reduced burden to the Commission since a denial would result in a new application and additional Commission staff hours to process the Canadian concurrence.

5. In support of its request for extended implementation, St. Lawrence County offers the following extenuating circumstances:<sup>13</sup>

- St. Lawrence County is wholly located North of Line A<sup>14</sup> and requires Canadian concurrence on all applications. This is a burden due to the extended period required for Canadian concurrence and the lack of any timelines or deadlines in the several agreements between the U.S. and Canada for frequencies below 512MHz.
- St. Lawrence County engaged in an extended engineering investigation with Industry Canada but did not receive timely responses from Canada, which took nearly six months to provide a full response. The entire application process took 15 months to complete.
- When the County filed the application that led to the licensing of WQZG446, it filed another application (#0007168862) which, because of the need for Canada concurrence, was not granted by the FCC for two years, so long a time that the County's Slow Growth request was no longer timely, and the FCC requested an updated construction schedule.

<sup>8</sup> *Id.*

<sup>9</sup> Amendment at 1. ("St. Lawrence County believed that it was still in an extended implementation period as evidenced by the annual certification filing on 07/10/2018. This was accepted by the FCC and no notification was provided that it was an improper filing.")

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

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

<sup>12</sup> *Id.* at 2-3.

<sup>13</sup> *Id.* at 1-2.

<sup>14</sup> Line A is an imaginary line within the U.S. approximately paralleling the U.S.-Canadian border. Its definition is incorporated in 47 CFR §§ 1.928(e), 90.7. Line A begins at Aberdeen, Washington, and ends at the southernmost point of Searsport, Maine. Applications for stations between the Line and the Canada border, with exceptions not relevant here, must be coordinated with Canada officials.

- St. Lawrence County has an additional license application pending for the last two sites in its system. That application (#0008414518) has been pending for 45 days.
- Integrated public safety radio systems cannot be procured piecemeal and can take several years to engineer, procure, and implement.

### III. DISCUSSION

6. *Petition for Reconsideration.* Section 1.106(c)(2) of the Commission’s rules provides that a petition for reconsideration which relies on facts not previously presented to the Commission may be granted if we find that “consideration of the facts relied on is required in the public interest.”<sup>15</sup> As an initial matter we find no merit in the County’s argument that we should reconsider dismissal of its application because it arose from “a simple mistake of rule, extenuated by the approval timelines.” Our precedent is clear that reconsideration is not warranted when parties miss deadlines because of mistake or inadvertence.<sup>16</sup> Secondly, we are not persuaded by the County’s argument that it did not seek an extension request because it incorrectly assumed that the Commission would, *sua sponte*, extend the County’s extended implementation period until 2020.<sup>17</sup> The County has neither cited a basis for its incorrect assumption nor cited to a prior instance in which the Commission *sua sponte* extended a slow growth authorization without notifying a licensee that it had done so.

7. Although we acknowledge the County’s claims of delay in receiving Canada concurrence to its application, the appropriate response to such delay is to follow the Commission’s procedural rules and seek an extension of time within which to comply with a deadline. We do not deem credible the County’s claim that it mistook the extension of time rule,<sup>18</sup> and instead conclude that through inadvertence or otherwise, the County simply ignored it. We also recognize that the WQZG446 license authorized facilities that are part of a larger system. The Commission’s extended implementation rules are designed to accommodate such large systems, but licensees are expected to follow those rules and the deadlines imposed by them and to seek an extension of time when factors beyond the licensee’s control prevent construction before the license term expires.

8. Should the County wish to pursue construction of the facilities formerly authorized in the WQZG446 license, it should submit a properly coordinated new license application. Should it do so, the licensing staff will promptly notify Canada of the filing of the application and note that it seeks facilities previously authorized under the expired WQZG446 license, for which Canada previously concurred.

9. *Extension of Time Request.* Because we are denying the County’s petition for reconsideration and are not reinstating the WQZG446 license as requested, the County’s request for an extension of time, which should have been made before the deadline expired, is moot.

### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to the authority of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Section 1.106 of the Commission’s Rules, 47 CFR §1.106, that the Petition for Reconsideration filed by the County of Saint Lawrence, New York, on November 20, 2018 IS DENIED.

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<sup>15</sup> 47 CFR §106(c)(2)

<sup>16</sup> See, e.g., *Instapage Network, Ltd.*, Order on Reconsideration, 17 FCC Rcd 19083, 19091-92 (WTB 2002) paras. 16-19 (“[o]versight,” “[c]onfusion,” and “[b]ad judgment” inadequate to excuse failure to file construction notification).

<sup>17</sup> Amendment at 1. (“St. Lawrence applied for and received an extended implementation for WQZG446, which we had incorrectly assumed, would be prorated to the issue date of the license and extending three years to 2020, with an option for two additional years.”).

<sup>18</sup> *Id.*

11. IT IS FURTHER ORDERED, that the County of Saint Lawrence, New York's request for an extension of the construction deadline for Public Safety Trunked Station, Call Sign WQZG446 IS DISMISSED AS MOOT.

12. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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