



Federal Communications Commission  
Washington, D.C. 20554

May 24, 2019

DA 19-473

Timothy E. Welch, Esq.  
Triangle Communication System, Inc.  
1025 Connecticut Avenue, NW  
#1000  
Washington, DC 20036

RE: Triangle Communication System, Inc. – Call Sign KNKQ433, Request for Extension of Site Construction Time, FCC File No. 0007941640; Request for License Modification, FCC File No. 0007351092

Dear Mr. Welch:

For the reasons discussed below, we partially set aside the grant of a license modification application adding a cellular site located in Zurich, Montana to Triangle Communication System, Inc.'s (Triangle) cellular radiotelephone service call sign KNKQ433.<sup>1</sup> We also dismiss Triangle's request, which pertains solely to the Zurich site, for an extension of time to meet its construction requirement and its alternative request for waiver of its construction deadline.<sup>2</sup> We revert Triangle's application for the Zurich site to pending status.

On July 25, 2016, Triangle filed a modification application seeking Commission approval to add three sites to call sign KNKQ433, located in Zurich, Harlem, and Chinook, Montana, respectively. In response to a required question on its Modification Application, Triangle answered "No" regarding whether this action may have a significant environmental effect. Based in part on that environmental representation, the Wireless Telecommunications Bureau's Mobility Division granted the Modification Application on October 20, 2016. Pursuant to Commission rule 22.946, licensees granted new or modified cellular facilities must construct and operate within one year of grant.<sup>3</sup> If a licensee fails to meet its construction requirement within that time period, its authorization for that facility automatically terminates.<sup>4</sup>

Triangle timely constructed the Harlem and Chinook sites.<sup>5</sup> However, with respect to the Zurich site, the Wireless Telecommunications Bureau's Competition and Infrastructure Policy Division (CIPD), in November 2016, informed Triangle that CIPD had determined that the company had not yet completed the required review process that would have allowed it to determine whether the tower construction at Zurich would have a significant environmental effect. Specifically, CIPD found that Triangle had not

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<sup>1</sup> ULS File No. 0007351092 (Modification Application).

<sup>2</sup> Request for Extension of Time, ULS File No. 0007941640 (filed Sept. 28, 2017) (Extension Request).

<sup>3</sup> 47 CFR § 22.946.

<sup>4</sup> 47 CFR §§ 1.946(c), 22.946.

<sup>5</sup> Triangle filed notification of construction for both sites on September 21, 2017; this notification was accepted the next day. *See* ULS File No. 0007934786.

completed the required Tribal Nation notification and engagement process.<sup>6</sup> Accordingly, Triangle's answer of "No" to the question of whether construction of the Zurich site may have a significant environmental effect was incorrect.

Given its conclusion that the environmental review process had not been completed, on November 10, 2016, CIPD specifically directed Triangle to cease any construction at the Zurich site.<sup>7</sup> On September 28, 2017, with CIPD's Stop Work Order still in place, Triangle filed the Extension Request seeking an additional "complete construction period" to construct the Zurich site, or in the alternative, a waiver of its October 20, 2017 construction deadline.<sup>8</sup> Triangle argues that it is entitled to an extension of time or waiver to construct the Zurich site because the Stop Work Order was a circumstance beyond its control, and it demonstrated due diligence in ordering equipment prior to the issuance of the Stop Work Order.<sup>9</sup>

After review of the record, we find it in the public interest to partially set aside our action granting Triangle authority to modify call sign KNKQ433; specifically, we set aside the grant regarding the Zurich site because the Modification Application was erroneously granted in full for operation of three sites based in part on Triangle's incorrect response to the environmental question regarding the Zurich site.<sup>10</sup> The courts have long recognized that administrative agencies may correct inadvertent, ministerial errors.<sup>11</sup>

We let stand the grant of Triangle's Modification of call sign KNKQ433 for the Harlem and Chinook sites, and we revert Triangle's application seeking authorization for the Zurich site to pending status. To implement this action in our licensing system, we issue on our own motion a separate ULS

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<sup>6</sup> Actions potentially impacting Tribal Nations are categorized among those that may have a significant environmental effect. *See* 47 CFR §§ 1.1307(a) (4) and (5) (actions involving facilities that may have an adverse effect on historic sites or affect Tribal religious sites may cause a significant environmental effect).

<sup>7</sup> *See* email from Erica Rosenberg, Assistant Chief, CIPD, to Timothy Welch, Hill & Welch (attorney for Triangle), sent November 3, 2016, at 5:58 p.m. (Stop Work Order). The Tribal consultation process was ultimately completed, and in February of this year, CIPD notified Triangle that it could proceed with the Zurich project. *See* Letter from Jiaming Shang, Acting Deputy Chief, CIPD, to Tim Nixdorf, Director of Wireless Operations, Triangle, et al. (WTB/CIPD Feb. 21, 2019).

<sup>8</sup> Extension Request at 1-2.

<sup>9</sup> *Id.*

<sup>10</sup> *See* 47 CFR § 1.934(g) (permitting dismissal of applications for failure to pursue environmental review); *see also* 47 CFR §§ 1.923(a) (requiring applications to be complete and contain any additional information required by the Commission's rules), 1.923(e) (requiring completion of environmental review prior to construction for any application in the wireless radio services proposing facilities that may have a significant environmental effect), 1.929(a)(4) (classifying applications and amendments requesting authorization for a facility that may have a significant effect on the environment as major), 1.947(a) (requiring Commission approval for major modifications); *RKO General, Inc. v. FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 and 457 U.S. 1119 (1982) ("the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate").

<sup>11</sup> *Chlorine Institute, Inc. v. OSHA*, 613 F.2d 120, 123 (5th Cir. 1980). Our action today provides Triangle with an opportunity to correct its application for the Zurich site. *See Communications and Control, Inc. v. FCC*, 374 F.3d 1329 (D.C. Cir. 2004).

application file number 0008576620 for specific consideration of the request to operate from the Zurich site.

We remind Triangle of its responsibility to ensure the continuing accuracy and completeness of information for this pending application. Within thirty calendar days following release of this order, Triangle must amend the now pending modification application, ULS file number 0008576620, to provide the information as required by sections 1.65(a), 22.953, and all other applicable parts of the Commission's rules,<sup>12</sup> including providing one of the following, as applicable: a certification that Triangle has completed its environmental review with respect to all actions that may have a significant environmental effect in compliance with section 1.1307; or, if appropriate, an environmental assessment.<sup>13</sup> We also dismiss Triangle's Extension Request or alternative request for waiver as not ripe, without prejudice to our consideration of Triangle's now pending request for modification of call sign KNKQ433.

Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 0.331 of the Commission's rules, 47 CFR § 0.331, the grant of FCC File No. 0007351092 with respect to the Zurich, Montana site is hereby set aside and returned to pending status under FCC File No. 0008576620, to be amended by Triangle Communication System, Inc. within thirty calendar days of the release of this Order as described above.

IT IS FURTHER ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.331, 1.3, and 1.946 of the Commission's rules, 47 CFR §§ 0.331, 1.3, 1.946, Triangle Communication System, Inc.'s Request for Extension of Time and alternative request for waiver, FCC File No. 0007941640, is DISMISSED.

Sincerely,

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>12</sup> See, e.g., 47 CFR §§ 1.65(a) (responsibility to ensure the continuing accuracy and completeness of information furnished in a pending application by amending within thirty days), 22.107(e) (same), and 22.953 (responsibility to provide specific information in support of major modification applications to change a cellular license authorization). We remind Triangle that it is responsible for assessing its potential environmental impact with respect to all types of significant environmental impacts encompassed in our rules and preparing an environmental assessment if so required. See, e.g., 47 CFR §§ 1.1307(a)(1) (facilities to be located in designated wilderness areas require the preparation of an environmental assessment), (a)(3)(ii) (facilities that are likely to jeopardize the continued existence of any proposed endangered or threatened species require the same), (a)(6) (certain facilities to be located in floodplains require the same).

<sup>13</sup> See 47 CFR § 1.1307(a).