

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

In the Matter of)
Nevada State Parks Division) Call Sign WQYH709
Petition for Reconsideration) FCC File No. 0004253647

ORDER

Adopted: March 23, 2020

Released: March 23, 2020

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

I. INTRODUCTION

1. On December 7, 2017, the Nevada State Parks Division (Nevada State Parks) filed a Petition for Reconsideration (Petition) of the Commission’s termination of Nevada State Parks’ license to operate under call sign WQYH709.1 Alternatively, Nevada State Parks requests a waiver of the Commission’s rules in order to complete construction of the facilities authorized by its license. For the reasons stated below, we deny the Petition and waiver request.

II. BACKGROUND

2. Nevada State Parks’ license was granted on October 3, 2016, authorizing construction on frequencies 151.340 MHz and 159.375 MHz at two locations.2 Nevada State Parks had until October 3, 2017 to complete construction of its authorized facilities3 and thereafter was required to file a Notice of Construction with the Commission within 15 days.4 On July 4, 2017, the Commission’s Universal Licensing System (ULS) sent a reminder to Nevada State Parks advising it of the pending construction deadline.5 On November 8, 2017, the ULS issued Nevada State Parks a letter advising it that the deadline to submit the Required Notice of Construction had passed and that the license was in termination pending status.6 On December 7, 2017, Nevada State Parks filed the instant Petition and waiver request.7

1 See Letter from Matthew Elmer, Communications Specialist, Nevada State Parks, to FCC (Dec. 7, 2017) (Petition).

2 FCC File No. 0004253647.

3 47 CFR 90.155(a) requires that “[a]ll stations authorized under this part, except as provided in §§ 90.528, 90.529, 90.629, 90.631(f), 90.665, 90.685, and 90.1209, must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.” Nevada State Parks does not fall within any of the exclusions listed. Id.

4 See 47 CFR § 1.946 (d) (“A licensee who commences service or operations within the construction period or meets its coverage or substantial services obligations within the coverage period must notify the Commission by filing FCC Form 601. The notification must be filed within 15 days of the expiration of the applicable construction or coverage period.”)

5 See Construction/Coverage Deadline Reminder Notice, Reference No. 6273194 (dated July 4, 2017).

6 See Construction/Coverage Deadline, Notice of Termination Pending Status, Reference No. 6309900 (dated Nov. 8, 2017).

7 See Petition at 1.

3. Nevada State Parks concedes that it neither met the section 90.155(a) deadline for constructing the frequencies authorized by its license, nor timely submitted the Notice of Construction required by section 1.946 (d). It requests reconsideration or a waiver, however, to “be given more time for this construction and building on this call sign.”⁸ The explanation offered by Nevada State Parks for its failure to conform with the Commission’s construction deadline and construction notification rules is that it did not have a “communications specialist here for a couple of years.”⁹

III. DISCUSSION

4. Section 1.106(c)(2) of the Commission’s rules provides that a petition for reconsideration may rely on facts not previously presented if we find that “consideration of the facts relied on is required in the public interest.”¹⁰ We do not find the facts alleged here to support grant of reconsideration. Nevada State Parks contends that its failure to comply with Commission rules and deadlines was administrative inadvertence due to the lack of a communications specialist on staff. It is well settled that claims of administrative inadvertence are inadequate to excuse either a failure to construct or to timely submit a construction notice.¹¹ Nevada State Parks has not presented any other facts to warrant a grant of its Petition in furtherance of the public’s interest.

5. Nevada State Parks’ alternative request for waiver of Sections 1.955 and 90.155 of the Commission’s rules does not meet the Commission’s waiver standard. Section 1.925(b)(3) of the Commission’s rules requires parties seeking a waiver to demonstrate that the 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; or in 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 The underlying purpose of the construction and construction certification rules is to ensure that licensed facilities are promptly activated to promote the rapid deployment of service to the public¹³ and to avoid “spectrum warehousing.”¹⁴ Nevada State Parks has not shown that the underlying purpose of the rules would not be

⁸ *Id.*

⁹ *Id.*

¹⁰ 47 CFR § 1.106(c)(2).

¹¹ See *State of Nevada Department of Transportation*, Order, DA 20-8, para. 5 (PSHSB Jan. 3, 2020) (citing *Instapage Network, Ltd.*, Order on Reconsideration, 17 FCC Rcd 19083, 19091-92, paras. 16-19 (WTB 2002) (“[o]versight,” “[c]onfusion,” and “[b]ad judgment” inadequate to excuse failure to file construction notification)). See also *Broward County, Florida*, Order, 33 FCC Rcd 12293 (PSHSB Dec. 19, 2018). Cf. *Anderson Communications*, Memorandum Opinion and Order, 16 FCC Rcd 15020, 15021, para. 5 (2001); *Peacock's Radio and Wild's Computer Service, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 15016, 15017, para. 5 (2001); *Fresno City and County Housing Authorities*, Order on Reconsideration, 15 FCC Rcd 10998, para. 11 (2000); *Plumas-Sierra Rural Electric Cooperative*, Order, 15 FCC Rcd 5572, 5575, para. 9 (WTB 2000).

¹² See 47 CFR § 1.925. See also *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)).

¹³ Cf. *Extension of Time to Meet the Final Buildout Requirement for Providing Substantial Service Under Section 101.1413 of the Commission’s Rules*, Order, 33 FCC Rcd 10757, 10758 para. 3 (WTB 2018).

¹⁴ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, 17645, para. 7 (2011) citing the Commission’s “fundamental interest” in expediting new radio service and preventing “warehousing” of scarce spectrum); See also, *1998 Biennial Regulatory Review — Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23093, para. 90 (1998), *on reconsideration*, 14 FCC Rcd 17525, 17539, para. 35 (1999); *Great Lakes Community Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 13487, 13489, para. 3 (MB 2009).

served or would be frustrated by application to the instant case, nor has it shown that that its negligence in meeting the deadlines was due to unique or unusual factual circumstances.

6. We therefore deny Nevada State Parks' Petition requesting reconsideration of the dismissal of its license, call sign WQYH709, and deny its request for waiver of sections 1.955(a)(2) and 90.155 of the Commission's rules to allow it to complete construction of its previously authorized facilities.¹⁵ However, Nevada State Parks may file a new, properly coordinated application if it desires to use its previously licensed frequencies. In addition, if Nevada State Parks needs to operate while its application is pending with the Commission, it may file a request for special temporary authority in accordance with Section 1.931 of the Commission's rules.¹⁶

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 1.106 and 1.925 of the Commission's rules, 47 CFR §§ 1.106, 1.925, that the Petition for Reconsideration filed December 7, 2017, by the Nevada State Parks Division, IS DENIED.

8. IT IS FURTHER ORDERED that the request for waiver of Sections 1.955 and 90.155 of the Commission's rules, 47 CFR §§ 1.955, 90.155, filed December 7, 2017 by the Nevada State Parks Division, IS DENIED.

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

¹⁵ See 47 CFR. § 1.955(a)(2) ("Authorizations automatically terminate (in whole or in part as set forth in the service rules), without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements."); *id.* at § 90.155 ("All stations authorized under this part . . . must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.")