

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

In the Matter of
Marin County
Request for Extension for Call Signs WRAR811,
WRAR827 and WRAS546
File Nos. 0010392148, 0010392149, and
0010392145

ORDER

Adopted: May 11, 2023

Released: May 11, 2023

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

I. INTRODUCTION

1. This Order addresses a request by Marin County Department of Public Works (Marin or the County) for a waiver of section 90.551 of the Commission’s rules to extend the construction completion date for three licenses in the 700 MHz band for an additional year. For the reasons discussed below, we grant the County’s extension request until February 29, 2024.

II. BACKGROUND

2. The three licenses in question currently have an extended implementation buildout deadline of February 15, 2023, which the County initially stated it was on track to meet as of January 2022. The County provides that it met its 2019 and 2020 construction deadlines and began the construction of new sites in 2021. The County now asserts that it is unable to meet its intended construction schedule based on multiple issues beyond its control. In support of its waiver request, on April 17, 2023, Marin attached Supporting Documentation to its applications and waiver request.

3. First, the County provided several state and local governmental orders related to the COVID-19 pandemic, that restricted Marin’s ability to work on-site until June 15, 2021. In particular, the County indicates that due to the pandemic, its local government issued “shelter-at-home public health orders” which “greatly affected the final design work of the system.” The County states that while they

1 See File Nos. 0010392148, 001032149, and 0010392145 (filed Jan. 25, 2023 and amended Apr. 17, 2023) and Waiver Request Letter attached to the applications (Waiver Request). See also 47 C.F.R. § 90.551.

2 See County of Marin, CA Extended Implementation Fourth Annual Construction Notification, filed January 14, 2022. https://appsint.fcc.gov/UlsApp/ApplicationSearch/applAdmin.jsp?applID=13193780#

3 Waiver Request at 2.

4 Id.

5 Supporting Documentation Sets 1-4 filed Apr. 17, 2023.

6 Waiver Request at 2 and Supporting Documentation Set #1. The set consists of: Marin County, Public Health Order, dated 29 April 2020; Marin County, Public Health Order, dated 15 May 2020; Marin County, Public Health Order, dated 20 May 2020; Marin County, Public Health Order, dated 28 April 2021; California Department of Public Health, Blueprint for a Safer Economy, dated December 2020 and the California Department of Public Health, Beyond the Blueprint for a Safer Economy, 6 April 2021.

were eventually able to move to “a work-at-home configuration for its engineers, . . . the transition, combined with the COVID-19 illnesses of key design personnel, led to substantial delays in work.”⁷

4. The County also provided a series of correspondence between the County and various vendors to demonstrate the extent of supply chain issues during the pandemic, citing various factors, including shifts in demand, labor shortages and structural matters.⁸ The County states that the Russia-Ukraine conflict and the more recent COVID-19 lockdown in China have exacerbated the supply chain issues, further delaying their project.⁹ In particular, “towers, equipment shelters, and generators, which are required at several sites, have had 30 to 35-week lead times, which are much greater than originally anticipated. The delivery times of even commonplace items, such as electrical panels, have been delayed and have slowed construction.”¹⁰

5. Next, the County presented support for its claim that the environmental sensitivity of its proposed locations required an environmental review that took 28 months as opposed to the original 18 month estimate.¹¹ The County also provided details regarding a change in its project construction management which required a transfer of knowledge of the entire system design, as well as changes in business procedures, resulting in overall construction delays.¹² Finally, the County detailed a change in its design firm which resulted in weeks of delay.¹³

III. DISCUSSION

6. To obtain a waiver of the Commission’s rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the requested waiver would be in the public interest;¹⁴ or (ii) 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

⁷ *Id.*

⁸ Waiver Request at 2 and Supporting Documentation Set #2. This set consists of 6 sets of correspondence between the County and its vendors documenting missed delivery dates, and slippage of both estimated and actual delivery dates.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Waiver Request at 2 and Supporting Documentation Set #3. This set consists of Marin County, Professional Services Contract with WRA Environmental Consultants, 19 September 2017; WRA Environmental Consultants, Exhibit A – Scope of Work, Phase 1a; WRA Environmental Consultants, Exhibit A – Scope of Work Phase 2 with Schedule; MERA Governing Board, Excerpt from Minutes of 24 October 2018, Regular Meeting; MERA Governing Board, Excerpt from Minutes of 27 February 2019 Regular Meeting; MERA Governing Board, Excerpt from Minutes of 8 May 2019 Regular Meeting; and MERA Governing Board, Excerpt from Minutes of 11 December 2019 Regular Meeting.

¹² Waiver Request at 2 and Supporting Documentation Set #4. This set consists of: Marin County, Notice of Termination of Implementation Agreement, 11 March 2020; MERA Governing Board, Excerpt from Minutes of 10 June 2020 Special Meeting; and MERA Governing Board, Excerpt from Minutes of 24 June 2020 Regular Meeting.

¹³ Waiver Request at 2 and Supporting Documentation Set #5. This set consists of: MERA Governing Board, Excerpt from 12 May 2021 Staff Report; and MERA Governing Board, Excerpt from 23 June 2021 Staff Report; MERA Governing Board, Excerpt from 28 July 2021 Staff Report; MERA Governing Board, Excerpt from 22 September 2021 Staff Report; and MERA Governing Board, Excerpt from 27 October 2021 Staff Report.

¹⁴ 47 CFR § 1.925(b)(3)(i).

alternative.¹⁵ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁶

7. We find that the County has demonstrated an unusual set of factual circumstances satisfying the second prong of the Commission's waiver standard. In light of these facts, we find that strict enforcement of the prior construction deadlines would be both inequitable and contrary to the public interest in that it would result in a waste of monies, strand investment in facilities already under construction, and, most importantly, deprive the citizens of Marin County of a critical public safety communications system.¹⁷ The County has shown substantial progress in implementing its system and demonstrated that the delays it has encountered were due to forces outside of its control. In addition, we are further assured by the fact that the County will continue to be subject to annual reporting requirements.¹⁸ Accordingly, we grant the County's extension requests and extend the construction deadline to February 29, 2024 for the three licenses and associated applications.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 1.925, 90.155, and 90.551 of the Commission's rules, 47 CFR §§ 1.925, 90.55, 90.551, that the requests for waiver filed by Marin County filed January 25, 2023 and amended April 17, 2023 in connection with applications File Nos. 0010392148, 0010392149, and 0010392145 ARE GRANTED, and the applications SHALL BE PROCESSED consistent with this Order and the Commission's rules.

9. IT IS FURTHER ORDERED pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 1.925, 90.155, and 90.551 of the Commission's rules, 47 CFR §§ 1.925, 90.155, 90.551, that the construction deadline for the facilities represented by the call signs WRAR811, WRAR827 and WRAS546 ARE HEREBY EXTENDED to February 29, 2024.

10. 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

John A. Evanoff
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

¹⁵ 47 CFR § 1.925(b)(3)(ii).

¹⁶ *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)); *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

¹⁷ *See Metropolitan Transportation Authority Police Department*, Order, 18 FCC Rcd 1164 (PSHSB 2018).

¹⁸ *See* 47 CFR § 90.629(c).