

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

In the Matter of)	
)	
DISTRICT OF COLUMBIA)	File No. 540202 (KNJE616)
)	File No. 585369 (KNJU834)
Applications for Renewal of 800 MHz)	
Private Land Mobile Radio Stations)	

MEMORANDUM OPINION AND ORDER

Adopted: October 25, 1996

Released: October 29, 1996

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This *Memorandum Opinion and Order* addresses a Petition for Reconsideration ("Petition") filed by the District of Columbia ("District"). The Petition requests reconsideration of the decision by the Wireless Telecommunications Bureau's Licensing Division ("Division") to deny the District's request to renew the licenses and further extend the time in which to construct Stations KNJE616 and KNJU834.¹ For the reasons set forth below, the District's Petition is denied.

II BACKGROUND

2. The District was granted an authorization for Station KNJE616 on July 17, 1984, and for Station KNJU834 on September 13, 1985. Both authorizations include extended implementation provisions pursuant to Section 90.629 of the Rules, 47 C.F.R. § 90.629. Over a six-year period from 1984 to 1990, spanning more than a full five-year license term for each of its licenses, the District requested three extensions of the construction period for these stations.² These three requests were granted. The last extension, granted in March 1992,

¹ Station KNJE616 is authorized as a three-channel conventional 800 MHz system and Station KNJU834 is authorized as a fifteen-channel trunked system, both using Public Safety Category frequencies in the 806-821/851-866 MHz bands.

² Letters from George W. Schoene, Chief, Bureau of Traffic Services, Government of the District of Columbia, to W. Riley Hollingsworth, Chief, Compliance Branch, requesting a one-year extension (dated August 22, 1988), to Carol Fox Foelak, Chief, Compliance Branch, requesting a two-year extension (dated October 17, 1989), and to Ms. Wanda Adams, Technical Section, requesting an additional two year extension (dated October 18, 1990).

requested that a new extended implementation plan be submitted by May 30, 1992, extended the construction period for no more than three years, and stated that further extensions would not be looked upon favorably.³ On June 17, 1992, the District submitted an extended implementation plan indicating that system completion would be in January 1995, which was within the three-year extension.⁴

3. On July 13, 1995, six weeks after the last extended implementation period expired, the District requested yet a fourth waiver of the rules to further extend the implementation period for these stations to April 1998.⁵ By this waiver request, which is the matter currently under consideration, the District seeks to further delay construction of its stations to 13 years and 14 years, respectively, after the initial grants of these licenses.⁶ On October 31, 1995, the Division denied the District's request to (1) reinstate the now cancelled station authorizations for KNJE616 and KNJU834 and (2) further extend the time to construct the stations. In its denial, the Division stated " [g]iven the amount of time which has lapsed since the facilities were initially authorized to the District, the limited progress to date in constructing those facilities, and the explanations proffered for the delays, the District's request lacks conviction in its construction commitment."⁷ Additionally, the Division stated that the Washington, D.C. area has exhausted all available 800 MHz spectrum specifically allocated for public safety uses, and that the Commission has received two finder's preference requests for the frequencies authorized to the District under these call signs. On November 30, 1995, the District submitted its Petition for Reconsideration of the Division's October 31, 1995, denial.⁸

³ Letter from Carol Fox Foelak, Compliance Branch, to John P. Bond III, D.C. City Administrator (dated March 26, 1992).

⁴ Letter from Robert E. Mallet, D.C. City Administrator to Ms. Kathy Daiis, Licensing Division (dated June 17, 1992).

⁵ Letter from Michael C. Rogers, D.C. City Administrator to Terry Fishel, Chief, Land Mobile Branch, Licensing Division (dated July 13, 1995). The District states that the 1992 implementation schedule could not be met due to amendments to its Request for Proposal (RFP) and a delay in response from the vendors.

⁶ Section 90.633(c) of the Rules requires that, absent extended implementation authority, the District's conventional station, KNJE616, should have been constructed within eight months. Section 90.631(e) of the Rules requires that, absent extended implementation authority, the District's trunked station, KNJU834, should have been constructed within one year.

⁷ Letter to Michael C. Rogers, D.C. City Administrator, from Terry L. Fishel, Chief, Land Mobile Branch (dated October 31, 1995). The letter also states that the FCC has received requests from Howard County, MD and Montgomery County, MD for the frequencies authorized to the District for these stations.

⁸ Petition for Reconsideration, In the Matter of Restoration of Station Licenses KNJU834 and KNJE616, filed by the District of Columbia on November 30, 1995.

III. PETITION

4. In its Petition, the District requests that the Commission reinstate the licenses for Stations KNJE616 and KNJU834. In support of its request, the District states that it now has a commitment to construct and the ability to pay for the system. The District further contends that the stations will enable the District's Office of Emergency Preparedness (OEP) to carry out its public safety mission, and that restoration of the station licenses will provide interoperability capability with other governmental jurisdictions.⁹

5. The District states that it has previously been unable to construct and implement the two stations because of a lack of vendor response to its first RFP, the need to withdraw a second RFP because of major revisions, and further amendments and delays in response to its third RFP.¹⁰ The District now contends that, despite past delays, it has the ability to finance the system and will make an absolute commitment to construct and implement a communications system utilizing these frequencies.¹¹ The District further states that it will not proceed with its latest RFP but, instead, will issue a purchase order to buy system components from the Federal Supply or General Services Administration Schedule. The Petition includes a copy of a purchase order that the District says it intends to send to its equipment vendor if the Petition is granted. However, the District states that the purchase order for the equipment has not yet been approved by the District's Financial Review Board and would not be issued unless the two licenses were renewed.¹² The Petition also includes a memorandum from the D.C. Budget Director to the City Administrator indicating that as of October 1995, \$6.115 million was available for the communications system.

6. The District further argues that the station's frequencies have great importance to its OEP public safety mission. The District claims that the OEP is responsible for all emergency management in the Nation's Capital and that part of its mission includes assisting federal authorities in protecting high-ranking government officials and foreign dignitaries. The District states that the current OEP communications system is inadequate to fulfill this mission, and that the construction of the 800 MHz system would provide the necessary communications capability.¹³ The District also claims that restoration of its licenses will provide interoperability

⁹ *Id.* at 3-5.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 2.

¹² *Id.* at 2. No further indication has been received from the District concerning purchase order approval. We note, however, that the submitted purchase order was for fifteen base stations, one antenna, and miscellaneous hardware, but did not include any mobile or portable units. The approved extended implementation schedule for stations KNJE616 and KNJU834 called for the loading of 25 and 1500 mobiles respectively by the end of the first year.

¹³ *Id.* at 3-4.

with the Washington Metropolitan Area Transit Authority and other government jurisdictions that have installed 800 MHz systems.¹⁴

IV. DISCUSSION

7. Over the past twelve years, the District has requested four extensions of time to construct its stations and place them in operation in accordance with various extended implementation schedules. In support of these requests, the District has argued that procurement problems and budget uncertainties were the reasons for its repeated failure to adhere to its previously submitted schedules. The Division granted three of these requests but denied the last one. The District now requests we reconsider the Division's decision to deny the District's request to renew the licenses and to extend the time in which to construct the stations. As discussed below, we find that the arguments supporting grant of the District's request are not persuasive and that the Division's action in cancelling the licenses is both reasonable and warranted.

8. We are mindful that local governmental entities often must satisfy administrative requirements for funding that are more cumbersome than those faced by other Part 90 private land mobile radio eligibles. In this connection, the Commission provided for extended implementation periods, or "slow growth," for stations licensed under Part 90 to entities that require a longer period of time to plan, fund and implement their systems.¹⁵ Moreover, in this particular instance, we have granted the District three previous extensions of time to construct its stations and place them in operation, with concomitant changes to its slow growth schedule. We also recognize, however, that slow growth systems tie up channels to the disadvantage of other applicants, and, therefore, there is a need for licensees of slow growth systems to demonstrate that they are implementing their systems in a diligent and expeditious fashion.¹⁶

9. The District has been licensed for these frequencies for 12 and 11 years, respectively, without constructing the stations. Based on this past experience, we have no assurance that the District will actually put these frequencies to use if it is given yet another extension. Further, public safety entities have now exhausted available public safety 800 MHz spectrum in the metropolitan Washington, D.C. area. Applications for the District's unused frequencies have been filed by the local governments of Howard County, Maryland, and Montgomery County, Maryland. Both applicants claim they need additional frequencies for their own local government and public safety systems, and that the only frequencies available in this area are those that are

¹⁴ *Id.* at 4-5. The District states that a communications interface would then be possible with Arlington and Fairfax Counties, Virginia, as well as with the City of Alexandria, Virginia.

¹⁵ See 47 C.F.R. § 90.629. See also Private Land Mobile Radio Rules, Part 90 Amended, *Second Report and Order*, PR Docket Nos. 79-191, 79-334, 79-107 and 81-703, 90 FCC 2d 1281, 1300 (1982).

¹⁶ *Id.* at 1301.

assigned to, and currently unused by, the District. Grant of any additional extension of time to the District would have an adverse impact upon these other public safety entities in the same metropolitan area that also have vital public safety communications needs.

10. The District argues, on the other hand, that these frequencies are just as important for its own public safety communications needs. The District, however, has repeatedly failed to construct these stations after being granted three extensions of the implementation period. It does not appear that the purchase of equipment was hindered by a lack of funds, since, as indicated in the D.C. Budget Director's memorandum that was included in the Petition, monies for the stations have been available for some time and are still available. Also, the District indicates in its Petition that it has chosen to spend some of the available funding on other improvements to the District's communication system, such as construction of a new communications center and the installation of a computer-aided dispatch system.¹⁷

11. Finally, when the last extension was granted, the Division stated that it would not favorably view any future requests for extension of time based upon any additional failure to adhere to yet another extended implementation schedule.¹⁸ Thus, the District has been on notice for over three years that it was unlikely to receive another extension of time without commencement of construction of the authorized facilities.

12. 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 Sections 0.131, 0.331 and 1.106(a)(1) of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331 and 1.106(a)(1), that the Petition for Reconsideration filed by the Government of the District of Columbia IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Michele C. Farquhar
Chief, Wireless Telecommunications Bureau

¹⁷ Petition at 2, 3.

¹⁸ Letter from Carol Fox Foelak, Compliance Branch, to John P. Bond III, D.C. City Administrator, *supra*.