

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

In the Matter of	)	
	)	
Clifford E. Bade Application for Review of	)	File Nos. 0003696852
Denial of Requests to Extend the Construction	)	0003696824
Deadlines for Part 22 Geographic Area Paging	)	0003696865
Licenses WPZG752, WPZG753, WPZG754,	)	0003696815
WPZG755, and WPZG756	)	0003696799

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 25, 2019**

**Released: July 26, 2019**

By the Commission:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order, we deny an Application for Review filed by Clifford E. Bade (Bade)<sup>1</sup> challenging the denial of the above-captioned identical requests for extension of time to meet the construction requirements for five Part 22 geographic area paging licenses.<sup>2</sup> The *Staff Decision* denying those requests was issued by the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau).<sup>3</sup>

2. In his Application for Review, Bade contends that circumstances beyond his control—specifically, failure to obtain approvals from the Canadian regulatory body to operate near the Canadian border—prevented him from meeting the construction requirements for the five licenses. We reject that contention, affirm the *Staff Decision*, and deny the Application for Review.

**II. BACKGROUND**

3. Under our Part 22 rules for paging licenses, a licensee must construct sufficient facilities to cover one-third of the population in the license area no later than three years after the initial grant of the license.<sup>4</sup> Alternatively, the licensee may notify the Commission at the end of the three-year period that it plans to provide substantial service no later than five years after the initial grant of the license.<sup>5</sup> If it chooses this alternative, the licensee must construct sufficient facilities to cover two-thirds of the

<sup>1</sup> Application for Review of Clifford E. Bade (Nov. 23, 2009) (Application for Review). Bade filed the pleading as an attachment in ULS to his applications requesting an extension of time to meet the applicable construction requirements for five of his Part 22 paging licenses. See FCC File Nos. 0003696852 (WPZG752), 0003696824 (WPZG753), 0003696865 (WPZG754), 0003696815 (WPZG755), 0003696799 (WPZG756) (Jan. 8, 2009) (Extension Applications).

<sup>2</sup> Letter from Robert H. Schwaninger, Jr., Counsel for Clifford E. Bade, to the Federal Communications Commission, Wireless Telecommunications Bureau (Jan. 7, 2009) (Extension Request Letter). The Extension Request Letter is included as an attachment to the Extension Applications in ULS.

<sup>3</sup> Letter from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Clifford E. Bade, Robert H. Schwaninger, and Marjorie K. Conner, P.L.L.C (Oct. 28, 2009) (*Staff Decision*). The *Staff Decision* is included as an attachment to the Extension Applications in ULS.

<sup>4</sup> 47 CFR § 22.503(k)(1).

<sup>5</sup> *Id.*

population or demonstrate that it is providing substantial service in the paging geographic area by five years after the initial grant.<sup>6</sup>

4. If a licensee fails to meet its construction obligations by the expiration of the construction period, its authorization terminates automatically without Commission action on the date the construction period expires.<sup>7</sup> Licensees may request an extension of time to meet the applicable construction requirements.<sup>8</sup> An extension request must be filed before the expiration of the construction period, and it may be granted if the licensee shows that failure to meet the coverage deadline is because of an involuntary loss of site or other causes beyond the licensee's control.<sup>9</sup>

5. Before building out a paging license near the Canadian border, a licensee must check to see if its buildout would extend north of Line A, the coordination zone in the United States along the Canadian border. If it would, the licensee must first coordinate deployment with the Canadian regulatory authority, Innovation, Science and Economic Development Canada (ISED),<sup>10</sup> pursuant to an international agreement known as the *Above 30 MHz Agreement*.<sup>11</sup> Canadian licensees near the border have a reciprocal obligation to coordinate with the Commission.<sup>12</sup> Both the United States and Canada have equal access to the bands at issue and assignments for those frequencies are made on a first-come, first-served basis.<sup>13</sup> ISED's licensing database is accessible to the public and provides technical and other information about publicly licensed Canadian stations.<sup>14</sup>

6. Before the Commission takes final action on an application for a U.S. frequency assignment in the coordination zone, the application is referred to ISED as a coordination proposal through the Canadian Co-Channel Serial Coordination System (COSER).<sup>15</sup> ISED approves or rejects a U.S. coordination proposal based on whether it anticipates harmful interference to an incumbent station in Canada from the proposed U.S. assignment.<sup>16</sup> ISED often provides information about the station where it anticipates harmful interference that can assist the applicant in modifying a rejected proposal. However,

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<sup>6</sup> *Id.* § 22.503(k)(2) and (3). Our rules define “substantial service” as service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal. *Id.* § 22.503(k)(3).

<sup>7</sup> *Id.* § 1.946(c); *see id.* §§ 1.955(a)(2) (providing that “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” (citing § 1.946(c)); 22.503(k) (providing that failure by a paging geographic area licensee to meet either the three-year or five-year coverage requirements, or alternatively, the substantial service requirements no later than five years after initial grant of the authorization, will result in automatic termination of authorizations for those facilities that were not authorized, constructed, and operating at the time the geographic area authorization was granted).

<sup>8</sup> *Id.* § 1.946(e).

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

<sup>10</sup> Innovation, Science and Economic Development Canada was previously called Industry Canada; its name changed in 2015.

<sup>11</sup> On October 24, 1962, the United States and Canada entered into the “Exchange of Notes Between the Government of Canada and the Government of the United States of America Concerning the Coordination and Use of Radio Frequencies Above Thirty Megacycles Per Second” (*Above 30 MHz Agreement*). *See* 47 CFR § 1.928(a). The agreement has been amended a number of times and applies to both Federal and non-Federal (including state and local government) frequency use for diverse services. It establishes coordination procedures for assignments, in relevant part, in the VHF and UHF Frequency Bands and specifies a distance from the border within which coordination must take place. *Above 30 MHz Agreement*, Arrangement A, as amended.

<sup>12</sup> *See Above 30 MHz Agreement*, Arrangement A § 4(b).

<sup>13</sup> *Id.*, Arrangement A; *see* 47 CFR § 22.169.

<sup>14</sup> *See* Innovation, Science and Economic Development Canada, Spectrum Management System Data, [http://sms-sgs.ic.gc.ca/eic/site/sms-sgs-prod.nsf/eng/h\\_00010.html](http://sms-sgs.ic.gc.ca/eic/site/sms-sgs-prod.nsf/eng/h_00010.html) (last visited June 6, 2019). Using this link, applicants may search for existing licensed sites in Canada using various search tools. For example, an applicant could run a “single

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if it anticipates harmful interference at a station protected by national security, ISED typically provides only limited information.

7. *Bade's Licenses.* Bade won seven Part 22 Basic Economic Area (BEA) paging licenses in Auction No. 48.<sup>17</sup> Five of the seven licenses—WPZG752, WPZG753, WPZG754, WPZG755, and WPZG756—are at issue in this proceeding.<sup>18</sup> The licenses were granted in the Detroit/Ann Arbor/Flint, Michigan market area (BEA 057, the “Detroit BEA”) on different frequencies within the 152 MHz band. The vast majority of the Detroit BEA—both in terms of population and land area—is north of Line A: only about 0.002% of the BEA’s population is south of Line A.<sup>19</sup> Bade paid \$4,160 at auction for the five Detroit BEA licenses.

8. Prior to Auction No. 48, the Bureau instructed potential bidders that licensees would need to submit a site-based modification application through ULS to obtain authority within their respective licensed geographic areas to operate individual stations north of Line A.<sup>20</sup> The Bureau warned potential bidders that some or all channels in areas adjacent to the Canadian border could be restricted based on agreements with Canada.<sup>21</sup> It also stated that potential bidders were responsible for identifying and evaluating risks associated with licenses and the impact of those risks on future license use.<sup>22</sup>

9. Consistent with the Commission’s rules and procedures, Bade then filed modification applications for each of the five licenses, in which he sought approval to construct and operate site-based stations at a single site north of Line A in Detroit.<sup>23</sup> Division staff submitted Bade’s initial proposals to ISED through COSER, and ISED rejected all five because of anticipated harmful interference at specified locations in Ontario, Canada. Division staff returned the rejected applications to Bade and forwarded the

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frequency” search, specify the province(s) of interest, and seek station locations, call signs, latitude and longitude of the sites, site elevations and antenna structure heights, antenna gains and azimuths, and the licensee’s name and company address, among other data. ISED has indicated that over 90 percent of all stations licensed in Canada appear in the publicly available database. Locations protected for Canadian national security purposes are not included in the database.

<sup>15</sup> See *Above 30 MHz Agreement*, Arrangement A § 4(a).

<sup>16</sup> See *id.* When ISED responds to a COSER request, it designates the proposal as either “Harmful Interference Anticipated” (HIA), “No Harmful Interference Anticipated” (NHIA), or “No Harmful Interference Anticipated with a Condition” (NHIC).

<sup>17</sup> See *Lower and Upper Paging Bands Auction Closes, Winning Bidders Announced*, Public Notice, 18 FCC Rcd 11154 (WTB 2003). The licenses were granted on January 8, 2004.

<sup>18</sup> Bade also won paging licenses for BEA 056 – Toledo, OH (WPZG751) and BEA 058 – Northern MI (WPZG757). The northern half of BEA 056 and all of BEA 058 are also located north of Line A. Bade filed modification applications under call signs WPZG751 and WPZG757 to obtain Canadian approval to locate one station in each of those markets. See FCC File Nos. 0002051626 and 0002051619 (filed Feb. 17, 2005). ISED approved Bade’s proposals to construct one site in each respective location. Bade constructed the Toledo and Northern Michigan stations but did not file renewal applications, thus those authorizations expired in 2014.

<sup>19</sup> Based on 2010 census data, the land area north of Line A in BEA 057 is about 24,120 square miles, whereas the area south of Line A is about 300 square miles. Similarly, the population north of Line A is about 6.8 million people, whereas the population south of Line A is about 12,800 people.

information provided by ISED, which included, for each proposal, the relevant frequency, city and province, and longitude and latitude of the location(s) at which ISED anticipated harmful interference.<sup>24</sup>

10. After the initial rejections, Bade filed amended modification applications under four of his five licenses—WPZG753, WPZG754, WPZG755, and WPZG756. He subsequently filed a second round of amended modification applications under two of those licenses—WPZG754 and WPZG756. Division staff submitted the amended proposals to ISED through COSER. ISED ultimately cleared two of the four amended proposals: for WPZG753, after Bade clarified the maximum power levels of the proposed mobile units, and for WPZG754, after Bade relocated the station from Detroit to Ann Arbor. Accordingly, the Division granted the amended modification applications for those two licenses. ISED continued to anticipate harmful interference with respect to Bade’s proposed operations under WPZG755 and WPZG756, however, and because Bade filed no further amendments, the modification applications were dismissed.<sup>25</sup> Because Bade never amended the rejected modification application for WPZG752, the Division likewise dismissed it.<sup>26</sup>

11. *Request for Extension of Time to Comply with the Five-Year Deadline.* On January 8, 2009, the five-year construction deadline, Bade filed identical requests seeking an extension of time for all five licenses.<sup>27</sup> Specifically, Bade requested “an extension of time to construct facilities under this license until such time as the Bureau provides to Mr. Bade the necessary Canadian information that will allow for the construction of facilities in accord with the treaties between the United States and Canada.”<sup>28</sup> Bade argued that he was unable to obtain the relevant data from ISED and was therefore unable to produce necessary engineering in support of his applications to operate stations north of Line A.<sup>29</sup> Bade concluded that “[f]or reasons entirely outside of [his] control, he has been unable to achieve authority to construct facilities due to an inability to obtain necessary data from Canada or the Commission.”<sup>30</sup>

12. *Staff Decision.* On October 28, 2009, the Division, finding that Bade’s failure to meet the

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<sup>20</sup> See 47 CFR § 22.503(g)(2) (subsequent application for Commission authorization necessary for paging geographic area licenses where international coordination procedures are required prior to assignment of a channel to the facility); *Lower and Upper Paging Bands Auction Scheduled For May 13, 2003, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures*, Public Notice, 17 FCC Rcd 27799, 27810 (WTB 2002) (*Auction No. 48 Procedures Public Notice*) (“Licensees on the lower paging channels must submit a Form 601 to obtain authorization to operate stations north of Line A . . . because these channels are subject to the [*Above 30 MHz Agreement*] with Industry Canada.”); *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10068, para. 60 (1999) (same).

<sup>21</sup> *Auctions No. 48 Procedure Public Notice*, 17 FCC Rcd at 27810-11.

<sup>22</sup> *Id.* at 27810.

<sup>23</sup> See FCC File Nos. 0002198064 (WPZG754) and 0002198072 (WPZG756) (filed June 14, 2005); FCC File Nos. 0002318463 (WPZG752), 0002318308 (WPZG753), and 0002318193 (WPZG755) (filed Sept. 16, 2005).

<sup>24</sup> See ULS Notice of Return, Reference No. 4191525 (WPZG752) (Aug. 11, 2006); ULS Notice of Return (WPZG753), Reference No. 3882010 (Jan. 12, 2006); ULS Notice of Return, Reference No. 3696216 (WPZG754) (Aug. 30, 2005); ULS Notice of Return, Reference No. 3696217 (WPZG756) (Aug. 30, 2005). We note that Bade’s application under call sign WPZG755 sought authority to operate on frequency 152.62 MHz, an offset channel from the authorized center frequency 152.63 MHz for the channel block. ISED’s response focused on the authorized center frequency. See ULS Notice of Return, Reference No. 3882011 (WPZG755) (Jan. 12, 2006). The return notices gave Bade 60 days to amend his applications.

<sup>25</sup> ULS Notices of Dismissal, Reference Nos. 4560646 (WPZG755) and 4560647 (WPZG756) (May 18, 2007). See 47 CFR § 1.934(e)(3) (providing that the Commission may dismiss applications that request spectrum that is unavailable because “[r]easonable efforts have been made to coordinate the proposed facility with foreign administrations under applicable international agreements, and an unfavorable response (harmful interference anticipated) has been received”). We note that Division staff cited section 22.531(e) of our rules in dismissing

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construction requirements was not because of an involuntary loss of site or causes beyond his control, denied all five extension requests.<sup>31</sup> Because Bade had been granted authority to construct stations under WPZG753 and WPZG754 following successful coordination with ISED,<sup>32</sup> the *Staff Decision* found that Bade's argument that he was unable to obtain sufficient information to coordinate his operations successfully was inapplicable to those two licenses.<sup>33</sup> As to the remaining three licenses, the *Staff Decision* also found Bade's argument unpersuasive.<sup>34</sup> It noted that, when the modification applications were returned to Bade, they included frequency and location information concerning where interference was anticipated, and that after receiving this information, Bade amended four of the five modification applications—two of which ISED subsequently approved.<sup>35</sup> The *Staff Decision* also found that it is the applicant's—not the Commission's—responsibility to provide sufficient information for the Commission to process its applications.<sup>36</sup>

### III. DISCUSSION

13. Bade's Application for Review contests only one aspect of the *Staff Decision*—that Bade should be required to meet the Commission's construction requirements for paging geographic area licenses when he did not obtain ISED approval for his proposed stations north of Line A.<sup>37</sup> Bade argues that ISED has not provided data that he maintains is needed to assess how to amend—and obtain approval of—his proposed stations' operations, thereby facilitating the required buildout.<sup>38</sup> Bade asserts that it is the Bureau's responsibility to obtain or provide access to information he believes is necessary to gain ISED approval.<sup>39</sup> In essence, Bade contends that he should be granted an indefinite extension of time to construct facilities, and that the Bureau must provide assistance in his effort to obtain ISED approval by providing specific technical data from ISED regarding existing facilities that require protection from harmful interference.<sup>40</sup> In the alternative, Bade requests assistance in the form of a “general agreement between the Countries that would pave the way for Bade's refiling of applications,”<sup>41</sup> or a “grant of authority to construct on other frequencies which may not be of significance to Canada and which would

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Bade's applications under call signs WPZG755 and WPZG756. On June 19, 2007, Bade filed a petition seeking reconsideration of the dismissal of his application under call sign WPZG755, arguing that section 22.531(e), which lists the 931 MHz frequencies available for assignment in the United States north of Line A, neither applied to WPZG755 nor prohibited its modification. Petition for Reconsideration of Clifford E. Bade (filed June 19, 2007). Bade did not file a petition seeking reconsideration of the dismissal of his modification application filed under call sign WPZG756. The *Staff Decision*, having denied Bade's extensions requests, dismissed Bade's petition seeking reconsideration of the dismissal of the modification application filed under call sign WPZG755 as moot. Bade's Application for Review does not seek relief regarding the *Staff Decision*'s dismissal of his petition as moot.

<sup>26</sup> ULS Notice of Dismissal, Reference No. 4294159 (WPZG752) (Oct. 31, 2006).

<sup>27</sup> See Extension Applications.

<sup>28</sup> Extension Request Letter at 1.

<sup>29</sup> *Id.* In addition, Bade claimed that he had asked the Bureau to obtain the “necessary Canadian data” for him, but that the Bureau had not done so. *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Staff Decision* at 2.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 2-3.

<sup>34</sup> *Id.* at 3.

<sup>35</sup> *Id.*

<sup>36</sup> See *id.*

provide equity to Bade.”<sup>42</sup>

14. Bade has failed to identify anything in the *Staff Decision* that conflicts with the statute, Commission regulations, case precedent, established Commission policy, or requirements under the *Above 30 MHz Agreement* (or other international agreement). Nor has Bade identified any other basis for concluding that the determinations made in the *Staff Decision* were erroneous or ill-considered. Accordingly, we find that the *Staff Decision* correctly denied Bade’s extension requests.

15. *First*, Bade’s argument falls flat for two of the licenses at issue—WPZG753 and WPZG754—for which he was able to successfully coordinate with ISED. ISED approved Bade’s proposals to locate facilities north of Line A for those licenses, and the Commission granted the respective modification applications, but Bade chose not to construct any facilities under either license. Bade did not explain in either his Extension Request Letter or Application for Review why he failed to construct these stations in the more than 19 months between grant of authority and the filing of his requests, except to say that he “has not been able to discern how to complete construction of the . . . call signs given the circumstances of this matter.”<sup>43</sup> Indeed, he does not appear to acknowledge that he had authority to construct facilities under these call signs. Bade’s own failure to build was clearly not “beyond his control.”<sup>44</sup>

16. *Second*, Bade’s successful coordination of two licenses undermines his argument regarding the remaining three. Bade was able to secure sufficient information to successfully coordinate licenses WPZG753 and WPZG754, and he does not present any evidence on why he could not have secured sufficient information to successfully coordinate WPZG752, WPZG755, and WPZG756. Indeed, each time ISED rejected his proposals for these three licenses, Bade received the same type of information about the stations at which ISED anticipated harmful interference—the frequency, city and province, and longitude and latitude—that Bade received with respect to his proposals under WPZG753 and WPZG754. When Bade modified his proposals under those two licenses to clarify the maximum power levels of his proposed mobile units for the former, and to move the station from Detroit to Ann Arbor for the latter, ISED approved his proposals. Just because Bade did not continue to make similar adjustments for the remaining three Detroit BEA licenses does not obviate his obligation to comply with the construction requirements. Bade’s own failure to continue to coordinate with ISED was clearly not

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<sup>37</sup> See Application for Review at 1 (presenting as the issue for review “whether licensees can be held to the obligations contained under Section 22.503(k) when necessary technical information is rendered unavailable by Canada to allow a licensee to determine the technical parameters for construction of facilities North of Line A”). We note that Bade references FCC File No. 0002318193, his modification application under call sign WPZG755, in the header of his Application for Review, but Bade is not seeking review of that action. Rather, Bade lists in the text of the first paragraph in his Application for Review the file numbers for the five extension requests he submitted on January 8, 2009, stating that he is seeking review of the denial of those requests. *Id.*

<sup>38</sup> In his Application for Review, Bade states, as an example, that he searched the ISED database for frequency 152.62 MHz, which is the frequency Bade sought to construct under call sign WPZG755. *Id.* at 4. According to Bade, his search resulted in “no records were found that matched your search criteria” and, as a result, he should be able to file and obtain ISED clearance for his application. *Id.* We have already noted that frequency 152.62 MHz is an offset frequency from the center frequency, 152.63 MHz, and that ISED rejected Bade’s proposal based on anticipated interference from the center frequency. See *supra* note 24.

<sup>39</sup> Application for Review at 2-3. According to Bade, Canada is “stonewalling” the process. *Id.*

<sup>40</sup> *Id.* at 5-6.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 6.

<sup>43</sup> *Id.* at 2.

<sup>44</sup> *Staff Decision* at 2.

“beyond his control.”<sup>45</sup>

17. *Third*, allowing Bade to avoid his construction requirements because he failed to successfully coordinate buildout of three of his five licenses would undermine the integrity and the purpose of our construction requirements and the auction process. Section 309(j) of the Communications Act directs the Commission, in designing its competitive bidding procedures, “to include performance requirements . . . to prevent stockpiling and warehousing of spectrum . . . and to promote investment in and rapid deployment of new technologies and services.”<sup>46</sup> The Commission adopted buildout requirements to effectuate this provision,<sup>47</sup> and Bade was informed of the requirements for obtaining authority to operate in the coordination zone north of Line A and the consequences of failing to do so. Before the auction, the Commission made clear that bidders seeking licenses for areas adjacent to the Canadian and Mexican borders should “be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of current or future agreements with Canada or Mexico,”<sup>48</sup> and that bidders were “solely responsible for identifying associated risks, and investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 48.”<sup>49</sup> The Bureau repeated these warnings five weeks prior to the auction,<sup>50</sup> and it also informed applicants to “be aware that an FCC auction represents an opportunity to become an FCC licensee in [the paging] service, subject to certain conditions and regulations” and that a Commission license does not “constitute a guarantee of business success.”<sup>51</sup> Further, the Commission’s rules clearly state that the Commission may dismiss applications that request spectrum that is unavailable because “[r]easonable efforts have been made to coordinate the proposed facility with foreign administrations under applicable international agreements, and an unfavorable response (harmful interference anticipated) has been received.”<sup>52</sup>

18. In other words, Bade assumed a certain amount of risk when bidding on licenses in market areas that require coordination with ISED. And the cost of the licenses at auction apparently took into account the risks associated with the licenses, as evident here by Bade’s roughly \$4,000 purchase price. Our goal in designing the competitive bidding system is to award the licenses expeditiously to bidders that value them most highly to bring services to the public without undue delay. Allowing a licensee to sidestep the risks associated with meeting construction requirements after obtaining an authorization would skew competition in bidding, distort the pricing information generated by the auction process, and reduce efficiency.

19. We reject Bade’s contention that his desire for technical data from ISED that was protected for national security reasons absolves Bade of his burden of coordination.<sup>53</sup> We reiterate the

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<sup>45</sup> *Id.* at 3.

<sup>46</sup> 47 U.S.C. § 309(j)(4)(B).

<sup>47</sup> See *Revision of Part 22 and Part 90 of the Commission’s Rules To Facilitate Future Development of Paging Systems*, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732, 2766, paras. 62-63 (1999).

<sup>48</sup> *Auction No. 48 Procedures Public Notice*, 17 FCC Rcd at 27809-10.

<sup>49</sup> *Id.* at 27810.

<sup>50</sup> *Auction of Licenses For Lower and Upper Paging Bands*, Public Notice, 18 FCC Rcd 6426, 6428 (Apr. 7, 2003).

<sup>51</sup> *Auction No. 48 Procedures Public Notice*, 17 FCC Rcd at 27811.

<sup>52</sup> 47 CFR § 1.934(e)(3).

<sup>53</sup> See Application for Review at 2-3 (maintaining that the Bureau warned Bade that “the information requested was not available from Canada because Canada considered such information to be protected by national security” and further stating that “Canada’s position was reiterated in direct correspondence with Industry Canada which politely refused Bade’s efforts to identify the technical parameters of any station operating in Canada which was subject to protection from Bade’s proposed operations”).

*Staff Decision*'s correct finding that it was Bade's own responsibility to adjust his plans and to modify his applications for site-based authorization north of Line A and obtain approval from ISED—as he successfully did for two of his licenses. As the licensee, it was Bade's responsibility, if he so chose, to modify his engineering, move his proposed operations to a different location in the BEA, or make other alterations to obtain ISED clearance and to ultimately comply with our construction requirements for each license.

20. Finally, in his Application for Review, Bade makes two new arguments: (1) he asks in the alternative for either “a general agreement” between the United States and Canada to “pave the way for Bade's refiling of applications” or a grant of authority from the Bureau to construct on frequencies “which may not be of significance to Canada,” and (2) he suggests that his situation is analogous to the “plight” of 220-222 MHz licensees that obtained an extension of time to construct their facilities because “there existed no equipment available to construct.”<sup>54</sup> The Division was never given an opportunity to consider these arguments, and we reject them under section 1.115(c) of our rules, which precludes the Commission from granting an Application for Review if it “relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.”<sup>55</sup>

21. We nevertheless address these arguments here to provide a clear resolution of substantive issues, and we find no basis for granting relief based on them. With respect to Bade's requests for assistance in attaining a new agreement between the two countries or a new grant of authority to construct on different frequencies, we explained above that the *Staff Decision* correctly rejected Bade's similar request in the form of additional Bureau assistance in receiving ISED approval. With respect to Bade's analogy to the extension obtained by 220-222 MHz licensees, we find that situation to be inapposite here. Unlike that context, Bade's decision to stop pursuing ISED coordination after the last applications for license modification were rejected was entirely within his control. Further, Bade offers no evidence that his failure to meet his construction obligations is related to a lack of available equipment.

#### IV. ORDERING CLAUSE

22. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and section 1.115 of the Commission's Rules, 47 CFR § 1.115, the Application for Review filed by Clifford E. Bade on November 23, 2009, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>54</sup> See *id.* at 5; see also *Request of Warren C. Havens for Waiver or Extension of the Five-Year Construction Requirement for 220 MHz Service Phase II Economic Area and Regional Licenses et al.*, 19 FCC Rcd 12994, 13001, para. 15 (2004) (extending construction deadline for Phase II 220 MHz EA licensees that timely sought extension requests where the two companies that originally manufactured the necessary equipment for narrowband voice service no longer did so).

<sup>55</sup> 47 CFR § 1.115(c); see also *Access Application for a New LPFM Station at San Diego, California*, Memorandum Opinion and Order, 29 FCC Rcd 9735, 9735, para. 2 (2014) (dismissing an application for review under section 1.115(c) where the applicant acknowledged that the dismissal of its underlying application complied with existing law, but in its application for review presented its argument that the Commission should refrain from dismissing the application to allow the Commission time to encourage Mexico to change its international spacing requirements).