



Federal Communications Commission
Washington, D.C. 20554

March 31, 2009

DA 09-732

Robert Lewis Thompson, Esq.
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In re: Gulf-California Broadcast Co.
TV Pickup Station WPWD239, Palm Desert, California
File No. 0002803192

Dear Mr. Thompson:

On September 17, 2008, you filed, on behalf of your client, Gulf-California Broadcast Co. (Gulf) a petition for reconsideration¹ of the change of status of Broadcast Auxiliary Service (BAS) TV Pickup Station WPWD239, Path 2 into termination pending status. In the Petition, Gulf also requests an extension of time to construct until March 10, 2009 Path 2 of Station WPWD239.² For the reasons stated below, we grant Gulf's Petition, reinstate the license for Station WPWD239, Path 2 to active status, and grant Gulf a six-month extension of time to complete construction of that path.

Gulf is the licensee of commercial television station KESQ-TV, Palm Springs, California, for which Station WPWD239 is a TV pickup station.³ On January 16, 2007, the Wireless Telecommunications Bureau (Bureau) granted an application to modify Station WPWD239 to add Path 2 to operate on 2025-2110 MHz, 2458.5 MHz, and 2475.25 MHz.⁴ The application was filed as part of the process to relocate BAS incumbents from the 1990-2025 MHz band.⁵ Under the term of the authorization, Gulf was required to complete construction of that path by July 16, 2008.⁶ Gulf failed to do so.⁷ Accordingly, on August 20, 2008, the Bureau notified Gulf that its license had been placed in termination pending status.⁸ In response, Gulf filed the Petition on September 17, 2008.

¹ Petition for Reconsideration (filed Sep. 17, 2008) (Petition).

² *Id.* at 1 n.1, 2-3.

³ *Id.* at 1.

⁴ *See* File No. 0002803192 (granted Jan. 16, 2007).

⁵ *See* Petition at 1-2. *See also* Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, ET Docket No. 00-258, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004) (*800 MHz Order*).

⁶ *See* File No. 0002803192 (granted Jan. 16, 2007).

⁷ Petition at 1-2.

⁸ *See* Construction/Coverage Deadline Notice of License Termination Pending Status, Reference No. 4775072 (dated Aug. 20, 2008). *See also* Wireless Telecommunications Bureau Site Based Licenses Termination Pending Public Notice, Report No. 4312, *Public Notice* (Aug. 20, 2008) at 4.

Gulf argues that it has been diligent in constructing its new BAS 2 GHz system and that most of the construction of WPWD239 has been completed.⁹ According to Gulf, however, the southern California market decided at a regional meeting in February 2007 that the 2 GHz BAS transition would not occur until March 9, 2009.¹⁰ Gulf notes that southern California regional frequency coordinator Howard Fine has recently reported to Gulf that few, if any, of the area licensees have fully constructed their new 2 GHz facilities.¹¹ Gulf states that construction of WPWD239 will be completed by March 9, 2009, but that Gulf cannot report the completion of construction until the switch-over occurs on that date.¹² Gulf requests that its license for WPWD239 be extended through at least March 10, 2009, and that a waiver of such rules as may be needed to grant the instant petition be granted.¹³

Section 1.946(c) of the Commission's Rules states:

If a licensee fails to commence service or operations by the expiration of its construction permit or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires.¹⁴

The Commission's Rules state that waivers may be granted if it is shown that: (i) the underlying purpose of the rules(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 (ii) in view of the 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.¹⁵

While we do not condone Gulf's failure to seek an extension of time in advance of the expiration of Gulf's construction/coverage deadline, we believe that, based on the totality of the circumstances involved in this case, the public interest would be served by extending the construction deadline for TV Pickup Station WPWD239 for six months from the date of this letter.¹⁶ Gulf has shown that it has been diligent in constructing its system.¹⁷ The obstacle Gulf faces to timely completion of construction is primarily due to the need of numerous parties within Gulf's market to coordinate among themselves, a

⁹ Petition at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 2.

¹³ *Id.* at 1 n.1, 2-3.

¹⁴ 47 C.F.R. § 1.946(c).

¹⁵ 47 C.F.R. § 1.925(b)(3).

¹⁶ Normally, a request for extension of time to complete construction must be filed electronically using Form 601 and the Universal Licensing System (ULS). See 47 C.F.R § 1.913(a)(1). In this case, however, Gulf cannot file an extension request electronically because the path in question is in termination pending status. We therefore grant Gulf such waivers as may be necessary to allow consideration of Gulf's request to extend the construction deadline that is contained in its Petition.

¹⁷ See, e.g., Regional Transit Service, Inc., *Letter Granting Extension of Time*, 23 FCC Rcd 5210, 5211 (WTB MD 2008).

matter of timing which is beyond Gulf's control.¹⁸ Section 1.946(e)(1) of the Commission's Rules permits grants of extension of time for causes beyond the control of a licensee.¹⁹ We note that Gulf states that it will complete construction of Station WPWD239 as soon as coordination permits.²⁰ Waiving Section 1.946(c) of the Commission's Rules and reinstating Gulf's authorization to active status will further the Commission's goal of abating unacceptable interference to 800 MHz public safety systems in a way that imposes minimal disruption on licensees.²¹

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.925, that the waiver request and the petition for reconsideration filed September 17, 2008 by Gulf-California Broadcast Co. IS GRANTED, and the license for Station WPWD239, Path 2 IS RETURNED to active status.

IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.946 of the Commission's Rules, 47 C.F.R. § 1.946, that the time for Gulf-California Broadcast Co. to construct the facilities authorized under the license Station WPWD239, Path 2 IS EXTENDED TO September 13, 2009.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

Blaise A. Scinto
Chief, Broadband Division
Wireless Telecommunications Bureau

¹⁸ See, e.g., Leap Wireless International, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 19573, 19580 ¶ 13 (WTB CWD 2001). Cf. Regional Transit Service, Inc., *supra*, 23 FCC Rcd at 5211 (timing of Canadian government approval not within petitioner's control); NextBus Information Systems, Inc., *Letter Granting Extension of Time*, 23 FCC Rcd 2660, 2661 (WTB MD 2008) (timing of disbursement of federal funds not within petitioner's control).

¹⁹ 47 C.F.R. § 1.946(e)(1). See, e.g., Requests of Progeny LMS, LLC and PCS Partners, L.P. for Waiver of Multilateration Location and Monitoring Service Construction Rules, WT Docket No. 08-60, *Order*, DA 08-2614 (WTB Nov. 26, 2008) at n.13.

²⁰ Petition at 2.

²¹ 800 MHz *Order*, 19 FCC Rcd at 14972-73 ¶ 2.