

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

In the Matter of)	
)	
Request for Extension of Time to Construct a)	
900 MHz Specialized Mobile Radio Station and)	ULS File No. 0001139141
Request for Waiver of the Automatic License)	
Cancellation of Call Sign KNNY348)	
)	
)	
)	

Order

Adopted: February 6, 2004

Released: February 6, 2004

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address the application filed by William G. McCart (McCart) requesting an extension of time to construct a 900 MHz system in the Specialized Mobile Radio (SMR) service and the associated request for waiver of the automatic license cancellation of that system license.¹ For the reasons stated below, we deny McCart’s request.

II. BACKGROUND

2. On August 16, 1996, the Commission authorized McCart to construct and operate a 900 MHz SMR system in the Spokane, WA / Billings, MT market (MTA042), under license call sign KNNY348. The license was acquired by McCart pursuant to the Commission’s competitive bidding procedures. The Commission requires that licensees either provide coverage of one-third of the “Major Trading Area” (MTA) population at the end of three years and two-thirds at the end of five years, or elect at the three-year mark to make a substantial service showing at the five-year deadline.² In May 2001, the Commission extended the five-year construction deadline for most such 900 MHz systems from August 2001 to December 31, 2002 stating that doing so would “serve the public interest because it will allow the introduction of innovative digital 900 MHz voice services, thus benefiting consumers and promoting

¹ Request for Extension of Construction Period and Waiver of Automatic License Cancellation Provision filed December 31, 2002 (Extension and Waiver Request).

² See 47 C.F.R. §§ 1.946(b) and 90.665(c).

competition.”³

3. On December 31, 2002, McCart filed the above captioned Extension and Waiver Request, claiming that “[t]he general delay in building out MTA licenses has been due to a variety of factors, some of which are endemic to the economy as a whole, others which relate to the decline in the telecommunications industry specifically in recent years, but, most principally, the lack of digital technology for deployment in 900 MHz systems.”⁴ McCart asserts that Motorola developed a digital product for use in the iDEN network operated by FCI 900, Inc. and that FCI 900, Inc. and Neoworld License Holdings, Inc. (Neoworld) will be able to deploy that technology to satisfy their 900 MHz MTA construction obligations. McCart contends, however, that the same technology is not available to other parties with 900 MHz MTA authorizations such as McCart and no other digital equipment has been developed for the band. McCart contends that it is in precisely the same situation as of December 31, 2002 that existed in May, 2001 when the Commission determined that a 900 MHz construction extension was warranted. Contending that the Commission found that “the public interest would be ill served by compelling 900 MHz MTA licensees to devote scarce resources to the construction of stopgap legacy analog systems in order to meet the five-year construction deadline,”⁵ McCart requests a further construction extension until digital equipment is available for its system.

III. DISCUSSION

4. In reviewing McCart’s application, we find no basis in the record for extending the construction deadline or waiving the automatic cancellation of the Station KNNY348 license. Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission’s rules, a license will terminate automatically as of the construction deadline if the licensee fails to meet its construction requirement,⁶ unless the Commission grants a request for an extension of the construction period or otherwise waives the construction requirement. Accordingly, without grant of an extension of time or waiver of the construction requirement, the license automatically terminates as of the construction deadline. An extension of time to complete construction may be granted, pursuant to section 1.946(e) of the Commission’s rules, if the licensee shows that the failure to complete construction is due to causes beyond its control.⁷

5. A party seeking waiver of a Commission rule must show that “[t]he 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”⁸ Alternatively, a party must show that “[i]n 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

³ See In the Matter of FCI 900, Inc. Expedited Request for 3-year Extension of 900 MHz Band Construction Requirements and Neoworld License Holdings, Inc. Request for Waiver of 900 MHz Band Construction Requirements and Petition for Declaratory Ruling, *Memorandum Opinion and Order*, 16 FCC Rcd 11072 at ¶ 6 (WTB 2001) (*FCI 900/Neoworld Order*).

⁴ Extension and Waiver Request at 1.

⁵ Extension and Waiver Request at 2, *citing*, *FCI 900/Neoworld Order*, 16 FCC 2d. 11078 at ¶ 9.

⁶ 47 C.F.R. §§ 1.946(c) and 1.955(a)(2). Further, Section 90.665(d) specifically addresses the automatic cancellation of MTA licenses.

⁷ 47 C.F.R. §§ 1.946. Section 1.946(e) also states specific circumstances that would not warrant an extension of time to complete construction. 47 C.F.R. §§ 1.946(e)(2)-(3).

⁸ 47 C.F.R. § 1.925(b)(3)(i).

alternative.”⁹ When seeking to deviate from the general rule, an applicant faces a heavy burden.¹⁰ In order to obtain a waiver, an applicant must plead with particularity the facts and circumstances which warrant such action.¹¹

6. McCart argues principally that it could not meet its construction deadline set forth in Section 90.665(c) because of “the lack of digital technology for deployment in 900 MHz systems.”¹² However, we find this reason alone, and McCart’s economic arguments, for that matter, are insufficient to allow McCart to hold the spectrum until equipment finally becomes available. Significantly, McCart’s request is completely open-ended and provides no information as to how long it may take for equipment to become available for its particular system. Without some idea of when equipment will become available, we cannot even be sure that grant of a limited waiver in this case will provide relief to McCart. By McCart’s own admission, digital equipment is available (i.e., iDEN equipment produced by Motorola), but it is unclear from his application whether McCart cannot deploy iDEN equipment due to technical reasons or will not deploy such equipment due to business reasons. Finally, we disagree with McCart’s assertion that it is similarly situated to FCI 900, Inc. and Neoworld. FCI 900 Inc. and Neoworld were granted relief in order to allow time for digital equipment to become available.¹³ Unlike McCart’s situation, FCI 900, Inc. provided concrete assurances from an equipment manufacturer that digital equipment would be available shortly, even though only analog (but not digital) equipment was available at that time. In contrast, McCart provides no plan for obtaining equipment and no certainty of when, if ever, equipment will be available to meet their needs.

7. Based on the foregoing, we find that McCart’s request does not warrant an extension of time to construct its system and does not satisfy the criteria for a waiver of the automatic license cancellation provision of the Commission’s construction rule. We therefore deny the Extension and Waiver Request and find that McCart’s license for Call Sign KNNY348 automatically terminated, pursuant to sections 1.946(c), 1.955(a)(2), and 90.665(d) of the Commission’s rules, on December 31, 2002.¹⁴ Furthermore, in light of the automatic termination of the subject licenses, McCart’s license term has ended and he is no longer eligible to pay the outstanding amount of his winning bid obligations with installment payments.¹⁵

⁹ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁰ See *WAIT Radio v. FCC*, 418 F.2d 1153 (1969).

¹¹ *Id.*

¹² Extension and Waiver Request at 1.

¹³ See *FCI 900/Neoworld Order*, 16 FCC Red at 11074-76, ¶¶ 4-5.

¹⁴ 47 C.F.R. §§ 1.946(c), 1.955(a)(2), and 90.665(d).

¹⁵ See 47 C.F.R. § 1.2110(g)(3)(ii).

IV. ORDERING CLAUSE

8. ACCORDINGLY, IT IS ORDERED, that the application filed by William G. McCart seeking an extension of time to construct a Specialized Mobile Radio station, and the associated request for waiver of the automatic license cancellation of Call Sign KNNY348, ARE DENIED and that William G. McCart IS NOTIFIED that the license for Call Sign KNNY348 automatically terminated, pursuant to sections 1.946(c), 1.955(a)(2), and 90.665(d) of the Commission's rules, on December 31, 2002.¹⁶ This action is taken pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 0.331, 1.925, 1.946, 1.955 and 90.665 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, 1.946, 1.955 and 90.665.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁶ 47 C.F.R. §§ 1.946(c), 1.955(a)(2), and 90.665(d).