

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

In the matter of
220 MHz, Inc., LASMR, and C. Dino Sakkis
Licensees of WPCV804, WPCB301, and
WPCR818 Request for Extension of Time and
Waiver of 47 C.F.R § 90.157
File No. 0001181073

Order

Adopted: December 22, 2003

Released: December 23, 2003

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION AND BACKGROUND

1. On December 31, 2002, 220 MHz, Inc., LASMR, and C. Dino Sakkis (Licensees) of stations WPCV804, WPCB301, and WPCR818, respectively, filed a request for expedited action for a time extension and limited waiver of 47 C.F.R. § 90.157 of the Commission’s Rules to provide a two year extension of the period of discontinuance for these licenses until February 1, 2005.1 In the request for waiver, Licensees notified the Commission that these 220 MHz stations discontinued service as of February 1, 2002.2 Section 90.157, states that a “station license shall cancel automatically upon permanent discontinuance of operations,” and that “any station which has not operated for one year or more is considered to have been permanently discontinued.”3 As discussed below we deny Licensees’ request for a waiver and extension of time.4 Accordingly, we confirm that the station licenses, WPCV804, WPCB301, and WPCR818 cancelled pursuant to section 90.157.5

2. Licensees state that they obtained the non-nationwide Phase 1 site specific licenses for 220 MHz service in areas of Southern California in 1993 and began service in 1995, using equipment acquired from Securicor Wireless, Inc. (Securicor).6 Licensees state that the manager of the 220 MHz

1 Letter from Thomas Gutierrez to Marlene H. Dortch, Secretary, FCC, dated December 31, 2002 (December 2002 Waiver Request). WPCR818 was originally granted to Isabel C. Crocker, but is now held by LASMR. Letter from Thomas Gutierrez to Marlene H. Dortch, Secretary, FCC, dated January 31, 2003 (January 2003 Letter) at 1.

2 December 2002 Waiver Request at 2.

3 47 C.F.R. § 90.157.

4 The Licensees also request a waiver of the ULS electronic filing requirement, pursuant to section 1.913(b) of the Commission's rules for the manual filing of the time extension and waiver request. January 2003 Letter at 3. We grant the parties' request for waiver of the ULS filing requirement to file manually the request for time extension and waiver. 47 C.F.R. § 1.913(b).

5 47 C.F.R. § 90.157.

6 December 2002 Waiver Request at 1.

system discontinued operations based on instructions from the site owner. According to the Licensees, they owe the site owner back payments and will be unable to resume operations at the existing site. Licensees will not be working with the same manager at another site.<sup>7</sup> Licensees claim it would be burdensome for them to be required to continue to operate an unprofitable system “just to satisfy Commission requirements.”<sup>8</sup>

3. Licensees state that over time, the 220 MHz station equipment purchased to operate the system needed to be upgraded, but they were unable to obtain new equipment from Securicor, SEA or R.F. Johnson.<sup>9</sup> Licensees assert that they require an extension of the one-year discontinuance period to enable them to obtain from Motorola equipment that would not be available until late 2003.<sup>10</sup> Licensees state that the Motorola equipment is 12.5 KHz equipment that must be paired with other five KHz channels. Thus, Licensees claim they expect difficulty relocating channels and negotiating with owners whose sites are necessary to operate the equipment.<sup>11</sup> Licensees indicate in a January 31, 2003 filing that, if necessary, they would “would work diligently to have the equipment in place by February 1, 2004,” thereby reducing the extension request to one year.<sup>12</sup>

## II. DISCUSSION

4. We deny Licensees’ request because we do not find that the Licensees have met the Commission’s waiver standard. Pursuant to the Commission’s rules for processing of waivers, section 1.925 provides that waivers may be granted based on a showing that the purpose of the rules would not be served, would be frustrated, or that the grant would be in the public interest.<sup>13</sup> Alternatively, an applicant’s request for waiver may also be granted if in view of the unique or unusual factual circumstances of the instant case, application of the rules would be inequitable, unduly burdensome or contrary to the public interest or the applicant has no reasonable alternative.<sup>14</sup> Additionally, section 1.3 of the Commission’s rules provides authority for a rule waiver upon a showing of good cause.<sup>15</sup>

5. Licensees do not explain how their inability to continue operations at their prior site, operate a profitable system, and effectively upgrade their 220 MHz system meets the Commission’s waiver standard.<sup>16</sup> First, the Licensees’ business decisions and dealings led to the loss of their site and the

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<sup>7</sup> January 2003 Letter at 2.

<sup>8</sup> December 2002 Waiver Request at 3.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> January 2003 Letter at 2.

<sup>11</sup> December 2002 Waiver Request at 2.

<sup>12</sup> January 2003 Letter at 2. Since filing the waiver request, the license for WPCV804 expired on August 11, 2003 and was cancelled on September 28, 2003. WPCB301 was granted a renewal on January 29, 2003. A modification application (ULS File # 0001181073) for WPCB301 was filed on January 31, 2003 and amended on May 20, 2003. This application is pending and contains the request for waiver. WPCR818 was granted a renewal on June 6, 2003. The renewal application (ULS file # 0001330032) filed on May 30, 2003 did not indicate that this rule waiver is outstanding.

<sup>13</sup> See 47 C.F.R. § 1.925(a)(3).

<sup>14</sup> *Id.*

<sup>15</sup> See 47 C.F.R. § 1.3.

<sup>16</sup> As support for their request, Licensees cite to orders they claim show circumstances where the Commission granted waivers because licensees could not provide service “due to factors beyond their control.” December 2002 Waiver Request at 3. They cite to three orders providing time extensions and waivers of construction requirements and one order granting a time extension and waiver of section 90.157. The orders granting extensions of time for construction requirements present different facts and different rule sections. The waiver of section 90.157 cited by

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need to obtain an alternate site. Second, the Licensees fail to explain how their site difficulties, combined with the Commission's permanent discontinuance rule, would result in operation of an unprofitable system. Third, Licensees fail to effectively explain how upgrading their system relates to the need for additional system down time beyond what it provided for in the rules (i.e., one year). All licensees face the challenges of maintaining, repairing, and upgrading their systems over time. Likewise, manufacturers are constantly discontinuing old product lines while developing new product lines. These factors are a reality of doing business in the communications industry and should not have been unforeseen by the Licensees.

6. Licensees notified the Commission that service terminated in February 1, 2002, and as of January 31, 2003, Licensees clarified that the 220 MHz system had still not resumed operations and would not be able to resume service until, possibly, February 1, 2004, or as late as February 1, 2005.<sup>17</sup> Therefore, absent a waiver of Section 90.157, the licenses have automatically cancelled due to permanent discontinuance. As described above, the Licensees have not shown that they meet the waiver standard in this case. Accordingly, we deny Licensees' request and find that stations WPCV804, WPCB301, and WPCR818 have cancelled automatically pursuant to Section 90.157.<sup>18</sup>

### III. CONCLUSION AND ORDERING CLAUSES

7. We conclude it is not in the public interest to grant a time extension and waiver of 47 C.F.R. § 90.157 to 220 MHz, Inc., LASMR, and C. Dino Sakkis for discontinuance of service for stations WPCV804, WPCB301, and WPCR818, respectively.

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303 (r), 405 and Sections 1.925 and 90.157 of the Commission's Rules, 47 U.S.C. §§ 1.925 and 90.157, the Petition for Waiver and Extension of Time filed by 220 MHz, Inc., LASMR and C. Dino Sakkis IS DENIED.

9. IT IS FURTHER ORDERED that the Mobility Division SHALL DISMISS ULS File No. 0001181073.

10. This action is 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.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

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Licensees was granted to the Port Authority of New York and New Jersey for certain stations destroyed in the World Trade Center attack of September 11, 2001 and presents facts of an extraordinary nature, not similar to this case. See Port Authority of New York and New Jersey, Order, 17 FCC Rcd 16784 (WTB PSPWD 2002).

<sup>17</sup> January 2003 Letter.

<sup>18</sup> 47 C.F.R. § 90.157.