

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

In the Matter of)	
)	
INTERSTATE POWER AND LIGHT CO.)	FCC File No. 0001104499, 0001104500
)	0001104501, 0001104502, 0001104503,
Requests for Extension of Time to Construct)	0001104504, 0001104505
Private Land Mobile Radio Stations WPBI312,)	
WPBI313, WPBI314, WPBI315, WPBI316,)	
WPBI317, and WPBI318, and Waiver of Sections)	
1.946 and 90.629 of the Commission's Rules)	

ORDER

Adopted: May 29, 2003

Released: May 30, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order*, we address the above-captioned applications and requests for waiver (*Waiver Requests*)¹ of Interstate Power and Light Company (Interstate) to extend the time to construct 800 MHz Industrial/Land Transportation (I/LT) Stations WPBI312, WPBI313, WPBI314, WPBI315, WPBI316, WPBI317, and WPBI318, Cedar Rapids, Iowa.² In this connection, Interstate seeks waiver of Sections 1.946(e) and 90.629 of the Commission's Rules.³ For the reasons set forth below, we grant the *Waiver Requests*.

2. *Background.* Interstate is a wholly-owned subsidiary of Alliant Energy (Alliant), a

¹ The waiver requests were submitted as attachments to the subject applications. *See* Request for Waiver of Section 1.946(e) to Permit the Late Filing of an Extension Request Related to Licenses Issued under Call Signs WPBI312, WPBI313, WPBI314, WPBI315, WPBI316, WPBI317, WPBI318, AND WPBI319 (Late Filing Request) and Request for Waiver of Section 90.629 to Permit the Correction or Extension of Construction Schedule Established for Licenses Issued Under Call Signs WPBI312, WPBI313, WPBI314, WPBI315, WPBI316, WPBI317, WPBI318, and WPBI319 (Construction Extension Request), FCC File Nos. 0001104499-0001104505, Attachments C and A, respectively (filed Nov. 27, 2002). Although Interstate's requests and justifications include Station WPBI319, the information currently before us indicates that an extension for Station WPBI319 is unnecessary because the facility has been fully constructed and is operational.

² Interstate submitted justifications for the requested action. *See* Justification to Support the Request for Waiver of Section 1.946(e) of the Commission's Rules to Permit the Late Filing of an Extension Request Related to Licenses Issued Under Call Signs WPBI312, WPBI313, WPBI314, WPBI315, WPBI316, WPBI317, WPBI318, and WPBI319 (Justification for Late Filing) and Justification to Support the Request for Waiver of Section 90.629 of the Commission's Rules and Regulations for a Correction or Extension of Existing Construction Schedule Established for Licenses Issued Under Call Signs WPBI312, WPBI313, WPBI314, WPBI315, WPBI316, WPBI317, WPBI318, and WPBI319 (Justification for Extension), FCC File Nos. 0001104499-0001104505, Attachments D and B, respectively (filed Nov. 27, 2002). Interstate also submitted two supplemental pleadings in this proceeding. *See* Interstate Power and Light Company Supplement to Requests for Expedited Waiver of Sections 1.946 and 90.629 of the Commission's Rules (Supplement) and License, Site and Frequency List with Revised Slow-Growth Construction Schedule (Exhibit A), FCC File Nos. 0001104499-0001104505, Waiver Supplement and Waiver Supplement Exhibit A, respectively (filed Apr. 11, and 15, 2003, respectively).

³ 47 C.F.R. §§ 1.946(e), 90.629.

provider of electric, gas, and steam services in Iowa, Minnesota, Illinois and Wisconsin.⁴ Interstate operates a private network comprised of over ninety base station sites operating on 800 MHz General Category⁵ channels and located throughout its three-state (Iowa, Minnesota and Illinois) service area. Interstate submits that its network supports and coordinates internal business activities, including the inspection, maintenance, and repair of its utility equipment and facilities.⁶ In 1999, Alliant (the parent company) sought to improve its network and committed funds to migrate to Motorola's new iDEN technology.⁷ Interstate asserts that this new system will permit future interoperability and overall frequency efficiency, as well as enhance the effectiveness of its critical response system.⁸ Interstate offers that the new system incorporates state-of-the-art technology for utilizing spectrum that will enable up to 6:1 channel per frequency use.⁹ In the short term, the system will provide voice dispatch and packet data capabilities for mobile work order dispatching and electric/gas distribution system monitoring and control.¹⁰ In the long term, the system will enable the licensee to add mobile telephony and short messaging services.¹¹

3. Interstate submits that its existing network provides a number of public safety benefits that would be enhanced by the improvement of the system, thereby enabling the company to deliver critical services more effectively.¹² It states that gas personnel require reliable communications to maintain "hit" response times and provide daily leak monitoring checks as required by state regulatory bodies.¹³ Interstate requires immediate, reliable and ubiquitous communications capabilities in order to respond effectively to large-scale emergencies, such as widespread outages caused by extreme weather conditions.¹⁴ Interstate asserts that it serves as a key player in the disaster recovery and hazard mitigation plans of the communities it serves.¹⁵ It also supports backup communications for public safety entities in some of its service areas, such as Cedar Rapids, Iowa.¹⁶

4. The portion of the system at issue in this proceeding involves the facilities licensed to

⁴ Justification for Extension at 2; Justification for Late Filing at 1.

⁵ The General Category is comprised of one hundred and fifty contiguous 25 MHz channels in the 800 MHz Band. See 47 C.F.R. § 90.615.

⁶ Justification for Extension at 2.

⁷ Justification for Late Filing at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ Justification for Extension at 2.

¹¹ *Id.*

¹² *Id.*

¹³ Justification for Late Filing at 2.

¹⁴ *Id.*

¹⁵ Justification for Extension at 3; Justification for Late Filing at 3.

¹⁶ Justification for Extension at 3; Justification for Late Filing at 3.

Interstate under Call Signs WPBI312, WPBI313, WPBI314, WPBI315, WPBI316, WPBI317, and WPBI318 (WPBI stations). The WPBI stations are authorized to operate thirty-six sites covering approximately 20,000 square miles.¹⁷ At issue in the instant proceeding are the facilities at twenty-five of these sites.¹⁸ The licenses for these stations were first granted on January 8, 1993. The sites and channels associated with these facilities at that time were fully constructed and placed in operation. To address capacity problems, in 1997 Interstate applied for the channels now at issue. At that time, Interstate requested a five-year extended implementation authority for construction of the expanded system.¹⁹ The extended implementation request included a proposed implementation schedule based on an anticipated grant date in 1997.²⁰ Interstate suggested annual milestones beginning in 1998, and ending on June 30, 2002²¹ - - a five-year period as provided for under Section 90.629 of the Commission's Rules.²² The actual date of grant, however, was March 23, 1999.²³ Interstate submits that although the first date in its schedule had already occurred, the Commission approved the specific implementation schedule as suggested by Interstate without adjusting the dates to reflect its request for a five-year period within which to construct, effectively establishing a three-year construction period.²⁴ Interstate asserts that it did realize, at the time of grant, that the schedule indicated on the Commission's database, but not on its licenses, did not reflect a full five-year construction period.²⁵

5. On May 15, 2002, Interstate filed a request to extend the implementation schedule to enable its migration to the iDEN technology.²⁶ Interstate submits that the Universal Licensing System (ULS) hotline personnel informed it that extension requests filed prior to the construction deadline did not require a fee, so no fee was submitted.²⁷ However, Interstate filed the request as a license modification application ("MD"), for which a filing fee is required, rather than as a request for extension of time ("EX"). Consequently, the request was dismissed on June 5, 2002, for failure to pay the required fee.²⁸ Interstate submits that, upon inquiry, it was told by Commission personnel to use the code "EX" rather

¹⁷ Justification for Extension at 4; Justification for Late Filing at 3.

¹⁸ Supplement at 1.

¹⁹ Justification for Extension at Exhibit A.

²⁰ *Id.* at 4.

²¹ Justification for Late Filing at 4.

²² 47 C.F.R. § 90.629.

²³ Justification for Late Filing at 4.

²⁴ *Id.*

²⁵ Justification for Extension at 4.

²⁶ FCC File No. 000894879 (filed May 15, 2002).

²⁷ Justification for Extension at 5; Justification for Late Filing at 4-5. Subsequently, the Commission clarified that a request for an extension of time is a request for waiver of the Rules and is subject to a waiver fee in radio services where waiver fees are applicable. *See* Wireless Telecommunications Bureau Confirms Waiver Fees for Filing a Request for Extension of Time to Meet Coverage/Construction Requirements in Certain Radio Services, *Public Notice*, DA 02-2259 (WTB rel. Sept. 16, 2002).

²⁸ *See* Dismissal Notice, FCC Ref. No. 1448729.

than “MD” in order to avoid the filing fee.²⁹

6. On June 13, 2002, Interstate then filed a second extension request,³⁰ which was dismissed on July 6, 2002 because it contained errors or incomplete information.³¹ Interstate submits that the error resulted from a misunderstanding regarding the ULS online filing interface.³²

7. On July 18, 2002, Interstate filed a third extension request,³³ which was dismissed on August 3, 2002, because it contained errors or incomplete information.³⁴ Interstate submits that the error resulted from a typographical error on one of its channels.³⁵ At that time, Interstate was informed by Commission personnel that a request for waiver of the filing date would also be needed, and that it could have filed an amendment to its applications in 1999 to reset the proposed construction schedule to reflect the processing delay.³⁶

8. Consequently, Interstate filed the above-captioned requests.³⁷ Specifically, Interstate requests a construction deadline of March 23, 2004, which is effectively for a five-year implementation period dating from the initial grant of March 23, 1999.³⁸ Interstate also seeks to further update and enhance its system (migration to iDEN technology) to meet additional communications needs and, thus, has filed a third set of applications in 2002, to enable it to do so.³⁹ Interstate’s efforts, as a whole, are intended to upgrade a significantly aging and unreliable system.⁴⁰

9. *Discussion.* Section 1.946(e) of the Rules provides that licensees may request to extend a construction period by filing FCC Form 601.⁴¹ The request must be filed before the expiration of the construction period. Therefore, a request for extension filed after expiration of the construction time must be accompanied by a request for waiver of this rule. Also pertinent to the instant case is Section 90.629

²⁹ Justification for Extension at 5; Justification for Late Filing at 5.

³⁰ FCC File No. 0000951759 (filed June 13, 2002).

³¹ See Dismissal Notice, FCC Ref. No. 1494410.

³² Interstate asserts that it improperly completed Items 3(d) and 3(e) of the section of Schedule L requesting that the “Lower” or “Higher” side of the frequencies be listed because of a lack of clarity in the instructions. Justification for Extension at 5; Justification for Late Filing at 5.

³³ FCC File No. 0000984452 (filed July 18, 2002).

³⁴ See Dismissal Notice, FCC Ref. No. 1523133.

³⁵ Justification for Extension at 5; Justification for Late Filing at 5.

³⁶ Justification for Extension at 5; Justification for Late Filing at 5.

³⁷ Justification for Extension at 5; Justification for Late Filing at 5.

³⁸ Justification for Extension at 6; Justification for Late Filing at 5.

³⁹ Justification for Extension at 6, Exhibit B. Interstate requests expedited grant of these applications. See Justification for Extension at 9; Supplement at 8. We take no action on this matter at this time.

⁴⁰ Supplement at 1.

⁴¹ 47 C.F.R. § 1.946(e).

of the Rules, which provides that a license applicant may be authorized for a period of up to five years for constructing and placing a system in operation if it meets the established criteria. The applicant must demonstrate that the extended implementation period is warranted under the circumstances by, among other things, describing the proposed system and stating the amount of time necessary to construct and place the system in operation. The applicant must also show that the proposed system will require longer than twelve months to construct and place in operation because of its purpose, size or complexity;⁴² or the proposed system is to be part of a coordinated or integrated wide-area system which will require more than twelve months to, among other things, plan and place in operation;⁴³ or the applicant is required by law to follow a multi-year cycle for planning.⁴⁴

10. We may grant a request for rule waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁴⁵

11. Under the circumstances presented, we conclude that grant of the *Waiver Requests* to permit the late filing of the extension requests and the grant of the requests to extend the construction periods is warranted. In regard to the late filing, we find it decisionally significant that Interstate repeatedly tried to file within the prescribed time, recognizing the importance of doing so.⁴⁶ It timely filed two previous extension requests which were dismissed solely due to technical defects arising from confusion over the use of ULS. Although Interstate is nevertheless required to file properly, we do note its sincere attempts to do so, particularly that Interstate sought assistance from Commission personnel in its efforts.

12. In regard to extending the construction periods, Interstate seeks essentially what Section 90.629 provides, a five-year period of time to construct a system such as the one envisioned by Interstate. As it submits, Interstate is not seeking any greater relief than is already routinely granted under the Commission's Rules.⁴⁷ In fact, Interstate meets not only one, but two criteria warranting a five-year period of time to construct, *i.e.*, its system is large and complex, and it is an integrated wide-area system. Thus, the import of the construction period rule is not diluted by grant in this instance. Actually, we find that grant of Interstate's request for waiver of Section 90.629 of the Commission's Rules will serve the underlying purpose of the rule which is to provide an adequate amount of time (up to five years) within which to construct a large, complex communications system.

13. Interstate has demonstrated good faith in its attempts to file its requests for construction

⁴² 47 C.F.R. § 90.629(a)(1).

⁴³ 47 C.F.R. § 90.629(a)(2).

⁴⁴ 47 C.F.R. § 90.629(a)(3).

⁴⁵ 47 C.F.R. § 1.925(b)(3).

⁴⁶ *Cf.* Licenses of National Science and Technology Network, Inc., *Order on Further Reconsideration*, 17 FCC Rcd 11133, 11137 ¶ 8 (WTB PSPWD 2002); Application of David J. Teat, *Order*, 15 FCC Rcd 689, 690 ¶ 5 (WTB CWD 2000) (*Teat*).

⁴⁷ Justification for Extension at 7.

period extensions on a timely basis, and in its efforts to construct its system in a timely manner.⁴⁸ In this connection, we note that it has completed the construction of both the facilities for Station WPBI319 (one of the stations that make up the system) and commenced use of the mobile units associated with Station WPBI312,⁴⁹ as well as, having signed contracts with Motorola related to the build out of the remaining portion of its system.⁵⁰ Interstate represents that radio equipment valued at approximately nine million dollars will be installed immediately upon Commission approval of the *Waiver Requests*.⁵¹ Also, Interstate has developed new administrative procedures to ensure compliance with the Commission's pertinent construction rules going forward.⁵²

14. Granting the *Waiver Requests* will serve the public interest as Interstate's system supports activities that help protect the safety of life and property in a rural, three-state region. As an example, Interstate played a critical role in assisting the public in 2000, when a large glass explosion destroyed the side of one city block and caused heavy damage to the main street district in Hubbard, Iowa.⁵³ Also, in 2001, when a tornado hit the town of Glenville, Minnesota, Interstate's communications network proved invaluable.⁵⁴ We find these operations, and others conducted by Interstate, to be of crucial importance and in furtherance of both public safety and the public interest.⁵⁵ We agree with Interstate that its communications system is an important adjunct to the public safety components of its operations and functions.⁵⁶

15. Interstate plans on using the requested extension of time for, among other things, redesigning certain aspects of its system to maintain future interoperability,⁵⁷ enhance channel utilization, and improve system performance and overall frequency efficiency.⁵⁸ This is consistent with our public interest goals of promoting efficient utilization of the spectrum. Interstate also submits that its upgraded system will aid it to meet the levels of reliability and coverage that its utilities require to support homeland security.⁵⁹

⁴⁸ *Teat*, 15 FCC Rcd at 690 ¶ 5.

⁴⁹ Supplement at n.9.

⁵⁰ *Id.* at 2. These contracts concern the migration of Interstate to use of the iDEN technology.

⁵¹ *Id.*

⁵² *Id.* at 7. See Monroe County, *Order on Reconsideration*, 16 FCC Rcd 16447, 16449 ¶ 6 (WTB PSPWD 2001).

⁵³ Justification for Extension at 3.

⁵⁴ *Id.*

⁵⁵ For additional examples, see Supplement at 3.

⁵⁶ Justification for Extension at 3.

⁵⁷ An upgrade of Interstate's system will enable it to share a compatible platform with its sister subsidiary, Wisconsin Power and Light Company. See Supplement at 2, 7.

⁵⁸ Justification for Extension at 6; Justification for Late Filing at 6.

⁵⁹ Supplement at 1, 5. Interstate asserts that commercial wireless providers cannot offer complete coverage in many of the rural areas it serves and, thus, commercial service is not a reasonable alternative is credible. Justification for Extension at 3. It submits that commercial networks often become overloaded in emergency (continued...)

16. We conclude that Interstate has demonstrated sufficiently that grant of its request for extended implementation pursuant Section 90.629 of the Commission's Rules is warranted.⁶⁰ First, it is constructing a wide-area technologically advanced system.⁶¹ Second, Interstate has specified a precise amount of time to implement its system.⁶² Third, Interstate has provided a list of its systems.⁶³ Finally, it has proposed a construction schedule.⁶⁴

17. We conclude that granting the requested waivers under the circumstances presented herein is consistent with precedent. Interstate's prior efforts to file an extension request - - though defective - - had been made in good faith.⁶⁵ There is a clear distinction between a licensee that unsuccessfully attempts to timely file and one who submits nothing until the time expires.⁶⁶ Grant of the requests for extension of time also is consistent with prior case law. This matter is similar to the East River Electric Power Cooperative (*East River*) case.⁶⁷ In *East River*, a rural electric cooperative utility was provided additional time to implement a large expansion and upgrade of the 800 MHz portion of its mobile system in South Dakota and Minnesota.⁶⁸ Likewise, Interstate is changing its system to a state-of-the-art network using iDEN technology. Its plans envision the use of digital equipment in lieu of an analog system.⁶⁹ Interstate has a history without complaints and serves the residents throughout a three-state area. Interstate has demonstrated that denial of these waiver requests would potentially result in a significant disruption of service to a wide-area network, and, thus, grant of its requests is in the public interest.⁷⁰

18. *Conclusion.* For the reasons stated herein, we find that Interstate has met the burden for grant of waivers of Sections 1.946(e) and 90.629 of the Commission's Rules. This *Order* grants Interstate's *Waiver Requests* and permits the processing of the subject applications permitting extension of the time for construction. In addition, we extend the construction for the WPBI stations to March 23,

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situations precisely when Interstate most urgently needs a reliable communications system thus necessitating noncommercial facilities. Supplement at 3. See Commonwealth of Pennsylvania and GPU Energy, 14 FCC Rcd 14029, 14035 ¶ 12 (WTB PSPWD 1999).

⁶⁰ See In the Matter of Part 90 of the Commission's Rules Governing Extended Implementation Periods, PR Docket No. 92-210, *Report and Order*, 8 FCC Rcd 3975 (1993).

⁶¹ Justification for Extension at 2.

⁶² *Id.* at 5.

⁶³ *Id.* at Exhibit B

⁶⁴ Supplement at Exhibit A.

⁶⁵ City of Dardanelle Fire Department, *Order*, 17 FCC Rcd 10901, 10902 ¶ 4 (WTB PSPWD 2002).

⁶⁶ See, e.g., City of Henderson, Nevada, *Order*, 14 FCC Rcd 16156, 16158 ¶ 4 (WTB PSPWD 1999).

⁶⁷ East River Electric Power Cooperative, *Order*, 13 FCC Rcd 5871 (WTB 1999).

⁶⁸ *Id.* at 5881-82 ¶ 17.

⁶⁹ Supplement at 1-2.

⁷⁰ Industrial Communications & Electronics, Inc., *Order on Reconsideration*, 13 FCC Rcd 8417, 8422-23 ¶ 14 (WTB CWD 1998).

2004. This action serves the public interest in that it will enhance the effectiveness of Interstate's critical response system. Granting the requested waivers will enable the use of state-of-the-art technology for utilizing spectrum, thus, serving the Commission's goal of spectrum efficiency.

19. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.925, 1.946(e), and 90.629 of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.946(e), 90.629 of the Commission's Rules, the Requests for Waiver filed by Interstate Power and Light Company on November 27, 2002, ARE GRANTED, and applications FCC File Nos. 0001104499-0001104505 SHALL BE REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch, for processing consistent with this *Order*.

20. 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

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau