

REQUEST FOR WAIVER OF SECTION 1.948

The shareholders of AWAC Aviation, Inc. (“AWAC Aviation) and Harbor Diversified, Inc. (“Harbor” or “Transferee”) (collectively the “Applicants”), pursuant to Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925, hereby respectfully request a waiver of Section 1.948(c) of the Commission’s rules, 47 C.F.R. § 1.948, to allow the processing and grant *nunc pro tunc* of the Applicants’ FCC Form 603 applications for the transfer of control of the wireless aircraft (AC) and business radio (IG) licenses of Air Wisconsin Airlines Corporation (“Air Wisconsin”) referenced in the underlying application. As detailed below, the Applicants cannot provide the certification required under Section 1.948(c) because the transfer in question has been consummated. A waiver of this rule section, however, would serve the public interest by, among other things, allowing Air Wisconsin to continue to utilize the frequencies, which are used in the operation of a regional airline company that is regulated by the Department of Transportation as well as the Commission, and to obtain consent *nunc pro tunc* for the transfer.

Air Wisconsin, a privately held, regional airline, uses its wireless licenses for internal communications systems in support of its activities. On January 31, 2012, a reorganization of parent entities of Air Wisconsin was consummated pursuant to which the stock held by the seven shareholders of AWAC Aviation, the immediate parent company of Air Wisconsin, was transferred to a new intermediate subsidiary, Amun LLC. Amun LLC then sold 80% of the stock of AWAC Aviation to Harbor in exchange for shares of Harbor common stock and other consideration, with the result that Amun became the single largest shareholder in Harbor, with approximately 36% of the total issued and outstanding stock of Harbor. AWAC Aviation at all times continued to own 100% of the stock of Air Wisconsin, the entity that has been granted the wireless licenses.

The transaction occurred at corporate levels above the licensee, Air Wisconsin. The parties did not realize until too late that completion of the transaction and the insertion of a new parent corporation could effectuate a transfer of control of the private wireless licenses that Air Wisconsin held for internal use so as to require the prior consent of the Commission pursuant to Section 1.948(a). As a result, no application was filed with the Commission pursuant to Section 1.948(c).

Because Amun LLC is owned and controlled by the former shareholders of AWAC Aviation and is the largest single shareholder of Harbor (AWAC Aviation’s new immediate parent corporation) and controls additional stock in AWAC Aviation directly, this change at levels above Air Wisconsin was not anticipated to result in any change in the day-to-day operation and control of the licensee, Air Wisconsin. Nevertheless, subsequent review of the transaction indicates that the parties should have filed an application and obtained prior consent of the FCC before consummating the reorganization and establishing the new ultimate parent corporation of Air Wisconsin. The parties have filed the instant application to correct the error. The Applicants submit

that this corrective action demonstrates the Applicants' good faith effort to comply with the Commission's rules.

The standard for waiver of the Commission's wireless rules is governed by Section 1.925(b)(3) of the Commission's rules, which provides as follows:

(3) The Commission may grant a request for waiver if it is shown that:

(i) The 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; or

(ii) In 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 alternative.

See 47 C.F.R. § 1.925(b)(3).

The Applicants satisfy alternative (ii) of the required waiver showing. The untimely filing of the application was due solely to oversight as to the effect of the upper-level reorganization on the need for prior approval for the resulting change in control of Air Wisconsin. There was no intent to flout any Commission rules. Under these circumstances, a refusal to permit the processing and grant of a transfer application would be inequitable, unduly burdensome, and contrary to the public interest because the transaction has already taken place and refusal to grant the waiver could interfere with the continued safe operation of a federally regulated airline. It would be extraordinarily burdensome and impractical to require an unwinding of the transaction and to begin all over again after applying to and receiving consent from the Commission. It therefore would be less burdensome for the Commission and all parties if the Commission were to waive Section 1.948 of its rules and grant its consent to the transfer of control *nunc pro tunc*. Furthermore, given the absence of any intention of the Applicants to flout the Commission's rules and the parties' effort now to seek the Commission's consent, no public purpose would be served by denying consent to the transaction. Rather, the public interest would be best served by permitting Air Wisconsin to continue to use its above-listed Commission licenses in the conduct to its business.

Applicants take their respective responsibilities to comply with the Commission's rules, including the rules regarding assignments and transfers of control, very seriously. Once the Applicants became aware that they were required to have filed a transfer of control application, they took steps to prepare and file the instant application. Applicants regret that they did not file this application and receive Commission consent in advance of closing as required by the rule. Air Wisconsin has otherwise operated the wireless licenses in compliance with the Commission's rules and procedures.

In these circumstances, Applicants submit that it would serve the public interest for the Commission to process the Applicant's transfer of control applications notwithstanding the prior consummation. Accordingly, Applicants respectfully request waiver of Section 1.948(c) of the Commission's rules to permit the processing and grant of this application for transfer of control after the transaction has taken place and request Commission consent to the transaction *nunc pro tunc*.