

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

In the Matter of Applications of)
)
GEC PARTNERS, LLP)
) File Nos. 0000346725, 0000346727
For Renewal of Licenses of Stations WPNG290,)
Colorado Springs, Colorado, and WPNG380,)
Cleveland, Ohio)

MEMORANDUM OPINION AND ORDER

Adopted: October 1, 2001

Released: October 3, 2001

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

I. INTRODUCTION

1. On April 16, 2001, TRW Inc. (TRW) filed a petition to deny the above-captioned renewal applications filed on January 29, 2001 by GEC Partners LLP (GEC) for Stations WPNG290 and WPNG380 in the 39 GHz band service (39 GHz band).¹ For the reasons set forth below, we dismiss TRW’s petition to deny, consider the pleading as an informal objection, deny TRW’s informal objection, and grant GEC’s renewal applications.

II. BACKGROUND

2. In 1996, as part of its consolidation of the rules governing common carrier and private operational fixed microwave services, including the 39 GHz bands, the Commission established Part 101 of the Commission’s Rules and adopted a ten-year license term for all microwave services.² Prior to the *Part 101 R&O*, common carrier 39 GHz licensees were subject to a fixed term ending on February 1, 2001, while private carrier 39 GHz licensees had five-year license terms.³

3. In 1997, as part of the *39 GHz R&O*, the Commission adopted a renewal expectancy for licenses in the 39 GHz band,⁴ and changed the buildout requirements for the 39 GHz band licenses. Prior to the *39 GHz R&O*, 39 GHz licensees were subject to a buildout requirement of constructing at least one

¹ Petition to Deny filed by TRW Inc. on Apr. 16, 2001 (Petition to Deny).

² Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, *Report and Order*, 11 FCC Rcd 13449 (1996) (*Part 101 R&O*).

³ Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd 18600, 18620-18621 ¶ 36 (1997) (*39 GHz R&O*).

⁴ *Id.*, 12 FCC Rcd at 18626 ¶ 49.

link in their respective geographic service areas within eighteen months of the date of license grant.⁵ As a result of the Commission's decisions in the *39 GHz R&O*, a 39 GHz band licensee is required to demonstrate provision of "substantial service" in its license area in connection with its application for renewal of license.⁶ In establishing this "substantial service" standard, the Commission intended to "ensur[e] that service is being provided to the public,"⁷ but wanted to provide licensees "a significant degree of flexibility in meeting their performance requirement."⁸ In an effort to give licensees this flexibility, the Commission rejected defining specific buildout benchmarks as "unduly restrictive and burdensome."⁹ The Commission did state, however, that one example of a substantial service showing might consist of four links per million population within a service area.¹⁰ The Commission specifically declined to exempt the incumbent 39 GHz band licensees from this new "substantial service" renewal standard.¹¹

4. On January 29, 2001, GEC filed renewal applications for its 39 GHz band Stations WPNE290, located in the area of Colorado Springs, Colorado and WPNG380, located in the area of Cleveland, Ohio.¹² In accordance with Section 101.17 of the Commission's Rules, GEC attached its substantial service showing to the subject renewal applications.¹³ GEC's applications were accepted for filing on February 7, 2001.¹⁴ Pursuant to Section 1.939 of the Commission's Rules,¹⁵ the deadline for filing petitions to deny against GEC's applications was March 9, 2001. On April 16, 2001, TRW filed its Petition to Deny against the subject applications.¹⁶ On May 8, 2001, GEC filed an Opposition to the Petition to Deny.¹⁷ On May 18, 2001, TRW filed its Reply to the Opposition.¹⁸

⁵ See 47 C.F.R. § 101.63 (1996).

⁶ See 47 C.F.R. § 101.17.

⁷ *39 GHz R&O*, 12 FCC Rcd at 18624 ¶ 46.

⁸ *Id.* at 18623 ¶ 42.

⁹ *Id.* at 18623-18624 ¶ 43.

¹⁰ *Id.* at 18624-18625 ¶ 46.

¹¹ *Id.* at 18624 ¶ 46.

¹² See FCC File Nos. 0000346725 and 0000346727, filed January 29, 2001.

¹³ See 47 C.F.R. § 101.17.

¹⁴ See Public Notice No. 769 (rel. Feb. 7, 2001).

¹⁵ 47 C.F.R. § 1.939.

¹⁶ See Petition to Deny.

¹⁷ See GEC Partners, LLP Opposition to Petition to Deny, filed May 8, 2001 (Opposition). GEC filed motions for extension of time to file an opposition on April 30, 2001, and May 4, 2001. After reviewing the motions, we find that GEC had good cause for the requested extensions and we grant the motions pursuant to 47 C.F.R. § 1.46.

¹⁸ See TRW, Inc., Reply to Opposition, filed May 18, 2001 (Reply).

III. DISCUSSION

5. TRW asks the Commission to accept its petition to deny on the merits, notwithstanding the fact that TRW filed its petition after the March 9, 2001 deadline.¹⁹ TRW argues that it could not have filed its petition prior to March 9, 2001 because, until TRW's application was granted, it lacked standing to file a petition to deny.²⁰ TRW argues that continued pendency of its 39 GHz band application during the period for filing a petition to deny against GEC's application should not prevent TRW from raising "important public interest objections"²¹ On the merits, TRW argues that GEC does not disclose the number of customers it serves.²² TRW further argues that GEC has failed to provide a clear and expeditious accounting of spectrum as required by the Commission because its showings focus on potential system capacity.²³ In its Opposition,²⁴ GEC maintains that the Division should dismiss TRW's petition on procedural and substantive grounds. Specifically, GEC argues that the petition to deny is untimely filed, that TRW lacks standing, and that GEC has shown that it meets the substantial service requirement under Section 101.17 of the Commission's Rules.²⁵

6. *Procedural Arguments.* While petitions to deny GEC's renewal applications were due on March 9, 2001, TRW did not file its petition to deny until April 16, 2001. TRW asks the Commission to accept the petition, notwithstanding the fact that it was not timely filed. A request for a rule waiver in the Wireless Telecommunications Services may be granted if it is shown that (a) the underlying purpose of the rule 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 (b) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.²⁶ Ordinarily, applicants cannot establish standing to protest Commission action adverse to their interests.²⁷ TRW acquired standing to file a petition to deny on March 29, 2001, when its license applications for the Pueblo, Colorado and Wheeling, West Virginia Economic Area (EA) licenses were granted. The Commission's Rules state that only a party in interest has standing to protest an application before the Commission.²⁸ In this case, we believe a waiver would be inconsistent with the underlying purposes of the rule, which is to allow for the orderly processing

¹⁹ Petition to Deny at 1 n.1.

²⁰ *Id.* at n.1, 2-3.

²¹ *Id.* at 3, Reply at 3-4.

²² Petition at 4.

²³ *Id.*

²⁴ *See* Opposition.

²⁵ *Id.* at 1, 5, *citing* 47 C.F.R. § 101.17.

²⁶ 47 C.F.R. § 1.925(b)(3).

²⁷ *See* Application of KIRV Radio, *Memorandum Opinion and Order*, 50 FCC 2d 1010 ¶ 2 (1975) ("the claim of potential economic injury by a mere applicant for a broadcast facility is too remote and speculative to show standing as a 'party in interest'"); *see also* Application of Butte County Cellular License Corp., *Memorandum Opinion and Order*, 8 FCC Rcd 7894 (1993).

²⁸ *See* 47 C.F.R. § 1.106(b).

of applications while providing interested parties with the opportunity to challenge the grant of applications filed with the Commission. We believe that it would be unduly disruptive to the normal processing of Commission applications to allow persons to file otherwise untimely petitions to deny based on the timing of a different application filed by the petitioner. We also conclude that a waiver under the second prong of the waiver standard is not warranted here because we do not consider the fact that TRW's application was granted after the deadline for filing petitions to deny to be a unique or unusual circumstance. Given the large number of applications filed with the Commission, it would not be unusual for a party who wishes to file a petition to deny to have its own application pending before the Commission during the time period for filing petitions to deny. Accordingly, we dismiss TRW's petition to deny as untimely filed. We note, however, that the Commission has allowed a party whose application was granted just prior to Commission action on a second application to file a post-grant petition for reconsideration of the second application because there was insufficient time for the party to file a pre-grant opposition.²⁹ Because under this rationale, TRW could arguably file a post-grant petition for reconsideration, we will consider the substance of TRW's pre-grant petition to deny as an informal objection pursuant to Section 1.41 of the Commission's Rules.³⁰

7. *Substantive Arguments.* We are not persuaded by TRW's arguments opposing GEC's renewal applications. In its renewal applications, GEC demonstrated that it had eighteen links for Station WPNG290, in the area of Colorado Springs, Colorado, which contains a population of 716,411,³¹ and thirty links for Station WPNG380 in the area of Cleveland, Ohio, which contains a population of 351,348.³² Given the Commission's suggestion that the existence of four links per million population within a service area would constitute substantial service,³³ we find that GEC has met the safe harbor standard and has demonstrated sufficiently that grant of renewal of its licenses is warranted under the circumstances presented. TRW argues that GEC incorrectly equates equivalent T-1 lines to microwave links, whereas, TRW maintains, "T-1 lines are not necessarily the functional equivalent of links."³⁴ We agree with GEC, however, that it is appropriate to "focus on the extent to which the licensee has built out its system to accommodate provisioning of the new service and is in fact rolling out its business."³⁵ GEC's renewal applications describe the nature of the coverage as a percentage of the total geographic area and total population, and the capability of its network is set forth in terms of equivalent T-1 lines.³⁶ In light of the fact that GEC satisfies the safe harbor test adopted by the Commission, we find it unnecessary to inquire further as to the number of GEC's customers or the number of "equivalent T-1 lines" GEC offers. Accordingly, we will deny TRW's informal objection and grant GEC's renewal applications.

²⁹ See *West Michigan Telecasters, Inc., Memorandum Opinion and Order*, 11 FCC 2d 549, 549-550 ¶ 3 (1968).

³⁰ 47 C.F.R. § 1.41.

³¹ FCC File No. 0000346725.

³² FCC File No. 0000348492.

³³ 39 *GHz R&O*, 12 FCC Rcd at 18624-18625 ¶ 46.

³⁴ Petition to Deny at 3-4, *see also id* at 4 n.6.

³⁵ Opposition at 6.

³⁶ *Id.* at 5.

IV. CONCLUSION

8. We conclude that TRW's petition to deny should be dismissed as untimely. When we consider the substance of TRW's petition as an informal objection, we conclude that GEC has shown in its renewal applications for Stations WPNG290 and WPNG380 that it is providing substantial service in the areas served by those two stations. We therefore deny TRW's informal objection.

V. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, the Petition to Deny filed by TRW, Inc. on April 16, 2001 IS DISMISSED as a petition to deny, and when considered as an informal objection, IS DENIED.

10. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(d), and Section 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, that the applications filed by GEC Partners, LLP for renewal of the licenses for Stations WPNG290, Colorado Springs, Colorado and WPNG380, Cleveland, Ohio (FCC File Nos. 0000346725 and 0000346727) ARE GRANTED.

11. 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