



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON APPLICATIONS FILED BY LICENSEES IN THE LOCAL MULTIPOINT DISTRIBUTION SERVICE (LMDS) SEEKING WAIVERS OF SECTION 101.1011 OF THE COMMISSION'S RULES AND EXTENSIONS OF TIME TO CONSTRUCT AND DEMONSTRATE SUBSTANTIAL SERVICE

Comment Date: January 18, 2008

Reply Date: February 1, 2008

By this *Public Notice*, the Wireless Telecommunications Bureau seeks comment on applications filed by licensees in the Local Multipoint Distribution Service ("LMDS") seeking waivers of Section 101.1011 of the Commission's Rules¹ and extensions of time to build out their licenses and demonstrate substantial service within their licensed areas. On December 19, 2007, the Bureau released a *Public Notice*² seeking comment on applications filed by members of the Rural LMDS Group³ and the LMDS Coalition.⁴ The instant *Public Notice* provides updated file numbers for Qwest Corporation, which is a member of the LMDS Coalition,⁵ clarifies the nature of the relief sought by IDT Spectrum, LLC (IDT

¹ 47 C.F.R. § 101.1011.

² Wireless Telecommunications Bureau Seeks Comment on Applications Filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission's Rules and Extensions of Time to Construct and Demonstrate Substantial Service, *Public Notice*, DA-07-5050 (WTB rel. Dec. 19, 2007) (*December Public Notice*).

³ See Rural LMDS Group, Petition for Waiver of Section 101.1011 of the Commission's Rules and Extension of Construction Deadline (filed May 25, 2007) ("Rural LMDS Group Request"). The members of the Rural LMDS Group are listed in Appendix A. We note that the members of the Rural LMDS Group also individually filed applications electronically in the Universal Licensing System (ULS). See, e.g., Farmers Telephone Cooperative, Inc., File No. 0003064168 (June 8, 2007) ("Farmers Application"). The application file numbers for each licensee are listed in Appendix A. For purposes of the Commission's Rules, the official filings are the applications filed by the individual licensees. See 47 C.F.R. § 1.946(e).

⁴ See LMDS Coalition, Request for Waiver and Limited Extension of Deadline for Establishing Compliance with Section 101.1011(a) LMDS Substantial Service Requirements (filed June 14, 2007) ("LMDS Coalition Request"). The members of the LMDS Coalition are listed in Appendix B. The members of the LMDS Coalition also individually filed applications electronically in ULS. See, e.g., Alltel Communications, Inc., File No. 0003071271 (June 14, 2007) ("Alltel Application"). The application file numbers for each licensee are listed in Appendix B.

⁵ In the *December Public Notice*, Appendix B incorrectly listed the file numbers associated with the extension applications for Stations WPLM325, WPLM326, WPLM327, WPLM328, WPLM329, WPLM330, WPLM331, WPLM332. Appendix B to the instant *Public Notice* lists the correct file numbers and also correctly reflects that the licenses are held by Qwest Corporation. See Appendix B.

Spectrum), which is not part of the LMDS Coalition,⁶ and includes an additional extension application filed by Corr Wireless Communications, LLC (Corr Wireless).⁷ The instant *Public Notice* does not alter the comment and reply comment dates set forth by the *December Public Notice*. We briefly discuss each waiver request below and seek comment on them.

The Commission has allocated 1,300 megahertz of LMDS spectrum in each basic trading area (“BTA”).⁸ Specifically, the Commission allocated two LMDS licenses per BTA – the “A Block” and “B Block” licenses.⁹ LMDS licensees may provide any service consistent with the Commission’s Rules and their regulatory status,¹⁰ subject to a ten-year term from the initial license grant date.¹¹ At the end of the ten year period, licensees are required to submit an acceptable showing to the Commission demonstrating that they are providing “substantial service” in each licensed area.¹² Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.¹³

The Rural LMDS Group seeks a ten year extension of time for its members to construct and demonstrate substantial service in their licensed areas, thereby requesting that its members not be required to demonstrate substantial service until 2018 and 2019.¹⁴ The Rural LMDS Group asserts that its members cannot economically build out their planned LMDS systems prior to their 2008 and 2009 construction deadlines due to the lack of affordable equipment.¹⁵

The LMDS Coalition asks that the Commission extend the construction deadline until July 1, 2011 for each of its members’ A-Block licenses and until July 1, 2013 for each of its members’ B Block

⁶ In the *December Public Notice*, the extension applications filed by IDT Spectrum were incorrectly listed in the appendix for applications filed by members of the LMDS Coalition. See *December Public Notice*, Appendix B. The file numbers associated with IDT Spectrum’s applications are listed in Appendix C to the instant *Public Notice*.

⁷ See File No. 0003268451 (filed Dec. 26, 2007) (“Corr Wireless Application”).

⁸ See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies For Local Multipoint Distribution Service and For Fixed Satellite Services, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12605 ¶ 136 (1997) (“*Second LMDS Report and Order*”); see also Rand McNally Commercial Atlas & Marketing Guide 36-39 (123rd ed. 1992). Rand McNally is the copyright owner of the Major Trading Area (MTA) and BTA Listings, which list the BTAs contained in each MTA and the counties within each BTA, as embodied in Rand McNally’s Trading Area System MTA/BTA Diskette, and geographically represented in the map contained in Rand McNally’s Commercial Atlas & Marketing Guide. The conditional use of Rand McNally copyrighted material by interested persons is authorized under a blanket license agreement dated February 10, 1994 and covers use by LMDS applicants. This agreement requires authorized users of the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally ownership. There are a total of 493 BTAs in the LMDS.

⁹ See *Second LMDS Report and Order*, 12 FCC Rcd at 12556 ¶ 12.

¹⁰ See 47 C.F.R. § 101.1013(b).

¹¹ See *Second LMDS Report and Order*, 12 FCC Rcd at 12657 ¶ 259. Pursuant to 47 C.F.R. § 101.67, LMDS licenses are issued for a period not to exceed ten years.

¹² See 47 C.F.R. § 101.1011(a); see also *Second LMDS Report and Order*, 12 FCC Rcd at 12658 ¶¶ 261-262.

¹³ See 47 C.F.R. § 101.1011(a).

¹⁴ Rural LMDS Group Request at 1.

¹⁵ *Id.*

licenses.¹⁶ The LMDS Coalition argues that the requested extension of time will afford its members sufficient time to design, construct, and deploy economically rational LMDS networks capable of competing in the growing backhaul and broadband access sectors, potentially facilitating the emergence of a third broadband pipe.¹⁷

IDT Spectrum also has filed applications to extend the construction deadlines for its LMDS licenses. Specifically, on September 28, 2007, IDT Spectrum filed applications to extend the construction deadline for 16 LMDS licenses by an additional ten years.¹⁸ IDT Spectrum notes that the efforts it has undertaken to develop its LMDS licenses and the obstacles it has encountered tracked the experiences of the Rural LMDS Group and the LMDS Coalition.¹⁹ IDT Spectrum also argues that the LMDS band has faced challenges that have inhibited the development of other upper microwave band frequencies.²⁰ IDT Spectrum believes that a ten year extension is necessary to allow for the development of affordable equipment and market demand.²¹

In addition, Corr Wireless filed an application for the extension of the construction deadline for LMDS Station WPLM443 on December 26, 2007.²² Corr Wireless agrees with the representations made by the LMDS Coalition and the Rural LMDS Group and emphasizes the issues faced by rural licensees.²³ Corr Wireless requests a five year extension of time to demonstrate substantial service because it will permit equipment for the LMDS A Block to become more widely available to rural licensees.²⁴

We hereby seek comment on the waiver requests filed by the Rural LMDS Group, the LMDS Coalition, IDT Spectrum, and Corr Wireless. Parties may comment specifically or generally with respect to the waiver requests.

Section 1.925(b)(3) of the Commission's Rules provides that a waiver of the Commission's Rules may be granted 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; (ii) or in view of unique or unusual 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."²⁵ Section 1.946 of the Commission's Rules provides that a request for extension of time to construct "may be granted if the licensee shows that failure to meet the construction deadline is

¹⁶ LMDS Coalition Request at 2.

¹⁷ *Id.* at 15, 18.

¹⁸ A list of the IDT Spectrum Applications is contained in Appendix C.

¹⁹ *See e.g.*, File No. 0003185188, Petition for Waiver and Extension of Time to Meet Substantial Service Requirements Found in Section 101.1011 of the Commission's Rules (filed Sep. 28, 2007) ("IDT Spectrum Request") at 5.

²⁰ *Id.* at 6-8.

²¹ *See id.* at 5-10.

²² Corr Wireless Application.

²³ *See id.*, Request for Waiver of Build-Out Deadline at 1.

²⁴ *Id.*

²⁵ 47 C.F.R. § 1.925(b)(3).

due to involuntary loss of site or other causes beyond its control.”²⁶ The rule prohibits granting extensions based on a failure to obtain financing, failure to obtain an antenna site, failure to order equipment, or because of a transfer of control of the licensee.²⁷

Interested parties may file comments on the waiver requests on or before January 18, 2008. Parties interested in submitting reply comments must do so on or before February 1, 2008. All comments should reference the DA number of this *Public Notice*. Comments and reply comments may be filed electronically using ULS.²⁸ Parties wishing to comment generally on the Rural LMDS Group Request shall file under file number 0003064168. Parties wishing to comment generally on the LMDS Coalition Request shall file under file number 0003071271. Parties wishing to comment generally on the IDT Spectrum Request shall file under file number 0003185188. Parties wishing to comment on particular applications, including the applicants themselves, shall file their pleadings under the appropriate file numbers.

Alternatively, comments may be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20054. The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only by the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering 236 Massachusetts Avenue, N.E. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. *See* FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver requests, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. *See* Sections 1.1200(a), 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject waiver requests will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Brian Michael Wondrack, Esq., of the Broadband Division, Wireless Telecommunications Bureau at (202) 418-0653, TTY (202) 418-7233, or via e-mail to Brian.Wondrack@fcc.gov.

²⁶ 47 C.F.R. § 1.946(e)(1).

²⁷ 47 C.F.R. § 1.946(e)(2), (3).

²⁸ *See* Wireless Telecommunications Bureau Enhances the Commission's Universal Licensing System to Implement Electronic Filing for Pleadings, *Public Notice*, 21 FCC Rcd 424 (WTB 2006).

By the Acting Chief, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission.

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