

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

In re Matter of )
LORALEN CORP LLC ) File Nos. 0005220539, 0005220561
Requests for Extension of Time, or in the )
alternative, Limited Waiver of Substantial Service )
Requirements for Local Multipoint Distribution )
Service Stations WPOJ997 (Dyersburg-Union )
City, TN) and WPOJ998 (New London-Norwich, )
CT) )

MEMORANDUM OPINION AND ORDER

Adopted: October 12, 2012

Released: October 15, 2012

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny Loralen Corp LLC's (Loralen) requests for extension of time to demonstrate substantial service for their Local Multipoint Distribution Service (LMDS) licenses, as well as its associated requests for waiver of the June 1, 2012 substantial service deadline. Given our denial of these requests, Loralen's licenses for Stations WPOJ997 and WPOJ998 automatically terminated, by operation of Commission rule, as of June 1, 2012.

II. BACKGROUND

2. In 1997, the Commission allocated 1,300 megahertz of LMDS spectrum in each basic trading area ("BTA") across the United States.1 Specifically, the Commission allocated two LMDS licenses per

1 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. The Commission has allocated the LMDS for operations in a total of 493 BTAs throughout the nation.

BTA – an “A Block” and a “B Block” license in each.<sup>2</sup> The A Block license is comprised of 1,150 megahertz of total bandwidth, and the B Block license is comprised of 150 megahertz of total bandwidth.<sup>3</sup> The A Block consists of the sub bands 27.50-28.35 GHz (the A1 Band); 29.10-29.25 GHz (the A2 Band); and 31.075-31.225 GHz (the A3 Band).<sup>4</sup> The B Block consists of the sub bands 31.00-31.075 (the B1 Band) and 31.225-31.30 GHz (the B2 Band).<sup>5</sup> The same entity may hold the licenses for both the A and B Blocks of spectrum in an individual BTA, but each license is auctioned and licensed separately.

3. LMDS licensees are regulated under Part 101 of the Commission’s rules, which generally governs terrestrial microwave operations, and may provide any service consistent with the Commission’s Rules and the licensee’s regulatory status,<sup>6</sup> subject to a ten-year term from the initial license grant date.<sup>7</sup> 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.<sup>8</sup> Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.<sup>9</sup>

4. The final LMDS band allocation was adopted by the Commission on March 20, 1997.<sup>10</sup> Since allocating the LMDS spectrum, the Commission has thus far held two LMDS auctions: Auction 17 and Auction 23.<sup>11</sup> Auction No. 23, the second LMDS auction, began on April 27, 1999, and closed on May 12, 1999.<sup>12</sup> The licenses for Station WPOJ997 and WPOJ998 were issued to Lorallen on August 5, 1999 as a result of Auction No. 23.<sup>13</sup>

5. Lorallen was originally required to demonstrate substantial service by August 5, 2009, or 10 years after the initial license grant dates.<sup>14</sup> The Wireless Telecommunications Bureau (the “Bureau”) has already granted Lorallen and other LMDS licensees a significant extension of time in which to meet substantial service. On August 5, 2009, Lorallen filed applications for an extension of time until June 1,

<sup>2</sup> See *Second LMDS Report and Order*, 12 FCC Rcd at 12556 ¶ 12.

<sup>3</sup> See *id.*

<sup>4</sup> See 47 C.F.R. § 101.1005.

<sup>5</sup> See *id.*

<sup>6</sup> See 47 C.F.R. § 101.1013(b).

<sup>7</sup> 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, subject to renewal upon demonstration of substantial service.

<sup>8</sup> See 47 C.F.R. § 101.1011(a); see also *Second LMDS Report and Order*, 12 FCC Rcd at 12658 ¶¶ 261-262.

<sup>9</sup> See 47 C.F.R. § 101.1011(a).

<sup>10</sup> See *Second LMDS Report and Order*, 12 FCC Rcd at 12556 ¶ 13; see also 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, *First Report and Order and Fourth Notice of Proposed Rulemaking*, 11 FCC Rcd 19005, 19025 ¶ 45 (1996) (allocating the initial 1 GHz of spectrum for LMDS and seeking comment on the allocation of an additional 300 MHz of spectrum at 31.0-31.3 GHz).

<sup>11</sup> See, e.g., LMDS Auction Closes, *Public Notice*, 13 FCC Rcd 18217 (1998) (*Auction 17 Closing PN*); Local Multipoint Distribution Service Auction Closes, *Public Notice*, 14 FCC Rcd 8543 (1999) (*Auction 23 Closing PN*).

<sup>12</sup> See *Auction 23 Closing PN*.

<sup>13</sup> See File No. 0000014667 (granted Aug. 5, 1999). See also FCC Announces the Conditional Grant of 127 Local Multipoint Distribution Service Licenses, *Public Notice*, 14 FCC Rcd 13200 (WTB 1999).

<sup>14</sup> See *Second LMDS Report and Order*, 12 FCC Rcd at 12657 ¶ 259.

2012 to demonstrate substantial service for its LMDS licenses.<sup>15</sup> On September 25, 2009, the Bureau granted Lorallen an extension until June 1, 2012 to construct its LMDS licenses, resulting in a nearly three year construction extension.<sup>16</sup> The applications were granted with a comment referring to a 2008 Bureau order where the Bureau granted extensions to other LMDS licensees.<sup>17</sup> In the *LMDS Order*, the Wireless Telecommunications Bureau (the “Bureau”) granted the requests for extension of the construction deadlines filed by a large group of LMDS licensees to extend their deadlines to meet the substantial service requirements to June 1, 2012, resulting in a nearly four year construction extension for each of these licensees.<sup>18</sup> The Bureau found that these LMDS licensees faced factors beyond their control, including difficulties in obtaining viable and affordable equipment, that warranted an extension.<sup>19</sup> In making this finding, the Bureau noted that the licensees seeking relief from the construction deadlines represented a majority of LMDS licensees for whom buildout requirements were approaching, and that they all faced these same basic obstacles to timely construction.<sup>20</sup> Thus, these obstacles were not a product of an individual licensee’s short-sightedness or its unfortunate business decisions; rather, the difficulties in procuring the basic equipment necessary for LMDS operations were widespread, stemming from the state of the market. Based on the record evidence, the Bureau anticipated that various developments in the market – arising in large part from the rollout of new services that could provide opportunities for LMDS operations – would help rectify these difficulties. Thus, the Bureau found that LMDS licensees could potentially use their licenses to provide wireless backhaul services to licensees in the 700 MHz band, the Advanced Wireless Services-1 (“AWS-1”) band, and other bands suitable for mobile broadband service, all of which at that time had recently been auctioned, licensed, or put into use.<sup>21</sup> The Bureau anticipated that these bands would develop robustly, along with other mobile and fixed wireless services, and that resulting opportunities for associated LMDS service (such as wireless backhaul) would help spur production of equipment designed for LMDS use and thus facilitate timely construction by LMDS licensees, under the extended buildout deadline set by the Bureau.<sup>22</sup>

6. On May 16, 2012, Lorallen filed applications pursuant to Section 1.946(e) of the Commission’s Rules seeking a further two year extension of time until June 1, 2014, to construct its LMDS licenses.<sup>23</sup> Invoking the Commission’s general waiver authority under Section 1.925 of the Commission’s Rules, Lorallen alternatively seeks a waiver of Section 101.1011(a) of the Commission’s Rules, as a means of extending the construction deadline applicable to the licenses until June 1, 2014. Lorallen argues that equipment manufacturers have been unable to develop technology that could provide backhaul services at price points consistent with a viable business model.<sup>24</sup> Lorallen claims that it has

<sup>15</sup> File Nos. 0003923228, 0003923760 (filed Aug. 5, 2009).

<sup>16</sup> File Nos. 0003923228, 0003923760 (granted Sep. 25, 2009).

<sup>17</sup> *Id.*, citing 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, *Memorandum Opinion and Order*, 23 FCC Rcd 5894 (WTB 2008) (*LMDS Order*).

<sup>18</sup> *LMDS Order*.

<sup>19</sup> *Id.* at 5905 ¶ 24.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 5905 ¶ 25.

<sup>22</sup> *Id.*

<sup>23</sup> See File Nos. 0005220539, 0005220561 (filed May 16, 2012) (Extension Applications). With each Extension Application, Lorallen filed an exhibit entitled “Request for Waiver and Limited Extension of Deadline for Construction Build-Out under 47 C.F.R. § 1.925(b)(3) and for Establishing Compliance with Section 101.1011(a) LMDS Substantial Service Requirements” (Extension and Waiver Request).

<sup>24</sup> Extension and Waiver Request at 2.

spoken to equipment manufacturers and that if it attempted to order equipment, it would take several months to receive equipment.<sup>25</sup> Loralen states that it “has investigated financing and partnering alternatives and with the recent availability of the necessary equipment, expects that in the relatively near future the necessary arrangements can be finalized to facilitate the requisite build-out.”<sup>26</sup> Loralen hopes to work with an unnamed national carrier and tower company to facilitate its buildout.<sup>27</sup> It has tentatively identified two pieces of equipment that it wishes to use and has “researched and analyzed the potential market for services.”<sup>28</sup>

### III. DISCUSSION

7. We find that Loralen has not justified a grant of an extension of time, or a waiver of the construction deadline, for its LMDS licenses. And without such extension or waiver, Loralen’s licenses have automatically cancelled, by operation of Sections 1.946(c) and 1.955(a)(2) of the Commission’s Rules, as of June 1, 2012.<sup>29</sup> We discuss these findings in detail below.

#### A. Extension Requests

8. Loralen requests a further two year extension of time to demonstrate substantial service until June 1, 2014.<sup>30</sup> As noted above, this is the second extension that Loralen has requested for constructing these licenses. To be eligible for an extension of time to construct, Loralen must show that its “failure to meet the construction deadline is due to involuntary loss of site or other causes beyond its control.”<sup>31</sup> We conclude that Loralen has not met this threshold.

9. Loralen argues that it has not constructed because of difficulties in obtaining LMDS equipment for backhaul at a cost that supports its business plans. The Commission has consistently found that a licensee’s own business decisions are not circumstances beyond the licensee’s control and are therefore not an appropriate basis for regulatory relief.<sup>32</sup> In view of this precedent, we find that none of

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<sup>25</sup> Extension and Waiver Request at 2.

<sup>26</sup> Extension and Waiver Request at 6.

<sup>27</sup> Extension and Waiver Request at 6-7.

<sup>28</sup> Extension and Waiver Request at 7-8.

<sup>29</sup> 47 C.F.R. §§ 1.946(c) (providing that if a licensee in the Wireless Radio Services fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires) and 1.955(a)(2) (cross-referencing Section 1.946(c) and reiterating that authorizations in the Wireless Radio Services automatically terminate without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements).

<sup>30</sup> Extension and Waiver Request at 1.

<sup>31</sup> 47 C.F.R. § 1.946(e)(1).

<sup>32</sup> See, e.g., Redwood Wireless Minnesota, LLC, *Order*, 17 FCC Rcd 22416 (WTB CWD 2002) (construction delays resulting from business disputes were exercises of business judgment and were not outside Petitioner’s control); Eldorado Communications LLC, *Order*, 17 FCC Rcd 24613 (WTB CWD 2002) (licensee’s determination to initially deploy TDMA system and subsequently to adopt GSM with months remaining before construction deadline was business decision within its control); Bristol MAS Partners, *Order*, 14 FCC Rcd 5007 (WTB PSPWD 1999) (equipment installation or delivery not delayed for some unique reason and licensee failing to obtain equipment was business decision); AAT Electronics Corporation, 93 FCC 2d 1034 (1983) (decision not to market service aggressively because of equipment uncertainties was within licensee’s control); Business Radio Communications Systems, Inc., 102 FCC 2d 714 (1985) (construction delay caused by zoning challenge not a circumstance beyond licensee’s control); Texas Two-Way, Inc., 98 FCC 2d 1300 (1984), *aff’d sub nom.*, *Texas Two-Way, Inc. v. FCC*, 762

the factors cited by Loralen demonstrate that its failure to construct was caused by circumstances beyond its control.

10. First, we find that the pace of the development of the market for LMDS equipment wireless backhaul, by itself, does not justify granting an extension, because Loralen has had other ways to develop its service independent of the backhaul market. Thus, its decision to put its LMDS spectrum on the shelf until the market for wireless backhaul improved constituted a business decision voluntarily made by Loralen, not an inevitable result of circumstances beyond its control. Moreover, even if wireless backhaul presented the only feasible use of LMDS spectrum, Loralen's justification for additional construction time would fail, insofar as the market for wireless backhaul has been developing steadily. In 2005, 8.7 percent of backhaul traffic was sent by fixed wireless.<sup>33</sup> By 2009, that figure increased to 12.3 percent.<sup>34</sup> As noted above, when the Bureau granted an extension to LMDS licensees in 2008, it anticipated that licensees could potentially provide wireless backhaul services to licensees in bands that had recently been auctioned, licensed, or put into use.<sup>35</sup> In the years since the Bureau originally extended the construction deadline for these licenses, there has been considerable deployment of wireless broadband service in the 700 MHz, AWS-1 and BRS/EBS bands. Thus, the validity of one of the factors supporting the Bureau's earlier extension of the construction deadline – that with some additional time, productive opportunities for using LMDS licenses would develop as these emerging wireless broadband services create a need for supporting backhaul service – has been substantially confirmed. Notwithstanding that progress, Loralen has made little attempt to incorporate LMDS spectrum into its backhaul plans. Furthermore, Loralen does not attempt to show that it made any active attempt to develop LMDS equipment, either through its own efforts or by working with equipment suppliers. Finally, we note that many LMDS licensees did meet the June 1, 2012 deadline and built facilities.<sup>36</sup> Under those circumstances, we conclude that Loralen made a voluntary decision not to actively pursue development of LMDS facilities.

11. We also note that many LMDS licensees did meet the June 1, 2012 deadline and built facilities.<sup>37</sup> Loralen has had almost 13 years to build facilities, but it has sat back passively and waited. Under those circumstances, we conclude that Loralen made a voluntary decision not to actively pursue development of LMDS facilities. Its Extension Requests must therefore be denied.

12. We find that Loralen, which made no attempt to commence construction of its LMDS licenses in advance of the construction deadline, is readily distinguishable from several other licensees that attempted to build out their licenses prior to the deadline and that ordered equipment but failed to receive timely delivery of that equipment. Loralen investigated equipment, but chose not to order

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F.2d 138 (D.C. Cir. 1985) (licensee is responsible for delay resulting from interference caused by construction adjacent to construction site because site selection was an independent business decision).

<sup>33</sup> See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 10-133, *Fifteenth Report*, 26 FCC Rcd 9664, 9845 ¶ 320 (2011).

<sup>34</sup> *Id.* In a separate proceeding, Clearwire Corporation has indicated that it uses wireless for over 90 percent of its backhaul needs, including almost 13,000 licenses with over 48,000 paths. See Comments of Clearwire Corporation, WT Docket No. 12-156 (filed July 19, 2012) at 2.

<sup>35</sup> *LMDS Order*, 23 FCC Rcd at 5905 ¶ 25.

<sup>36</sup> As of October 3, 2012, the Broadband Division had accepted 67 LMDS buildout notifications from at least 18 different licensees. Another 221 showings were pending and undergoing review.

<sup>37</sup> As of August 23, 2012, the Broadband Division had accepted 67 LMDS buildout notifications from at least 18 different licensees. Another 221 showings were pending and undergoing review.

equipment or build facilities in advance of the deadline. Thus, its failure to construct its licenses was the result of its own business decision. Furthermore, these licensees requested extensions of six months or less, while Loralen is requesting a two year extension.

13. Loralen argues that the Bureau's grant of extensions to LMDS licensees in 2008 supports granting the instant Extension Requests.<sup>38</sup> We reject that argument. In 2008, the Bureau anticipated that licensees could potentially provide wireless backhaul services to licensees in bands that had recently been auctioned, licensed, or put into use.<sup>39</sup> In the years since the Bureau originally extended the construction deadline for these licenses, there has been considerable deployment of wireless broadband service in the 700 MHz, AWS-1 and BRS/EBS bands. Thus, the Bureau's rationale for extending the construction deadline – to provide opportunities for LMDS licenses to be used for backhaul in support of these emerging wireless broadband services – has been substantially realized. Notwithstanding that progress, Loralen made no serious attempt to develop its LMDS spectrum. We therefore conclude that the decision to grant an extension to LMDS licensees in 2008 does not support Loralen's request for yet more time.

14. Loralen cites a series of cases in which the Bureau granted extensions of the buildout requirement in other services.<sup>40</sup> Those cases are readily distinguishable from Loralen's situation. In many of those cases, there was a systemic problem with equipment availability that affected all licensees in the band.<sup>41</sup> Here, by contrast, many licensees have been able to obtain and deploy equipment. In other cases, there were broader issues with the service rules that delayed or prevented deployment.<sup>42</sup> No party has argued that the LMDS service rules are responsible for delays in deploying service. In the two cases where the former Commercial Wireless Division granted extensions of the five-year construction requirement for the Personal Communications Service, the licensees had demonstrated diligence by ordering equipment and deployment in the relevant markets.<sup>43</sup> Here, Loralen made no serious attempt to construct facilities in 13 years, and we do not find Loralen's conduct to be diligent.

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<sup>38</sup> Extension and Waiver Request at 4.

<sup>39</sup> *LMDS Order*, 23 FCC Rcd at 5905 ¶ 25.

<sup>40</sup> Extension and Waiver Request at 9-11.

<sup>41</sup> *See, e.g.*, Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses, WT Docket No. 06-102, *Order*, 21 FCC Rcd 14134, 14139-14140 ¶ 10 (WTB 2006) (*WCS Order*) (“participation by almost all of the licensees in the WCS industry in this proceeding leads us to believe that the technical and equipment challenges in this band are widespread”); Request of Warren C. Havens for Waiver of The Five-Year Construction Requirement For 220 MHz Service Part II Economic Area and Regional Licensees, *Memorandum Opinion and Order*, 19 FCC Rcd 12994, 13000-13001 ¶ 15 (WTB 2004) (“The two companies that originally manufactured five kilohertz voice equipment no longer do so. We find that the loss of that equipment was a unique circumstance that have frustrated licensees’ efforts to meet the construction requirements.”); FCI 900, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 11072, 11077 ¶ 7 (WTB 2001) (no digital voice equipment available for the 900 MHz SMR band).

<sup>42</sup> *See WCS Order*, 21 FCC Rcd at 14139 ¶ 10 (construction deadline extended until July 21, 2010 for WCS licensees; Bureau notes that restrictive out-of-band emission limits may have impeded development of WCS equipment); Request of Licensees in the 218-219 MHz Service for Waiver of the Five-Year Construction Deadline, *Order*, 14 FCC Rcd 5190, 5194 ¶ 9 (WTB PS&PWD 1999) (suspending construction benchmark while notice of proposed rulemaking proposing rule changes to service was pending).

<sup>43</sup> *See Monet Mobile Networks, Inc., Order*, 17 FCC Rcd 6452, 6453 ¶ 4 (WTB CWD 2002) (licensee ordered equipment in the year before the construction deadline, but vendors would not commit to providing equipment until after the deadline); Leap Wireless International, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 19573, 19578 ¶ 13 (WTB CWD 2001) (“We also find that an extension is supported by the fact that Leap has demonstrated diligence in its acquisition and construction of the Data Licenses.”)

**B. Waiver Request**

15. To be granted a waiver of the June 1, 2012 construction deadline, Loralen must show that either (1) 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 (2) in view of the 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.<sup>44</sup> As is discussed more fully below, we conclude that Loralen has failed to make the requisite showing, and we therefore deny its waiver request.

16. First, we conclude that an extension would be inconsistent with the underlying purpose of the substantial service standard, which, as the Commission has said, is to provide “a clear and expeditious accounting of spectrum use by licensees to ensure that service is being provided to the public.”<sup>45</sup> Loralen claims it has been “impossible for virtually any license holder to proceed with construction or to make use of this license(s) during the period up until” June 1, 2012.<sup>46</sup> In fact, many other licensees made a contrary judgment and built their facilities. Granting Loralen a further extension despite its lack of effort in attempting to develop its LMDS spectrum would be inconsistent with the underlying purpose of the substantial service requirement.

17. We also conclude that Loralen has not shown that requiring it to comply with the substantial service requirements is inequitable, unduly burdensome, and contrary to the public interest. As we have previously discussed, Loralen’s decision not to construct its LMDS licenses was a business decision. Other licensees made other business decisions that led them to build out their licenses.

18. Authorizations for LMDS licenses automatically terminate if the licensee fails to meet construction or coverage requirements.<sup>47</sup> In light of our decision to deny Loralen’s requests for an extension or waiver of the construction requirements, Loralen’s licenses automatically terminated, by operation of Sections 1.946(c) and 1.955(a)(2) of the Commission’s Rules,<sup>48</sup> as of June 1, 2012.

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<sup>44</sup> See 47 C.F.R. § 1.925(b)(3); 47 C.F.R. § 1.3; see also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1972), *cert. denied*, 409 U.S. 1027 (1972).

<sup>45</sup> See Amendment of Part 101 of the Commission’s Rules to Facilitate the Use of Microwave for Wireless Backhaul and Other Uses and to Provide Additional Flexibility to Broadcast Auxiliary Service and Operational Fixed Microwave Licensees, WT Docket No. 10-153, *Second Report and Order, Second Further Notice of Proposed Rulemaking, Second Notice of Inquiry, Order on Reconsideration, and Memorandum Opinion and Order*, 27 FCC Rcd 9735, 9773-9774 ¶ 104 (2012) (“*Wireless Backhaul 2<sup>nd</sup> R&O*”), citing *39 GHz R&O*, 12 FCC Rcd at 18623 ¶ 42; see also *39 GHz R&O*, 12 FCC Rcd at 18625 ¶ 46 (“This approach will permit flexibility in system design and market development, while ensuring that service is being provided to the public.”); *39 GHz R&O*, 12 FCC Rcd at 18626 ¶ 46 (“This revised performance standard should ensure that meaningful service will be provided without unduly restricting service offerings.”); *39 GHz R&O*, 12 FCC Rcd at 18625 ¶ 47 (“[A]pplying a similar performance requirement to all licensees at the license renewal point will help establish a level playing field without compromising the goals of ensuring efficient spectrum use and expeditious provision of service to the public.”); *Renewal of Licenses to Provide Microwave Service in the 38.6 – 40.0 GHz Band, Memorandum Opinion and Order*, 17 FCC Rcd 4404, 4407 ¶ 11 (WTB PS&PWD 2002) (“The Commission’s overarching purpose behind adopting the substantial service standard for renewal was to ensure that the spectrum was being used to provide service to the public.”).

<sup>46</sup> Extension and Waiver Request at 5-6.

<sup>47</sup> See 47 C.F.R. § 1.955(a)(2).

<sup>48</sup> *Id.*

**IV. CONCLUSION AND ORDERING CLAUSES**

19. Loralen has failed to justify an extension of time to meet the substantial service deadline for its LMDS stations or to justify a waiver of the June 1, 2012 deadline for establishing substantial service. We therefore deny the Extension and Waiver Request. Accordingly, Loralen's licenses to operate LMDS Stations WPOJ997 and WPOJ998 automatically terminated, by operation of Commission rule, as of June 1, 2012.

20. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.925 and 1.946 of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.946, that the request for waivers and the applications for extension of time to demonstrate substantial service (File Nos. 0005220539 and 0005220561) filed by Loralen Corp LLC on May 16, 2012 ARE DENIED.

21. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.955(a)(2) of the Commission's Rules, 47 C.F.R. § 1.955(a)(2), that the Universal Licensing System SHALL BE UPDATED to reflect that the licenses issued to Loralen Corp LLC for Local Multipoint Distribution Service Stations WPOJ997 and WPOJ998 TERMINATED as of June 1, 2012.

22. These actions are 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

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau