

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

In re Matter of
STAR SEARCH RURAL TV & CELLULAR, INC.
Requests for Extension of Time, or in the alternative, Limited Waiver of Substantial Service Requirements for Local Multipoint Distribution Service Licenses WPLM538 and WPLM539
File Nos. 0005234510, 0005234512

MEMORANDUM OPINION AND ORDER

Adopted: August 1, 2013

Released: August 2, 2013

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

I. INTRODUCTION

1. In this Order on Reconsideration, we deny a request filed by Star Search Rural TV & Cellular, Inc. ("Star Search") seeking reconsideration of our prior action denying Star Search's request for extension of time to demonstrate compliance with the substantial service requirements for its Local Multipoint Distribution Service ("LMDS") licenses WPLM538, Paris, Texas; and WPLM539, McAlester, Oklahoma ("Licenses").

II. BACKGROUND

2. On June 17, 1998, Star Search was issued the Licenses as a result of Auction No. 17. At the end of the initial ten-year license period, by June 17, 2008, Star Search was required to submit an acceptable showing to the Commission demonstrating that it was providing "substantial service" in each licensed area. Failure by any licensee to meet the substantial service requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

1 See File No. 0000000100 (granted June 17, 1998); see also FCC Announces the Conditional Grant of 199 Local Multipoint Distribution Service Licenses, Public Notice, 13 FCC Rcd 16730 (WTB 1998).

2 See 47 C.F.R. § 101.1011(a); 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, Second Report and Order, Order on Reconsideration and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545, 12658 ¶¶ 261-262 (1997) ("LMDS Second Report and Order").

3 See 47 C.F.R. § 101.1011(a).

3. On February 1, 2008, Star Search filed applications for extension of time to demonstrate substantial service for its LMDS licenses.⁴ On April 11, 2008, the Wireless Telecommunications Bureau (“Bureau”) granted the requests for extension of the construction deadlines filed by a large group of LMDS licensees – including Star Search – 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.⁵

4. The Bureau found that these LMDS licensees faced factors beyond their control, including difficulties in obtaining viable and affordable equipment, that warranted an extension.⁶ 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.⁷ 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 Star Search and others could potentially use their LMDS 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.⁸ 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 Star Search and the other LMDS licensees, under the extended buildout deadline set by the Bureau.⁹

5. On May 26, 2012, Star Search 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 two LMDS licenses.¹⁰ Invoking the Commission’s general waiver authority under Section 1.925 of the Commission’s Rules, Star Search sought 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, 2014.¹¹ Star Search stated that it was owned by the principals of Oklahoma Western Telephone Co. (“OWTC”), a local exchange telephone company and provider of wireless and cable services in rural southeastern Oklahoma, and that it obtained LMDS licenses with the intent of using them to supplement the services that OWTC

⁴ File Nos. 0003310466, 0003310486 (filed Feb. 1, 2008).

⁵ 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*).

⁶ *LMDS Order*, 23 FCC Rcd at 5905 ¶ 24.

⁷ *Id.*

⁸ *Id.* at 5905 ¶ 25.

⁹ *Id.*

¹⁰ See File Nos. 0005234510, 0005234512 (filed May 29, 2012) (Extension Applications). With each Extension Application, Star Search filed an exhibit entitled “Request for Extension of Time to Demonstrate Substantial Service” (Extension and Waiver Request).

¹¹ Extension and Waiver Request at 1.

provides.¹² However, Star Search stated that it had been unable to procure the equipment necessary to build a viable network to provide its existing customer base with wireless broadband service, and that it had been further hindered by the propagation characteristics of LMDS.¹³ Typically, according to Star Search, an LMDS site can only reach customers within a range of one to five miles, a limitation that would require Star Search to construct several hundred towers and purchase the necessary equipment for each tower in order to serve its customer base.¹⁴ This, it contended, was not economically feasible given the high cost and scarcity of LMDS equipment.¹⁵

6. On November 15, 2012, the Bureau's Broadband Division ("Division") denied Star Search's Extension and Waiver Request and noted that the Licenses automatically terminated as of June 1, 2012.¹⁶ The Division concluded that Star Search had not made the requisite showing that its failure to meet the substantial service deadline was caused by factors beyond its control.¹⁷ The Division noted that while Star Search may have been correct that its plan to deploy hundreds of base stations throughout its service area may not have been economically feasible, "its inability to execute that particular plan does not justify granting an extension, because Star Search has had other ways to make productive use of LMDS spectrum."¹⁸ As an example, the Division noted the ability to use LMDS for wireless backhaul and noted that Star Search's sister company held various licenses that could take advantage of wireless backhaul services.¹⁹ In light of the alternative uses available for LMDS spectrum, the Division concluded that Star Search's decision to wait until it would be economically feasible to deploy hundreds of LMDS stations throughout OWTC's service area was a voluntary business decision that did not justify an extension.²⁰ The Division observed that many other LMDS licensees did meet the June 1, 2012 deadline and built facilities, which further supported the conclusion that Star Search made a voluntary business decision not to build.²¹ The Division further held that Star Search had not justified a waiver of the substantial service deadline because an extension would be inconsistent with the underlying purpose of the substantial service standard, *i.e.*, to provide "a clear and expeditious accounting of spectrum use by licensees to ensure that service is being provided to the public."²² The Division also held that Star Search had not shown that requiring compliance with the substantial service rules was inequitable, unduly

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Star Search Rural TV & Cellular, Inc., *Memorandum Opinion and Order*, 27 FCC Rcd 14201 (WTB BD 2012) (*MO&O*).

¹⁷ *Id.* at 14204 ¶ 9.

¹⁸ *Id.* at 14205 ¶ 11.

¹⁹ *Id.* at 14205 ¶ 12.

²⁰ *Id.*

²¹ *Id.* at 14206 ¶ 13.

²² *Id.* at 14207 ¶ 17, citing 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).

burdensome, and contrary to the public interest because its decision not to construct its LMDS licenses was a business decision.²³

7. Star Search timely sought reconsideration of the *MO&O* on December 17, 2012.²⁴ Star Search argues that LMDS has not been a successful service because of problems with equipment and technology.²⁵ It contends that the problem is particularly acute in more rural areas such as Paris, Texas and McAlester, Oklahoma.²⁶ While Star Search agrees that other LMDS licensees have been able to build facilities, it argues that that fact “is not that compelling” because only a minority of licenses that received extensions in 2008 were built and most constructed licenses are owned by a relatively small number of licensees that hold multiple licenses.²⁷ Star Search repeats its claim that circumstances have not materially changed since the Bureau granted an extension in 2008.²⁸ It concludes that it is entitled to an extension or waiver because of “the industry and market conditions confronting LMDS licensees.”²⁹

III. DISCUSSION

8. “It is well established that reconsideration is appropriate ‘only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner’s last opportunity to present such matters.’”³⁰ After careful consideration of the Petition, we conclude that Star Search does not meet that standard. Instead, Star Search’s Petition reargues matters considered in the *MO&O*. We therefore deny the Petition.

9. Star Search’s main argument is that it has been unable to obtain affordable equipment to implement its plan to build an LMDS wireless broadband network with hundreds of base stations in its coverage area. The *MO&O* noted, Star Search’s claim “may be correct,” but “its inability to execute that particular plan does not justify granting an extension, because Star Search has had other ways to make productive use of LMDS spectrum.”³¹ In other words, Star Search’s failure to construct was a function of its voluntary business decision to develop a business plan that relied on the ability to obtain a large numbers of base stations at an affordable cost, as opposed to other business plans that could be implemented at a lower cost. As the *MO&O* explained, Star Search’s choice of business plan was not a factor outside its control and cannot form the justification for an extension.³² Star Search does not even allege that it considered alternative means of meeting the substantial service requirement. Star Search’s

²³ *MO&O*, 27 FCC Rcd at 14207 ¶ 18.

²⁴ Petition for Reconsideration and Reinstatement, Star Search Rural TV & Cellular, Inc. (filed Dec. 17, 2012) (“Petition”).

²⁵ *Id.* at 1-2.

²⁶ *Id.* at 2.

²⁷ *Id.* at 3.

²⁸ *Id.*

²⁹ *Id.* at 4.

³⁰ See Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, WT Docket No. 08-95, *Order on Reconsideration*, 27 FCC Rcd 16444, 16445 ¶ 2 (2012), citing General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee, For Authority to Transfer Control, MB Docket No. 03-124, *Order on Reconsideration*, 23 FCC Rcd 3131, 3132 ¶ 4 (2008).

³¹ *MO&O*, 27 FCC Rcd at 14205 ¶ 11.

³² *Id.* at 14205 ¶ 12.

Petition also cites no precedent in support of its argument. We therefore see no basis for revising the *MO&O*'s conclusion.

10. Star Search's claim that circumstances have not materially changed since the Bureau granted an extension in 2008 was also considered and rejected in the *MO&O*. The *MO&O* concluded that circumstances had changed since 2008 because of the increasing deployment of wireless broadband services and the associated need for supporting backhaul service.³³ Star Search does not acknowledge or respond to that point. In 2008, virtually no LMDS licensee was in a position to build because of the lack of available equipment. Today, many LMDS licensees have managed to build facilities. That fact demonstrates that equipment is available and that meeting the substantial service standard is possible. For that reason, we believe that Star Search's focus on the licensees who did not build is misguided.

11. We also find that the rural nature of Star Search's service areas does not justify an extension in this instance. The Commission elaborated on what may constitute "substantial service" for LMDS by offering some specific examples, which are sometimes referred to as "safe harbors," to provide LMDS licensees with a degree of certainty as to how to comply with the substantial service requirement by the end of the initial license term.³⁴ The Commission explained that an LMDS licensee that chooses to offer fixed, point-to-point services may fall within a "safe harbor" by constructing four permanent links per one million people in its licensed service area.³⁵ The Commission also elaborated that an LMDS licensee electing to deploy point-to-multipoint services may fall within a "safe harbor" by demonstrating coverage to 20 percent of the population in the licensed BTA.³⁶ Because the safe harbors impose varying obligations based on population, they necessarily impose a lower burden on licensees in rural, less populated areas. Furthermore, LMDS licensees in smaller markets have been able to meet the substantial service requirement.³⁷

12. Star Search's attempt to distinguish itself from licensees who have multiple licenses must be rejected. While it might conceivably be harder for a licensee with only two licenses to work with equipment vendors, Star Search has provided no meaningful information about its attempts to work with equipment manufacturers or to develop equipment for its proposed system. Furthermore, Star Search has known for fourteen years that it only holds two licenses in relatively rural areas, and it should have been able to plan accordingly to meet the substantial service deadline.

13. Finally, Star Search's arguments ignore the important interest in providing "a clear and expeditious accounting of spectrum use by licensees to ensure that service is being provided to the public."³⁸ Star Search has had these licenses for fourteen years and has done nothing with them. Furthermore, it is unclear whether Star Search would be able to put these licenses to use even if we

³³ *MO&O*, 27 FCC Rcd at 14206 ¶ 14.

³⁴ See *Second LMDS Report and Order*, 12 FCC Rcd at 12660-12661 ¶¶ 269-270.

³⁵ See *id.* at 12660 ¶ 270.

³⁶ See *id.*

³⁷ See, e.g., Nextlink Wireless, LLC, Station WPLM421, Ocala, FL; Broadband One North, Station WPOH524, Sault Ste. Marie, MI; Sunshine LMDS Network, Stations WPOK284, Valdosta, GA, and WPOK281, Albany-Tifton, GA; Verso LMDS, LLC, Station WPOJ980, La Salle-Peru-Ottawa-Streator, IL.

³⁸ See *MO&O*, 27 FCC Rcd at 14207 ¶ 17, citing 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).

granted it the additional two-year extension it seeks. We believe that granting an extension to Star Search would be fundamentally inconsistent with the purpose of our buildout requirements.

IV. CONCLUSION AND ORDERING CLAUSES

14. Star Search has failed to justify reconsideration of our earlier decision to deny its Extension and Waiver Request. We therefore deny the Petition.

15. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration and Reinstatement filed by Star Search Rural TV & Cellular, Inc. on December 17, 2012 IS DENIED.

16. 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

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Wireless Telecommunications Bureau