

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

In re Matter of
NUCOM
Petition for Reconsideration of Termination of
Local Multipoint Distribution Service Licenses
WPOH485, WPOH486, WPOH487, WPOH488,
and WPOH489

ORDER ON FURTHER RECONSIDERATION

Adopted: June 26, 2014

Released: June 27, 2014

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

I. INTRODUCTION

1. In this Order on Further Reconsideration, we deny a request filed by NUCOM seeking reconsideration of our action affirming the termination of NUCOM’s Local Multipoint Distribution Service (“LMDS”) licenses WPOH485 (Oneonta, NY), WPOH486 (Portsmouth, OH), WPOH487 (New Castle, PA), WPOH488 (Burlington, IA), and WPOH489 (Waycross, GA) (“Licenses”).

II. BACKGROUND

2. On June 24, 1998, the Licenses were originally issued to NUCOM as a result of Auction No. 17. At the end of the initial ten-year license period, by June 24, 2008, NUCOM was required to submit an acceptable showing to the Commission demonstrating 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.

3. On October 10, 2007, NUCOM filed applications for extension of time to demonstrate substantial service for its LMDS licenses. On April 11, 2008, the Wireless Telecommunications Bureau (“Bureau”) granted the requests for extension of the construction deadlines filed by a large group of

1 See File No. 0000000022 (granted June 24, 1998); FCC Announces the Conditional Grant of 25 Local Multipoint Distribution Service Licenses, Public Notice, 13 FCC Rcd 17186 (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).

4 File Nos. 0003195288-0003195292 (filed Oct. 10, 2007).

LMDS licensees – including NUCOM – 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. On April 2, 2012, NUCOM filed applications pursuant to Section 1.946(e) of the Commission’s Rules seeking a further extension of time until June 7, 2013, to construct its five LMDS licenses.⁶ On May 14, 2012, NUCOM amended the 2012 Extension Applications to provide a copy of an equipment order.⁷ On May 23, 2012, NUCOM amended the 2012 Extension Applications to provide additional legal argument in support of its request for more time.⁸ On August 7, 2013, NUCOM amended the 2012 Extension Applications to request an extension until November 1, 2013.⁹ On August 15, 2013, the Bureau granted the 2012 Extension Applications, as amended, and extended the deadline for NUCOM to demonstrate substantial service to November 1, 2013.¹⁰

5. NUCOM was required to file a notification of completion of construction for each of the Licenses by November 16, 2013, or fifteen days after the November 1, 2013 deadline.¹¹ If NUCOM had wanted additional time to demonstrate substantial service, it was required to have filed a Form 601 seeking an extension by November 1, 2013, the construction deadline.¹²

6. When a licensee fails to file a notification that it has completed construction by an applicable buildout deadline, the license, location, or frequency is placed in “termination pending” status. For a license, location, or frequency in that status, the Bureau presumes that the licensee did not meet buildout requirement.¹³ If the licensee does not file a petition for reconsideration within 30 days after public notice of the termination pending status demonstrating that it met that buildout requirement, the status of the license, location, or frequency is changed to “terminated” as of the buildout deadline.¹⁴ On December 11, 2013, the Bureau sent NUCOM license auto-termination letters and the Licenses entered termination pending status.¹⁵ Accordingly, on the same day, the Bureau provided public notice of the pending license terminations.¹⁶

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 See File Nos. 0005145441-0005145445 (filed Apr. 2, 2012) (“2012 Extension Applications”).

⁷ 2012 Extension Applications, NUCOM Equipment Order (filed May 14, 2012).

⁸ 2012 Extension Applications, Supplement and Amendment to Request for Additional Time to Demonstrate Substantial Service (filed May 23, 2012).

⁹ 2012 Extension Applications, Amendment (filed Aug. 7, 2013).

¹⁰ 2012 Extension Applications (granted Aug. 15, 2013).

¹¹ See 47 C.F.R. § 1.946(d).

¹² See 47 C.F.R. § 1.946(e).

¹³ See Wireless Telecommunications Bureau Announces Deployment Of “Auto-Term,” the Automated Feature in its Universal Licensing System That Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, *Public Notice*, 21 FCC Rcd 163 (WTB 2006) (“*Auto-Term Public Notice*”).

¹⁴ *Id.*

¹⁵ Auto-Termination Letters, Ref. Nos. 5704551-5704555 (Dec. 11, 2013).

¹⁶ Wireless Telecommunications Bureau Market Based Licenses Termination Pending, Report No. 9205, *Public Notice* (Dec. 11, 2013) at 1.

7. On December 26, 2013, NUCOM filed a petition for reconsideration.¹⁷ NUCOM reported, “NUCOM is in the process of completing its construction and coverage requirement and expect[s] completion before end of 2013.”¹⁸ On January 16, 2014, the Broadband Division (“Division”) of the Wireless Telecommunications Bureau denied the Petition.¹⁹ The Division wrote, “NUCOM has not met the November 1, 2013 substantial service deadline and it has not explained why it failed to either meet the substantial service deadline or timely request a further extension of the deadline.”²⁰ It noted that once a license enters termination pending status, a petition for reconsideration may be granted only if the licensee met the relevant construction deadline.²¹ The Division also stated that NUCOM had failed to properly request an extension of the substantial service deadline.²² It finally noted that “the Licenses automatically terminated, by operation of Sections 1.946(c) and 1.955(a)(2) of the Commission’s Rules, on November 1, 2013.”²³

8. NUCOM filed another petition for reconsideration on January 30, 2014.²⁴ NUCOM now claims that it filed a request for extension of time on October 4, 2013.²⁵ It provides a letter addressed to the Commission’s Gettysburg facility and a certificate of mailing dated October 9, 2013.²⁶ NUCOM notes it is a very small women-owned business and claims its members would be irreparably harmed if they are denied the opportunity to compete in the telecommunications field.²⁷

III. DISCUSSION

9. We must deny the Further Petition. While NUCOM now submits a letter dated October 1, 2013 requesting an additional extension of time, the Commission’s rules required NUCOM to submit its extension request electronically using the Universal Licensing System.²⁸ NUCOM’s previous extension requests were submitted via ULS. It does not explain why it failed to comply with our rules in this instance. The Division has no record of having received NUCOM’s October 1st letter. Accordingly, we must conclude that NUCOM did not submit a valid extension request in a timely manner.²⁹

¹⁷ Petition for Reconsideration (filed Dec. 26, 2013) (“Petition”).

¹⁸ *Id.*

¹⁹ NUCOM, *Order on Reconsideration*, 29 FCC Rcd 316 (WTB BD 2014).

²⁰ *Id.* at 318 ¶ 9.

²¹ *Id.*, citing *Auto-Term Public Notice*.

²² NUCOM, 29 FCC Rcd at 318 ¶ 9.

²³ *Id.* at 318-319 ¶ 9.

²⁴ Petition for Reconsideration, NUCOM (filed Jan. 30, 2014) (“Further Petition”).

²⁵ See Further Petition.

²⁶ See Letter from Mia Lovink, Nucom to Federal Communications Commission, Wireless Telecommunications Bureau (dated Oct. 1, 2013, submitted as attachment on Jan. 30, 2014) (“October 1 Letter”); United States Postal Service Certificate of Mailing (submitted Feb. 19, 2014).

²⁷ See Further Petition.

²⁸ See 47 C.F.R. § 1.913(b) (with certain exceptions not applicable here, “all applications and other filings using the application and notification forms listed in this section or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS.”)

²⁹ If NUCOM had submitted a valid extension request, we would have needed further information in order to make a decision on that request. NUCOM had submitted an equipment order in May 2012. In October 2013, however, (continued....)

10. While it is unfortunate for NUCOM's partners that NUCOM has lost its licenses, the harm to the business interests of NUCOM's partners is not a sufficient reason to justify reinstating the Licenses. NUCOM had over 15 years to construct facilities and provide service to the public. The LMDS substantial service requirement serves the important public interest purpose of providing "a clear and expeditious accounting of spectrum use by licensees to ensure that service is being provided to the public."³⁰ We believe the public interest in ensuring spectrum is put to use outweighs the private business interests of NUCOM's partners.

IV. ORDERING CLAUSES

11. 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 filed by NUCOM on January 30, 2014 IS DENIED.

12. 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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NUCOM claimed that equipment was still on back order. *See* October 1 Letter. It is not clear whether NUCOM was diligent in ensuring that equipment was available to it in a timely manner.

³⁰ *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). *See also* FiberTower Spectrum Holdings, LLC, *Order on Reconsideration*, 29 FCC Rcd 2493, 2503 ¶ 26 (2014), *appeal pending*.