

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

In re Matter of
RF DEVELOPMENT, LLC
Notification of Demonstration of Substantial
Service for Local Multipoint Distribution Service
Station WPOH612
File No. 0004994058

ORDER ON RECONSIDERATION

Adopted: November 3, 2015

Released: November 4, 2015

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

I. INTRODUCTION

1. In this Order on Reconsideration, we dismiss a petition for reconsideration filed by RF Development, LLC ("RF") of a Memorandum Opinion and Order that found that RF failed to demonstrate the provision of substantial service for Local Multipoint Distribution Service ("LMDS") Station WPOH612, Salisbury, Maryland. For the reasons discussed below, we dismiss the Petition in part and deny it in part.

II. BACKGROUND

2. 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, subject to a ten-year term from the initial license grant date. 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. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

1 Petition for Reconsideration, RF Development, LLC (filed Apr. 22, 2015) ("Petition").

2 RF Development, LLC, Memorandum Opinion and Order, 30 FCC Rcd 2865 (WTB BD 2015) ("MO&O").

3 See 47 C.F.R. § 101.1013(b).

4 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, 12657 ¶ 259 (1997) (Second LMDS Report and Order). 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.

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

6 See 47 C.F.R. § 101.1011(a).

3. The Commission has defined substantial service as “service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.”⁷ The Commission elaborated on this standard in the form of examples of what might constitute substantial service for LMDS licensees by providing safe harbors.⁸ Specifically, the Commission explained that “for an LMDS licensee that chooses to offer point-to-multipoint services, a demonstration of coverage to 20 percent of the population of its licensed service area at the 10-year mark would constitute substantial service. In the alternative, an LMDS licensee that chooses to offer fixed, point-to-point services, the construction of four permanent links per one million people in its licensed service area at the 10-year renewal mark would constitute substantial service.”⁹ The Commission further noted that it may consider such factors as whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, and whether the licensee’s operations serve niche markets or focus on serving populations outside of areas served by other licensees.¹⁰ The substantial service requirement can be met in other ways, and the Commission explained that it will review licensees’ showings on a case-by-case basis.¹¹

4. RF won the license for Station WPOH612 in Auction No. 17, and the license was granted on July 24, 1998.¹² RF was originally required to demonstrate substantial service by July 24, 2008, or 10 years after the initial license grant date.¹³

5. On December 16, 2011, RF filed an application seeking to demonstrate that LMDS Station WPOH612 is providing “substantial service” within its licensed area.¹⁴ RF contended therein that it exceeds the 20 percent signal coverage “safe harbor” requirements established by the Commission for LMDS licensees.¹⁵ In calculating the population within its service area, RF included “seasonal visitors” within the area where it was providing service.¹⁶ RF stated that “[t]he summertime population surges occurring within the Ocean City coverage area exceeds the total population of the entire BTA.”¹⁷ According to RF’s calculations, which are based on information in an Ocean City Planning and Zoning Commission document, “[t]he average annual weekend population for the area is calculated to be 154,933,” and RF claims that its constructed facility would serve 45 percent of the population within the

⁷ *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 269.

⁸ *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶¶ 269-270.

⁹ *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 270 (internal citations omitted).

¹⁰ *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 270 (internal citations omitted).

¹¹ *Second LMDS Report and Order*, 12 FCC Rcd at 12660-12661 ¶ 270.

¹² See File No. 0000000096 (granted July 24, 1998).

¹³ See *Second LMDS Report and Order*, 12 FCC Rcd at 12657 ¶ 259. On May 7, 2008, RF filed an application for an extension of time to demonstrate substantial service for LMDS Station WPOH612. File No. 0003430505 (filed May 7, 2008); see File No. 0003430505 (granting RF an extension of time to demonstrate substantial service for LMDS Station WPOH612 until June 1, 2012); see also 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).

¹⁴ See File No. 0004994058 (filed Dec. 16, 2011) (“Construction Notification”), Substantial Service Demonstration for WPOH612 (“Substantial Service Showing”).

¹⁵ Substantial Service Showing at 1.

¹⁶ Substantial Service Showing at 2.

¹⁷ Substantial Service Showing at 2.

BTA when seasonal visitors are included.¹⁸

6. On August 3, 2012, the Bureau's Broadband Division ("Division") returned the Construction Notification to provide RF with the opportunity to amend the Construction Notification to include additional information.¹⁹ The Division directed RF to provide "an attachment that explains how your communications system and the service you provide with it benefit the summer population of the area in and around Ocean City, Maryland. On October 1, 2012, RF amended the Construction Notification.²⁰ RF explains the service benefits to the Ocean City market area.²¹ According to RF, it

installed a communications system which is planned to provide service primarily to carrier companies seeking alternative connectivity for transport within the Ocean City market area. The communications system envisioned for the market will include connectivity for public and provide networks seeking transport within the market area. The summer population, along with businesses serving the areas in and around Ocean city, Maryland will be the beneficiaries of increased access and alternative carrier offerings. RF Development, LLC installed network equipment manufactured by Hughes Network Systems which is designed to provide Ethernet and private line access and other "last-mile" data transmission solutions.²²

7. On April 23, 2014, the Division notified RF that the Division's analysis shows that RF fails to meet the 20 percent coverage safe harbor for point-to-multipoint operation for Station WPOH612.²³ The Division rejected the contention that the Ocean City market has a large summer population of tourists that should be considered for purposes of meeting the safe harbor because the Commission only considers full-time residents in counting population within a service area.²⁴ The Division noted, however, that compliance with a safe harbor is not the only means by which an applicant can demonstrate substantial service and that, with additional information, it may be able to accept the substantial service showing on a case-by-case basis.²⁵ RF was encouraged to provide any additional information that may be helpful in supporting the substantial service showing.²⁶

8. On May 28, 2014, RF amended the Construction Notification.²⁷ First, RF contends the Division erred in concluding that the Commission only considers full-time residents in counting population within a service area for purposes of meeting the safe harbor.²⁸ Second, RF contends it has

¹⁸ Substantial Service Showing at 2.

¹⁹ Notice of Return, Ref. No. 5420398 (Aug. 3, 2012) (First Return Letter).

²⁰ Construction Notification (amended Oct. 1, 2012).

²¹ Construction Notification, Amended Substantial Service Showing at 2.

²² Amended Substantial Service Showing at 2.

²³ E-mail from John. J. Schauble, Deputy Division Chief, Broadband Division, Wireless Telecommunications Bureau, FCC, to Charles E. Walters, Managing Director, RF Development, LLC (Apr. 23, 2012) ("April 2012 Email").

²⁴ *See id.*

²⁵ *See id.* Although the Bureau noted RF's argument that Ocean City is a summer recreation destination, the Bureau explained that the description of services provided was too generic to conclude that such services were targeted towards the summer population of Ocean City or a niche market. *See id.* The Bureau stated that it might be able to make such a finding with additional information. *Id.*

²⁶ *See id.*

²⁷ Construction Notification (amended May 28, 2014), Second Amended Substantial Service Showing at 2.

²⁸ Second Amended Substantial Service Showing at 3.

demonstrated substantial service on a case-by-case basis because it operates in a niche market as well as serves populations outside areas served by other licensees.²⁹ RF argues that Ocean City, Maryland is a “niche” or “specialized business market”³⁰ because the annual influx of vacationing populations from the Washington DC, Philadelphia and New York regions has created a distinct and specialized business market area based on recreational commerce.³¹ RF believes it serves populations outside areas served by other licensees because Ocean City’s summertime population “far exceeds the residential population of the entire BTA” and, because such vacationing populations are from the Washington DC, Philadelphia and New York regions, the “population, when vacationing, is clearly not served by the licensee in their primary residential area.”³²

9. On July 31, 2014, the Division notified RF that the additional information provided in the Second Amended Substantial Service Showing was still insufficient to conclude that RF Development has demonstrated substantial service.³³

10. On August 20, 2014, RF informed the Division for the first time that it had also constructed a point-to-point link within the service area of Station WPOH612.³⁴ In response, the Division asked for the following information: (1) the date the link was constructed; (2) the coordinates for both ends of the link; (3) bandwidth of the link; and (4) a detailed explanation of how the link is being used.³⁵ In addition, the Division asked RF to identify the customer (if the link is being used by a customer) or to explain in detail for what purpose RF is using the link (if it was using the link for its own internal purposes).³⁶

11. On September 19, 2014, RF amended the Construction Notification to state that it also has met the Commission’s safe harbor for the provision of substantial service for fixed, point-to-point services (*i.e.*, the construction of four permanent links per one million people in its licensed service area) because, during May of 2008, it constructed one permanent link for LMDS Station WPOH612 to provide point-to-point backhaul service in BTA398.³⁷ RF contended that it established the link primarily for its own purposes.³⁸

12. On November 19, 2014, the Division asked RF to provide a detailed explanation of how RF is currently using the link and emphasized that the explanation should include the nature of the traffic

²⁹ Second Amended Substantial Service Showing at 3.

³⁰ Second Amended Substantial Service Showing at 4 (referencing Webster’s New World Dictionary and Thesaurus, Second Edition definition of “niche” as “a specialized business market”).

³¹ Second Amended Substantial Service Showing at 4.

³² Second Amended Substantial Service Showing at 4.

³³ E-mail from John. J. Schauble, Deputy Division Chief, Broadband Division, Wireless Telecommunications Bureau, FCC, to Charles E. Walters, Managing Director, RF Development, LLC (July 31, 2014).

³⁴ E-mail from Charles E. Walters, Managing Director, RF Development, LLC, to John. J. Schauble, Deputy Division Chief, Broadband Division, Wireless Telecommunications Bureau, FCC (Aug. 20, 2014).

³⁵ *Id.*

³⁶ *Id.*

³⁷ Construction Notification, Third Amended Substantial Service Showing (filed Sep. 19, 2014) at 3. RF notes that the 2010 Census data for the Salisbury BTA 398 reports the population of the five Maryland counties of Wicomico, Caroline, Worcester, Somerset and Dorchester comprising the BTA to be 242,341. *Id.* at 4.

³⁸ Third Amended Substantial Service Showing at 4. RF also therein provided the date the link was constructed; the coordinates for both ends of the link; and the bandwidth of the link. *See id.*

being carried over the link.³⁹ The Division noted that we had specifically asked RF to explain in detail for what purpose it is using the link if it is using the link for its own internal purposes.⁴⁰ The Division found RF's response stating that the link is primarily being used for its own purposes to be insufficient because the response does not explain the nature of that use.⁴¹

13. In response, RF amended the Application on January 6, 2015.⁴² RF clarified its statement that the link is primarily used for its own purposes.⁴³ RF explains that this statement was not meant to suggest that the link was being used for its own corporate communications needs but, rather, to underscore that the link was being used to pursue commercial business opportunities for the company.⁴⁴ More specifically, RF notes that “[t]he link was established for the purpose of demonstrating to prospective business partners, carriers and site operators the ability of RF . . . to provide high speed wireless connectivity to the proposed tower site.⁴⁵ In addition, RF provides an explanation of the nature of the link traffic.⁴⁶ RF is currently transmitting telemetry and control information over the point-to-point link, which is used to monitor the status of the link, as well as maintaining the link in order to demonstrate high speed connectivity to the site.⁴⁷

14. On April 1, 2015, the Division denied RF's demonstration of substantial service for Station WPOH612.⁴⁸ First, the Division found that RF failed to demonstrate that it meets the safe harbor for point-to-multipoint services.⁴⁹ The Commission has explained that “for an LMDS licensee that chooses to offer point-to-multipoint services, a demonstration of coverage to 20 percent of the population of its licensed service area at the 10-year mark would constitute substantial service.”⁵⁰ Rather than base its population served estimates on the U.S. Census, RF asked the Division to consider tourists and “weekend populations” in making its determination.⁵¹ The Division declined to adopt an amorphous definition of population that would vary from weekend to weekend, allow licensees to count residents of the United States redundantly in multiple areas, and arguably include foreign tourists as well.⁵² Because RF failed to demonstrate that it provides coverage to 20 percent of the population of the licensed service area, the Division found that it failed to meet the safe harbor for construction of point-to-multipoint

³⁹ Notice of Return, Ref. No. 5900787 (Nov. 19, 2014) (Second Return Letter) at 1.

⁴⁰ Second Return Letter at 1.

⁴¹ Second Return Letter at 1.

⁴² Construction Notification (amended Jan. 6, 2015), Fourth Amended Substantial Service Showing.

⁴³ Fourth Amended Substantial Service Showing at 2.

⁴⁴ Fourth Amended Substantial Service Showing at 2.

⁴⁵ Fourth Amended Substantial Service Showing at 2 (“The specific use of the link has been to demonstrate connectivity to the site in order to pursue commercial business opportunities available to RF Development, LLC and its potential business partners with carrier and tower site development customers, not for its own corporate communications purposes.”).

⁴⁶ Fourth Amended Substantial Service Showing at 3.

⁴⁷ Fourth Amended Substantial Service Showing at 3.

⁴⁸ *MO&O*.

⁴⁹ *MO&O*, 30 FCC Rcd at 2870-2871 ¶ 16.

⁵⁰ *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 270 (internal citations omitted).

⁵¹ *MO&O*, 30 FCC Rcd at 2870 ¶ 16.

⁵² *MO&O*, 30 FCC Rcd at 2871 ¶ 16.

services for LMDS Station WPOH612.⁵³

15. In addition, the Division found that the point-to-point link RF constructed is not relevant to its substantial service showing because the link was not used to provide service.⁵⁴ In 2011, the Commission affirmed the Bureau's rejection of substantial service showings "where there is no actual service being provided to the public."⁵⁵ The Commission has noted that the underlying purpose of the substantial service requirement is "providing 'a clear and expeditious accounting of spectrum use by licensees to ensure that service is indeed being provided to the public.'"⁵⁶ In other services, both the Commission and the Bureau have held that there is no service when facilities were constructed and operating but there was no use of the facilities.⁵⁷ The Division noted:

In this instance, the signals transmitted for testing or marketing purposes were not used as part of any communications system. The constructed link was shown to potential customers or used as the basis for various consultations or discussions to provide prospective service, but there was no communications use of the data transmitted over the link. There is no actual customer or RF employee who used the links as part of any communications service.⁵⁸

The Division therefore found that, in the absence of service being provided to the public, RF had failed to demonstrate substantial service by constructing one point-to-point link for Station WPOH612.⁵⁹

16. The Division noted that, although the substantial service requirement may be met in other ways and we review licensees' showings on a case-by-case basis,⁶⁰ it found that RF has failed to

⁵³ *MO&O*, 30 FCC Rcd at 2871 ¶ 16.

⁵⁴ Although RF seems to suggest that the Division failed to evaluate its substantial service showing as a "hybrid" showing, a "hybrid" showing would have required RF actively be using the point-to-point link to provide a bona fide communications service.

⁵⁵ 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, *Report and Order, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, 26 FCC Rcd 11614, 11661 ¶ 114 (2011) ("*Wireless Backhaul MO&O*"); see also *FiberTower Spectrum Holdings LLC, Memorandum Opinion and Order*, 28 FCC Rcd 6822, 6840-6841 ¶ 39 (2013).

⁵⁶ *Wireless Backhaul MO&O*, 26 FCC Rcd at 11661 ¶ 114, citing Amendment of the Commission's Rules Regarding the 37.0 – 38.6 GHz and 38.6 – 40 GHz Bands, *Report and Order and Second Notice of Proposed Rulemaking*, ET Docket No. 95-183, 12 FCC Rcd 18600, 18623 ¶ 42 (1997); 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 PSPWD 2002).

⁵⁷ For example, in 2004, the Commission affirmed the cancellation of a license in the 2.5 GHz band for failure to provide service, and noted that "it was clearly unreasonable for San Diego MDS to believe that the periodic broadcasting of signals that nobody received constituted 'service' within the meaning of the rule." San Diego MDS Company, *Memorandum Opinion and Order*, 19 FCC Rcd 23120, 23124 ¶ 10 (2004). The Bureau's Mobility Division has also rejected substantial service showings where facilities are constructed and operating but there is no internal use or service to customers. See *Cornerstone SMR, Inc., Order*, 27 FCC Rcd 5900 (WTB MD 2012); *JSM Holding LLC, Letter*, 27 FCC Rcd 5864 (WTB MD 2012).

⁵⁸ *MO&O*, 30 FCC Rcd at 2871-2872 ¶ 17.

⁵⁹ *MO&O*, 30 FCC Rcd at 2872 ¶ 17.

⁶⁰ *Second LMDS Report and Order*, 12 FCC Rcd at 12660-12661 ¶ 270.

demonstrate that it is providing substantial service.⁶¹ Specifically, the Division found that RF fails to demonstrate that it provides service to a niche market or to populations outside of areas served by other licensees.⁶² The Division found that RF has failed to demonstrate that Ocean City is not a market unserved by other carriers.⁶³ The Division therefore found that none of these factors supports a conclusion that Station WPOH612 is providing substantial service.⁶⁴

17. RF filed a petition seeking reconsideration of the Division's action on April 22, 2015. RF disagrees with the Division's definition of population,⁶⁵ interpretation of substantial service; and the finding that RF's fixed point-to-point link was not used for service.⁶⁶ RF also contends that it had expectations that a "hybrid" approach would be considered in evaluation its substantial service showing and that the Commission would consider other options, such as an extension of time or disaggregation of service area.⁶⁷ RF asks the Division to reinstate the license for Station WPOH612 through one of the following four actions: accepting its substantial service showing based upon arguments it previously made, find substantial service based on consideration of a "hybrid" approach taking into account both the point-to-multipoint system and the fixed link, accept RF's offer to partition part of its service area so that it would serve more than twenty percent of the population in its remaining service area, or grant it an 18 month extension of time to demonstrate substantial service for Station WPOH612.⁶⁸

III. DISCUSSION

18. We deny the Petition. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁶⁹ A petition for reconsideration that simply reiterates arguments that were previously considered and rejected will be denied.⁷⁰ We find that the Petition neither demonstrates material error or omission in the *MO&O*, nor

⁶¹ *MO&O*, 30 FCC Rcd at 2872 ¶ 18, citing *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 270 ("In evaluating a substantial service showing, the Commission may consider such factors as whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, and whether the licensee's operations serve niche markets or focus on serving populations outside of areas served by other licensees.") (internal citations omitted).

⁶² *MO&O*, 30 FCC Rcd at 2872 ¶ 18 (noting that the cases where the Bureau has accepted showings involving niche markets involve specialized customers such as a remote educational campus or public safety or a specialized service).

⁶³ *MO&O*, 30 FCC Rcd at 2872 ¶ 18 (noting that, since RF plans to provide services to other carriers, it would be illogical for RF to be pursuing its business plan in an unserved market).

⁶⁴ *MO&O*, 30 FCC Rcd at 2872 ¶ 18.

⁶⁵ RF raised various related arguments such as the Commission's misunderstanding of the population count analysis, the explanation of the population count analysis, and the exclusion of service to a majority of the population. Petition at 7-9.

⁶⁶ Petition at 5-12.

⁶⁷ Petition at 10-11.

⁶⁸ Petition at 12-13.

⁶⁹ 47 C.F.R. § 1.106; see 47 C.F. 1.106(d)(2) (a petition for reconsideration of a decision that sets forth formal findings of fact and conclusions of law shall also cite the findings and/or conclusions which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and/or conclusions should be changed).

⁷⁰ See *WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964) (*WWIZ*) ("it is universally held that rehearing will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken").

raises any new facts unavailable to the petitioners at their last opportunity to presents such matter. Therefore, for the reasons explained below, we dismiss the Petition.

19. With respect to RF's substantial service arguments that it made previously, we find that the Petition largely reargues matters that the Division previously considered and rejected in the *MO&O*. It is well established that "rehearing will not be granted merely for the purpose of debating matters on which the tribunal has once deliberated and spoken."⁷¹ A review of the pleadings shows that RF's arguments were thoroughly considered and rejected in the *MO&O*. While it is apparent that RF believes that the *MO&O* is incorrect, RF has not met the standards for reconsideration by demonstrating a material error or omission in the underlying order or raising additional facts not known or not existing until after the last opportunity it had to present such matters. Accordingly, we dismiss the Petition to the extent that it presents arguments previously considered and rejected.

20. We also reject RF's request that the Division evaluate its substantial showing under a "hybrid" approach where, if a licensee fails to meet the safe harbor separately for point-to-multipoint services or fixed, point-to-point services, we would determine whether it could be credited for offering both point-to-multipoint services and fixed, point-to-point services in satisfying the requirement to provide substantial service. Consideration under a "hybrid" approach is not appropriate in this case because the fixed, point-to-point link was not used to provide a bona fide communication service.⁷² Therefore, any reference to a point-to-point that does not provide a bona fide communications service could not affect the outcome of a "hybrid" showing. Because RF failed to demonstrate that it met the safe harbor for point-to-multipoint services, it equally failed to demonstrate the provision of substantial service under a "hybrid" showing.⁷³

21. We also decline to consider at this time RF's proposals that it be allowed to partition its license or seek an extension of time to demonstrate substantial service. "Grant of a request to reinstate and extend the construction period for a license that has canceled automatically for failure to construct requires 'an extraordinary showing of compelling circumstances.'"⁷⁴ RF had the opportunity to request an extension as an alternative to its substantial service notification, but it did not do so. We therefore conclude that extraordinary circumstances are not present to justify consideration of an extension request at this time. Similarly, while we may have considered RF's partitioning proposal prior to our action, we believe it is too late to consider such a proposal now. RF elected to continue to pursue its substantial service showing—filing multiple amendments over a course of three years—without seeking other regulatory actions it now wishes to pursue after the license has automatically cancelled.

IV. CONCLUSION AND ORDERING CLAUSES

22. For the reasons discussed above, we find that the Petition mostly presents arguments that were previously considered and rejected by the Division in the *MO&O*. RF has not identified any error or omissions in the *MO&O* warranting reconsideration of the action taken by the Division in this matter. We therefore dismiss the Petition in part and deny it in part.

23. Accordingly, IT IS ORDERED that 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

⁷¹ *WWIZ*, 37 FCC at 686 ¶ 2.

⁷² *MO&O*, 30 FCC Rcd at 2872 ¶ 17.

⁷³ The Division also evaluated and rejected claims that RF provided substantial service by serving niche markets or focusing on serving populations outside of areas served by other licensees.

⁷⁴ County of Alamance, North Carolina, *Order*, 13 FCC Rcd 23335, 23336 ¶ 4 (WTB PS&PWD 1998), quoting County of Los Angeles, *Order*, 4 FCC Rcd 4500, 4501 (PRB 1989) (citing Associated Information Services, Inc., *Memorandum Opinion and Order and Declaratory Ruling*, 3 FCC Rcd 5617, 5618–5619 (1988)).

Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by RF Development, LLC on April 22, 2015 IS DISMISSED IN PART AND DENIED IN PART.

24. 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

John J. Schauble
Deputy Chief, Broadband Division
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