

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

In the Matter of )
GREAT RIVER ENERGY ) File Nos. 0004417760-0004417773
14 Applications For Waiver and Extension of )
Time to Meet First Buildout Requirement for )
Multiple Address System Licenses )

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 2015

Released: April 1, 2015

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

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address 14 applications filed by Great River Energy ("Great River") for a waiver and extension of time to meet the first buildout requirement for Multiple Address System ("MAS") licenses. Great River seeks an extension of the first buildout requirement for five years, until October 12, 2015. For the reasons discussed below, we deny the Extension and Waiver Requests and note that Great River's licenses automatically cancelled on October 12, 2010.

II. BACKGROUND

2. MAS is a radio communications service that consists of 3.2 megahertz of spectrum in the 900 MHz band and is licensed under Part 101 of the Commission's rules. In 2000, the Commission designated the 928/959 MHz bands and twenty of the forty paired channels in the 932/941 MHz bands to be licensed on a geographic area basis using Economic Areas. The Commission has held two auctions of MAS licenses. In the first auction, Auction 42, held from November 14, 2001 to November 27, 2001, the Commission sold 878 licenses. In the second auction, Auction 59, held from April 26, 2005 to May 18, 2005, the Commission sold 2223 licenses.

3. Great River is a not-for-profit cooperative that provides wholesale electric service to 28 distribution cooperatives in Minnesota and Wisconsin. In turn, those member cooperatives distribute

1 See Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Docket No. 97-81, Report and Order, 15 FCC Rcd 11956 (2000) ("MAS Report and Order").

2 MAS Report and Order, 15 FCC Rcd at 11957-58 ¶ 2.

3 See Multiple Address Systems Spectrum Auction Closes – Winning Bidders Announced, Public Notice, 16 FCC Rcd 21011 (WTB 2001).

4 See Multiple Address Systems Spectrum Auction Closes – Winning Bidders Announced, Public Notice, 20 FCC Rcd 9551 (WTB 2005).

5 Petition for Waiver and Limited Extension of Deadline for Establishing Compliance with Section 101.1315 MAS Construction Requirement (filed Oct.12, 2010) ("Petition") at 2.

electricity to more than 639,000 member consumers, approximately 1.7 million people.<sup>6</sup> Great River is the second largest electric power supplier in Minnesota and one of the largest generation and transmission cooperatives in the United States.<sup>7</sup> Great River reports that it and its 28 member cooperatives intend to use the MAS frequencies to deploy Smart Grid technology according to the standards developed by the National Institute of Standards and Technology (“NIST”).<sup>8</sup>

4. Great River won 68 MAS licenses in Auction 59.<sup>9</sup> Subsequently, on October 12, 2005, Great River’s long form application was granted, and it was issued licenses for each of the markets for which it was the winning bidder.<sup>10</sup> Under Section 101.1325(b) of the Commission’s Rules, Great River had until October 12, 2010, or five years after its licenses were granted, to either provide service to at least one-fifth of the population within its service area or to demonstrate “substantial service.”<sup>11</sup>

5. On October 12, 2010, Great River filed the Extension Applications seeking an extension of the time to construct 14 of the 68 licenses that it had won in Auction 59.<sup>12</sup> Great River allowed the remainder of the licenses it won in Auction 59 to automatically terminate on October 12, 2010, the date of the first build-out requirement under Section 101.1325(b) of the Commission’s Rules. The Extension Applications are unopposed.

6. Great River argues that it should be granted a waiver and extension of time to construct until October 12, 2015 because it and its 28 member cooperatives intend to use the MAS frequencies to deploy Smart Grid technology according to the standards developed by the National Institute of Standards and Technology (“NIST”).<sup>13</sup> Because NIST has not yet issued any standards that can be applied by system and equipment manufacturers, Great River argues that it should be granted a waiver and extension of time to construct until October 12, 2015, which would allow NIST sufficient time to develop and publish the requisite standards and for Great River to design and deploy a standards based private network that would, in turn, allow its cooperative members owners to deploy Smart Grid technology.<sup>14</sup>

### III. DISCUSSION

7. MAS licensees may engage in terrestrial point-to-point and point-to-multi-point fixed and limited mobile operations.<sup>15</sup> The Commission determined that in order to meet the statutory requirement to include safeguards to protect the public interest in the use of spectrum, it would impose two buildout requirements on geographic area MAS licenses.<sup>16</sup> Within five years of license grant, geographic area

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<sup>6</sup> Petition at 2.

<sup>7</sup> Petition at 2-3.

<sup>8</sup> Petition at 3-4.

<sup>9</sup> See Multiple Address Systems Spectrum Auction Closes – Winning Bidders Announced for Auction No. 59, *Public Notice*, 20 FCC Rcd 9551, 9560 (WTB 2005).

<sup>10</sup> See The Wireless Telecommunications Bureau Announces the Grant of 21 Licenses to Operate in the Multiple Address Systems Bands, *Public Notice*, 20 FCC Rcd 16203 (WTB 2005).

<sup>11</sup> See 47 C.F.R. § 101.1325(b).

<sup>12</sup> A list of the licenses in question and the file numbers of the Extension Applications are contained in the Appendix to this *Memorandum Opinion and Order*.

<sup>13</sup> Petition at 3-4.

<sup>14</sup> Petition at 3-4.

<sup>15</sup> See 47 C.F.R. § 101.1307.

<sup>16</sup> *MAS Report and Order*, 15 FCC Rcd at 11994 ¶ 94, citing 47 U.S.C. § 309(j)(3).

MAS licensees were required to provide coverage to at least one-fifth of the population in their service areas or demonstrate substantial service.<sup>17</sup> At the end of the ten year period, licensees are required to make a continued showing of substantial service in each licensed area.<sup>18</sup> The Commission has defined “substantial service” as “service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal.”<sup>19</sup> The Commission concluded that the coverage requirements it adopted were consistent with rules for other services and would “hinder warehousing, promote the rapid development of new technologies, and promote service to rural areas.”<sup>20</sup>

8. 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 due to involuntary loss of site or other causes beyond its control.”<sup>21</sup> 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.<sup>22</sup>

9. We conclude that Great River has failed to justify an extension of time to meet the first construction requirement because Great River’s failure to meet the buildout deadline was attributable to factors wholly within its control. Great River made the business decision to develop a Smart Grid system based on equipment manufactured to meet the Smart Grid standard developed by NIST, even though NIST had not yet developed the standard. Meanwhile, other MAS licensees chose to build similar systems based on the current availability of equipment rather than rely on building a system based on equipment that had yet-to-be manufactured based on a standard that had yet to be developed. Although Great River developed a master plan and started to build the core back bone, it does not indicate that it has taken any other actions aimed at meeting its construction obligations. It offers no evidence of the efforts it made to search for equipment or to develop workable equipment, either before or after it acquired the licenses in question to actually use its 14 MAS licenses. Under these circumstances, we conclude that Great River’s failure to meet its buildout deadline was a consequence of its voluntary business decision to wait for the development of equipment based on a NIST standard that had yet-to-be-developed. “[I]n its licensing of various wireless telecommunications services, the Commission has repeatedly ruled that business decisions made by licensees which ultimately prove misguided should not influence Commission determinations made in the course of managing the spectrum.”<sup>23</sup> In this case, we conclude that Great River’s voluntary business decisions led directly to the situation in which it now finds itself, and that an extension of the construction deadline is not justified. A search of the Universal Licensing System shows that the Commission has accepted over 1,000 construction notifications from MAS licenses.<sup>24</sup> In the absence of any evidence of a systemic problem, we decline to grant a five year buildout extension.

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<sup>17</sup> *Id.*, see also 47 C.F.R. § 101.1325(b).

<sup>18</sup> *Id.*, see also 47 C.F.R. § 101.1325(b).

<sup>19</sup> *Id.*

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

<sup>21</sup> 47 C.F.R. § 1.946(e)(1).

<sup>22</sup> 47 C.F.R. § 1.946(e)(2), (3).

<sup>23</sup> See Bristol MAS Partners, Request for Extension of Time in which to Construct and Place into Operation Multiple Address System Stations WPJF864 through WPJF870, *Order*, 14 FCC Rcd 5007, 5009 (WTB PSPWD 1999) (denying a request for extension of time to construct where the construction delays resulted from business decisions and therefore could not be attributed to causes beyond the licensee's control).

<sup>24</sup> See, e.g., construction notifications filed by Joe Wheeler Electric Membership Corporation (File Nos. 0004348596, *et al.*), Paging Systems, Inc. (File Nos. 0002961454, *et al.*), and ConocoPhillips Communications, Inc. (File Nos. 0002971368, *et al.*).

10. To be granted a waiver of the October 12, 2010 construction deadline, Great River 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>25</sup> Because Great River makes no showing whatsoever under either provision of the Commission's waiver standard we conclude that Great River has failed to make the requisite showing, and we therefore deny its waiver request.

11. Under Section 1.955(a)(2) of the Commission's Rules, authorizations automatically terminate if the licensee fails to meet construction or coverage requirements.<sup>26</sup> In light of our conclusion that grant of an extension to Great River is not in the public interest, we find that Great River's licenses automatically terminated on October 12, 2010, the first build out deadline under Section 101.1325(b) of the Commission's rules.

#### IV. CONCLUSION AND ORDERING CLAUSES

12. Great River has failed to justify an extension of time to meet the first buildout deadline for the MAS licenses in question. We therefore deny the Extension Applications and declare that Great River's licenses automatically terminated as of October 12, 2010.

13. Accordingly, IT IS FURTHER ORDERED that, 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 No. 0004417760 *et seq.*) filed by Great River Energy on October 12, 2010 and listed in the Appendix to this *Memorandum Opinion and Order* ARE DENIED.

14. 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 licenses issued to Great River Energy and listed in the Appendix to this *Memorandum Opinion and Order* ARE DECLARED TERMINATED as of October 12, 2010.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>25</sup> See 47 C.F.R. § 1.925(b)(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); 47 C.F.R. § 1.3.

<sup>26</sup> See 47 C.F.R. § 1.955(a)(2).

## APPENDIX

<b>Call sign</b>	<b>File Number of Extension</b>
WQDP292	0004417760
WQDP293	0004417761
WQDP294	0004417762
WQDP295	0004417763
WQDP296	0004417764
WQDP297	0004417765
WQDP298	0004417766
WQDP299	0004417767
WQDP300	0004417768
WQDP301	0004417769
WQDP302	0004417770
WQDP303	0004417771
WQDP304	0004417772
WQDP305	0004417773