



Federal Communications Commission
Washington, D.C. 20554

August 07, 2017

DA 17-744

Mr. Thomas K. Kurian
11392 Vernazza Ct.
Las Vegas, NV 89138

RE: Request for Waiver of Section 27.14(g), File No. 0007650703

Dear Mr. Kurian:

For the reasons stated below, the Mobility Division of the Wireless Telecommunications Bureau hereby denies the request of Thomas K. Kurian (Kurian) for a waiver of, or a five-year extension of time to comply with, the interim construction requirement of Section 27.14(g) of the Commission's rules for a Lower 700 MHz E Block license in the U.S. Territory of Guam, Call Sign WQJQ677 (BEA173) (the License).¹

I. BACKGROUND

Construction Requirements. In the *700 MHz Second Report and Order*, the Commission adopted interim and end-of-license term construction benchmarks for certain 700 MHz band licensees.² The Commission initially required Lower 700 MHz band E Block licensees to provide signal coverage and offer service over at least 35 percent of their license area by June 13, 2013,³ and over at least 70 percent of their license area by the end of their initial 10-year license term.⁴ Kurian obtained the License at Auction 73 in 2008 when the Commission auctioned licenses in the Lower 700 MHz A, B, and E Blocks.⁵

Subsequently, in the 2013 *Interoperability Report and Order*, the Commission extended the interim and end-of-license term construction deadlines for all Lower 700 MHz E Block licenses to March 7, 2017, and March 7, 2021, respectively.⁶ The Commission provided Lower 700 MHz E Block licensees the option to meet their interim construction requirement by providing signal coverage and offering service to at least 40 percent of the aggregated population of *all* their E Block license areas.⁷ The Commission further provided Lower 700 MHz E Block licensees the option to meet their end-of-term construction requirement by providing signal coverage and offering service to at least 70 percent of the

¹ Thomas K. Kurian, Request for Waiver and/or Extension of Interim Construction Benchmark, Call Sign WQJQ677, citing 47 CFR § 27.14(g), ULS File No. 0007650703 (filed Feb. 6, 2017) (Request).

² See *Service Rules for 698-746, 747-762, and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*), upheld on reconsideration, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Memorandum Opinion and Order on Reconsideration, 28 FCC Rcd 2671 (2013).

³ 47 CFR § 27.14(g).

⁴ *Id.* § 27.14(g); *700 MHz Second Report and Order*, 22 FCC Rcd at 15293-94, 15349, paras. 6, 157.

⁵ See *Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73*, Public Notice, 23 FCC Rcd 4572 (WTB 2013). Kurian also acquired two 700 MHz Lower A Block licenses, which he later transferred to T-Mobile License LLC. See Required Notification, ULS File No. 0006554231 (filed Nov. 19, 2014).

⁶ *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122, 15147-48, paras. 56 (2013) (*Interoperability Report and Order*).

⁷ *Interoperability Report and Order*, 28 FCC Rcd at 15148, para. 57.

population of *each* of their E Block license areas.⁸

The Commission established that if a Lower 700 MHz E Block licensee fails to meet the extended interim construction deadline, the term of its license(s) would be reduced by one year (rather than by two, as under Section 27.14(g)(1)), and the licensee therefore would have to meet its end-of-license term construction requirement by March 7, 2020.⁹ If a licensee does not meet its end-of-license term construction requirement, Section 27.14(g)(2) provides that it will be subject to a “keep-what-you-serve” rule, whereby its “authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission.”¹⁰

Kurian’s 2013 Interoperability Extension Request and the Interoperability Proceeding. In 2012, the Commission initiated a rulemaking to promote interoperability in the Lower 700 MHz band and to encourage the efficient use of spectrum.¹¹ In the *Interoperability NPRM*, the Commission sought comment on whether it should modify the Lower 700 MHz E Block rules “to permit power levels, out of band emissions and antenna heights that are no greater than those currently permitted in the 700 MHz Lower A and B blocks, [and] to allow downlink only in the Lower E Block . . .”¹² The Commission also sought comment “on how such modifications would affect the operations and plans of Lower E Block licensees. . . .”¹³ Kurian did not file comments regarding the *Interoperability NPRM*.¹⁴

On May 7, 2013, Kurian filed a request for an extension of Section 27.14(g)’s interim construction deadline (then June 13, 2013) “for a period that is no less than two years after the availability of the 700 MHz E band [broadband] devices and after the Commission renders a final ruling on interoperability in” the *Interoperability* proceeding.¹⁵ Kurian argued that the additional two years would “allow [E Block] licensees adequate time to plan and develop their systems in light of the determination[s] in that proceeding.”¹⁶

On September 10, 2013, certain parties in the *Interoperability NPRM* proceeding filed with the Commission a voluntary industry consensus agreement to resolve the lack of interoperability in the Lower 700 MHz band.¹⁷ This agreement included a range of Lower 700 MHz band licensees, including the

⁸ *Id.* at 15148, para. 57. *See id.* at 15148, n.166; 47 CFR § 27.14(g).

⁹ *Interoperability Report and Order* at 15148, para. 58; 47 CFR § 27.14(g)(1).

¹⁰ 47 CFR § 27.14(g)(2). *See also 700 MHz Second Report and Order*, 22 FCC Rcd at 15348, para. 153.

¹¹ *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, 27 FCC Rcd 3521, 3522-23, para. 5 (2012) (*Interoperability NPRM*).

¹² *Id.* at 3540, para. 42 (quoting *Ex Parte* Letter from Joan Marsh, Vice President, Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 11-18, at 1-2 (filed Dec. 22, 2011)).

¹³ *Interoperability NPRM*, 27 FCC Rcd at 3541, para. 43.

¹⁴ *See Interoperability Report and Order*, 28 FCC Rcd at 15169-70, Appendix C, List of Commenters; FCC, Electronic Comment Filing System, WT Docket No. 12-69, <https://www.fcc.gov/ecfs/>.

¹⁵ Thomas K. Kurian, Request for Extension of Time and Waiver of Interim Construction Benchmark Deadline, Call Sign WQJQ677, ULS File No. 0005773320, at 1 (filed May 7, 2013) (*Interoperability Extension Request*). Another E Block licensee, Manifest Wireless, filed a similar request citing lack of interoperability as the basis for an extension. ULS File Nos. 0005817992- 0005818159, Attachment, Request for Extension and/or Waiver by Manifest Wireless L.L.C. (filed June 12, 2013) (*DISH Extension Request*). We note that Manifest Wireless L.L.C. is a subsidiary of DISH Network Corporation.

¹⁶ *Interoperability Extension Request* at 2.

¹⁷ At the Commission’s urging in the *Interoperability NPRM*, stakeholders in the *Interoperability* proceeding filed letters with the Commission indicating their support for a voluntary industry consensus agreement to resolve the

principal E Block licensee, DISH Network Corp. (DISH), as well as the Competitive Carriers Association.¹⁸

On October 29, 2013, the Commission released the *Interoperability Report and Order*, implementing the voluntary industry consensus agreement, whereby it limited all Lower 700 MHz E Block operations to downlink only and reduced the maximum permissible power levels and antenna heights.¹⁹ The Commission found “these changes to be in the public interest because they eliminate likely harmful interference, thereby promoting interoperable LTE operations in the Lower 700 MHz band.”²⁰

In the *Interoperability Report and Order*, the Commission also addressed Kurian’s Interoperability Extension Request (and extension requests filed by other parties) by waiving and extending the interim construction deadline for all Lower 700 MHz E Block licensees to March 7, 2017, and the end-of-term construction deadline to March 7, 2021, thereby affording Kurian more time than the two years he requested.²¹ The Commission explained that “[t]his additional time will afford licensees a sufficient opportunity to adjust their business plans in light of the technical changes to the band and also provide valuable services to the public in the near term.”²² The Commission also provided additional waiver relief on its own motion to all active Lower 700 MHz E Block licensees “to facilitate implementation of the [rule changes based on the] industry solution”²³ by (1) providing licensees the option to use population- rather than geographic-based benchmarks to meet their interim and end-of-term coverage requirements as described above, and (2) reducing the two-year acceleration of the end-of-term construction requirement for failure to meet the interim construction requirement to one year.²⁴ Kurian did not file a petition for reconsideration of any of the rule changes or relief adopted in the *Interoperability Report and Order*.

Request for Waiver and/or Extension. On February 6, 2017, Kurian filed the Request, asking that we either: (1) waive the March 7, 2017 interim construction deadline under Section 1.3 or Section 1.925(b)(3) of the Commission’s rules,²⁵ or (2) grant him a five-year extension of that deadline (that is, to

lack of interoperability in the Lower 700 MHz band. *See Interoperability Report and Order*, 28 FCC Rcd at 15123, paras. 1, 3, 13.

¹⁸ The licensee participants included AT&T Services, Inc.; DISH; US Cellular; C Spire Wireless; Vulcan Wireless LLC; King Street Wireless, L.P.; Cavalier Wireless LLC; and Continuum 700 LLC. Letter from Joan Marsh, Vice Pres. Fed. Regulatory, AT&T Services, Inc. to the Hon. Mignon Clyburn, Chairwoman, FCC, WT Docket No. 12-69, filed Sept. 10, 2013 (AT&T Sept. 10, 2013 Ex Parte); Letter from Jeffrey H. Blum, Senior Vice Pres. & Dep. Gen. Counsel, DISH Network, Corp., to the Hon. Mignon Clyburn, Chairwoman, FCC, WT Docket No. 12-69, filed Sept. 10, 2013 (DISH Network Sept. 10, 2013 Ex Parte); Letter from Grant Spellmeyer, Vice Pres. Fed. Affairs & Pub. Policy, US Cellular, Ben Moncrief, Dir. – Govt. Relations, C Spire Wireless, Scott Wills, Vulcan Wireless LLC, Allison Cryor NiNardo, Pres., Gen. Partner, King Street Wireless, L.P., Nash Nyland, Gen. Counsel, Cavalier Wireless LLC, T. Clark Akers, Exec. Vice Pres. Continuum 700 LLC, and Steven K. Berry, Pres. and CEO, Competitive Carriers Association to the Hon. Mignon Clyburn, Chairwoman, FCC, WT Docket No. 12-69, filed Sept. 10, 2013.

¹⁹ *Interoperability Report and Order*, 28 FCC Rcd at 15131, paras. 20, 21.

²⁰ *Id.* at 15131, para. 20. The Commission determined that, “under the current rules, there is a significant threat of harmful interference from high power transmissions in the Lower 700 MHz D and E Blocks to Band Class 12 devices operating on the Lower 700 MHz B and C Blocks that could jeopardize the viability of interoperability in the band.” *Id.* at 15131, para. 20.

²¹ *Id.* at 15147-48, para. 56.

²² *Id.*

²³ *Id.*

²⁴ *See id.* at 15148, paras. 57, 58.

²⁵ Request at 1 (citing 47 CFR §§ 1.3, 1.925(b)(3)).

March 7, 2022, making the interim construction deadline fall a year after the March 7, 2021, end-of-license term construction deadline) under Section 1.946(e).²⁶ Kurian states that, because the *Interoperability Report and Order* changed the Lower 700 MHz E Block licenses to downlink only, his spectrum is effectively unusable unless he can acquire uplink spectrum or find a partner with uplink spectrum,²⁷ and he claims that this rule change was a “circumstance beyond [his] control.”²⁸

Kurian asserts that he has made efforts to find a partner with uplink spectrum but has been unsuccessful, and that he needs an additional five years so he can acquire spectrum that can be used for uplink through an FCC auction or the secondary market.²⁹ Kurian contends that a waiver or extension “would allow [him] to conserve capital that otherwise would be devoted to sub-optimal build-out efforts, thereby preserving those resources for robust build-out once [Kurian] can find spectrum which is suitable for uplink.”³⁰

II. DISCUSSION

Waiver and Extension Standards. Licensees may seek a waiver of a construction requirement under Sections 1.3 or 1.925,³¹ or they may request an extension of time to construct under Section 1.946(e).³² Under Section 1.925(b)(3), the Commission may grant a request for a waiver when: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual 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.³³ Under Section 1.3, the Commission may grant a waiver where good cause is shown.³⁴ Separately, under Section 1.946(e), the Commission may grant an extension of time where a licensee demonstrates that the failure to complete construction is due to causes beyond its control.³⁵ Although Kurian requests relief under Sections 1.3, 1.925, and 1.946(e), reciting the text of each, he does not demonstrate factually how relief is warranted under any of these rules. Accordingly, for the reasons discussed below, we deny the Request, and Kurian’s final construction deadline is accelerated by rule one year to March 7, 2020.

At the outset, we emphasize that the Commission extended the interim construction deadline to March 7, 2017, in the *Interoperability* proceeding, providing Kurian and similarly situated licensees relief to account for the rule changes Kurian now cites as necessitating a waiver of the interim construction deadline or a five-year extension of it. As explained above, Kurian filed his *Interoperability Extension Request* after the Commission proposed limiting the Lower 700 MHz E Block spectrum to downlink only. Citing the lack of interoperable equipment in the E Block, he requested an additional two years to

²⁶ Request at 1 (citing 47 CFR § 1.946(e)). Kurian did not request an extension of his final construction deadline. If we were to extend Kurian’s interim construction deadline by five years as he requests, Kurian would also need an extension of the final deadline.

²⁷ See Request at 1.

²⁸ *Id.* at 2.

²⁹ See *id.* at 1-2.

³⁰ *Id.* at 2.

³¹ 47 CFR §§ 1.3, 1.925.

³² *Id.* § 1.946(e).

³³ *Id.* § 1.925(b)(3).

³⁴ *Id.* § 1.3.

³⁵ *Id.* § 1.946(e)(1).

meet the interim construction requirement after the conclusion of the *Interoperability* proceeding,³⁶ he did not oppose or otherwise address the Commission's proposed rule changes.³⁷ The Commission in the *Interoperability Report and Order* recognized the potential challenges that Lower 700 MHz E Block licensees might face because of the rule changes and provided several forms of relief, including granting Kurian's Interoperability Extension Request and extending the interim construction deadline by almost four years.³⁸

In addition, while Kurian states that he "never would have bid[] on the 700 MHz E block if the said spectrum could only be used for downlink only,"³⁹ the Commission recognized in the *Interoperability Report and Order* that "Congress specifically applied to licenses acquired by auction [a] 'long tradition of Commission authority to change rules governing already-issued licenses.'"⁴⁰ We also note that Kurian did not file comments on the proposed rule changes in the *Interoperability NPRM*, nor did he file a petition for reconsideration of the rule changes adopted in the *Interoperability Report and Order* or make any other objection.⁴¹ Instead, Kurian waited, until over three years after that Order adopted an industry consensus amending the rules for this band, including the E Block, and extending from 2013 to 2017 the interim construction deadline applicable to 700 MHz E Block licensees, to request a further waiver or extension of that new deadline, for five additional years.

Waiver Request. The Commission's construction obligations serve the important purpose of ensuring that scarce spectrum resources are put to use and deployed to serve all communities⁴² and promote the Commission's mandate to make spectrum "available, so far as possible, to all the people of the United States" wherever they live.⁴³ As with other Commission rules, requests to waive the requirements of the wireless construction rules must "meet a high hurdle even at the starting gate."⁴⁴ While we must evaluate each case based on the specific circumstances that it presents, the Commission's construction requirements are intended to ensure intensive use of valuable spectrum,⁴⁵ and waiver of those

³⁶ See Interoperability Extension Request at 2-4.

³⁷ See *id.*

³⁸ See *Interoperability Report and Order*, 28 FCC Rcd at 15147-48, para. 56; Interoperability Extension Request at 1.

³⁹ Request at 1.

⁴⁰ *Interoperability Report and Order*, 28 FCC Rcd at 15138, para. 33, quoting *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585, 589-90 (D.C. Cir. 2001) (citing 47 U.S.C. §§ 309(j)(6)(C)-(D)).

⁴¹ See Interoperability Extension Request at 1.

⁴² See, e.g., 47 U.S.C. § 309. See also, e.g., *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102, 16173-74, para. 187 (2012) ("The Commission establishes performance requirements to promote the productive use of spectrum, to encourage licensees to provide service to customers expeditiously, and to promote the provision of innovative services throughout the license area(s), including in rural areas."); *700 MHz Second Report and Order*, 22 FCC Rcd at 15348-49, paras. 154-155 (highlighting several important policy goals advanced by adoption of performance requirements, including to "better promote access to spectrum and the provision of service, especially in rural areas"); *Amendment of the Commission's Rules to Establish New Personal Communications Services*, Memorandum Opinion and Order, 9 FCC Rcd 4957, 5018-19, paras. 154-56 (1994) (imposing construction requirements to ensure effective spectrum use and promote nationwide coverage notwithstanding varying population densities).

⁴³ See, e.g., 47 U.S.C. § 151.

⁴⁴ See *WAIT Radio v. FCC*, 459 F.2d 1203, 1207 (D.C. Cir. 1972).

⁴⁵ See 47 U.S.C. § 309(j)(3)(D). Cf. *id.* § 309(j)(4)(B).

requirements is infrequent and only appropriate when consistent with that goal and the public interest.⁴⁶ It is a licensee's responsibility to confirm that it can satisfy construction and service requirements before acquiring spectrum.⁴⁷ Here, as described above, the Commission modified its rules and granted all affected licensees (including Kurian) additional time to satisfy their construction and service requirements. Kurian has not demonstrated that granting him further relief here will ensure any use of valuable spectrum or is in the public interest.

Kurian fails to demonstrate that he is entitled to relief under either prong of Section 1.925(b)(3). To meet the first prong of 1.925(b)(3),⁴⁸ Kurian must demonstrate that: (1) the underlying purpose of Section 27.14(g)—“to better promote access to spectrum and the provision of service, especially in rural areas”⁴⁹—would be frustrated by application of the rule here; and (2) that grant of the requested waiver will serve the public interest. While Kurian recites the rule's text, he does not explain how Section 27.14(g)'s underlying purpose would be frustrated by its enforcement here. Kurian also fails to explain how waiver relief would lead to the provision of service to the public, particularly those in rural areas, since he provides no concrete plan for using the spectrum and offers no basis upon which we can conclude that he would provide service to the public in the future.⁵⁰ Further, he offers no arguments as to how a waiver would serve the public interest.⁵¹ We therefore conclude that Kurian has failed to justify waiver relief under Section 1.925(b)(3)(i).

In his Request, Kurian states that he deserves waiver relief from meeting the already-extended interim construction deadline because “the challenges faced by [Kurian] are unique,” and he “has no reasonable alternative.”⁵² He provides no factual support for these allegations, however. Under Section 1.925 of our rules, Kurian must demonstrate that, in view of unique or unusual factual circumstances, application of Section 27.14(g) would be inequitable, unduly burdensome, or contrary to the public interest, or that he has no reasonable alternative.⁵³ Kurian does not explain how his circumstances are unique or unusual, or how they differ from those of any other Lower 700 MHz E Block licensee.⁵⁴ Kurian also fails to provide factual support for his claim that he has no reasonable alternative to a waiver here, nor does he specify how application of Section 27.14(g) would be inequitable, unduly burdensome, or contrary to the public interest. Instead, Kurian merely mentions efforts to partner with another

⁴⁶ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S. Ct. 461 (1972).

⁴⁷ See *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008*, Public Notice, 22 FCC Rcd 18141, 18155-57, paras. 39-47 (WTB 2007).

⁴⁸ 47 CFR § 1.925(b)(3)(i).

⁴⁹ *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, para. 153.

⁵⁰ See, e.g., *Aircom Consultants, Inc.*, Order on Reconsideration, 28 FCC Rcd 11150, 11153, para. 9 (WTB-BD 2013) (*Aircom Order*) (denying further waiver request because licensee provided no basis to conclude it could build its network with additional time); *Two-Twenty Auction Co., Inc.*, Letter Order, 24 FCC Rcd 8604, 8606 (WTB-MD June 26, 2009) (*Two-Twenty Order*) (denying further waiver request because petitioners failed to demonstrate how they intended to make use of the licensed spectrum).

⁵¹ See, e.g., *Aircom Order*, 28 FCC Rcd 11150, 11153, para. 9 (denying further waiver request because it would undermine the waived rule's underlying purpose to ensure that service is being provided to the public).

⁵² Request at 2.

⁵³ 47 CFR § 1.925(b)(3)(ii).

⁵⁴ In this regard, Kurian's waiver request amounts to an untimely petition for reconsideration of the Commission's 2013 action to modify the technical rules applicable to his license and its determination that an extension of almost four years would be sufficient to “afford licensees a sufficient opportunity to adjust their business plans in light of the technical changes to the band and also provide valuable services to the public in the near term.” See *Interoperability Report and Order*, 28 FCC Rcd at 15147-48, para. 56.

provider for, or acquire his own, uplink spectrum. He provides no specific details of the actual efforts he made to put the spectrum to use, however, nor does he describe how the public interest would not be served if we deny the requested relief.⁵⁵ We therefore find that Kurian has failed to show that grant of his request is warranted under Section 1.925(b)(ii).

Finally, for the same reasons as described above, the record does not support a finding that Kurian has shown good cause for waiver relief under Section 1.3.

Extension Request. Kurian also fails to justify why an extension of time under the separate legal standard of Section 1.946 is warranted. Section 1.946(e) provides that the Commission may grant an extension of time where the licensee demonstrates that the failure to complete construction is due to causes beyond its control.⁵⁶ We apply this standard in light of the mandate of Section 309(j) of the Communications Act,⁵⁷ which states that the Commission shall include performance requirements to ensure prompt delivery of services, to prevent stockpiling and warehousing of spectrum by licensees, and to promote investment and deployment of new technologies and services.⁵⁸

Kurian asserts that “[t]he change of rules by [the] FCC turning [his] Spectrum only for downlink use is certainly a circumstance beyond [his] control,” which circumstance “ha[s] made it impossible for [him] to meet the interim construction benchmark in the licensed areas in a manner that would provide an attractive, high-quality, affordable service to its customers.”⁵⁹ Other than generally claiming that he has attempted to partner with another provider, Kurian provides no examples of concrete actions he undertook to put the spectrum to use. Nor does Kurian demonstrate why the Commission’s 2013 waiver, granting him almost four additional years to meet the interim benchmark to account for the Commission’s change in rules, was inadequate to permit him to do so.⁶⁰ At bottom, Kurian’s justification for seeking even more time to meet the interim construction deadline—an additional five years—rests on his own business decision not to construct while he seeks to acquire uplink spectrum, in order to “allow him to conserve capital that otherwise would be devoted to sub-optimal build-out efforts, thereby preserving those resources for robust build-out once [he] can find spectrum which is suitable for uplink.”⁶¹ WTB has consistently found that considerations such as these constitute voluntary business decisions are not

⁵⁵ See, e.g., *Glenwood Tel. Membership Corp.*, Memorandum Opinion and Order, 28 FCC Rcd 11169, 11173, para. 13 (WTB-BD 2013) (*Glenwood Order*) (denying waiver request because licensee failed to show that it acted diligently in attempting to obtain equipment); *Aircom Order*, 28 FCC Rcd at 11153-54, para. 9 (finding that, given the amount of time licensee had to meet the construction deadline and its lack of progress, it was not inequitable to deny its further waiver request); *Eldorado Commc 'ns, L.L.C.*, Order, 17 FCC Rcd 24613, 24616-19, paras. 8-13 (WTB-CWD 2002) (denying waiver request for various reasons, including that the licensee was only in preliminary stages of construction toward the end of the construction deadline, despite holding licenses for years; service was being offered by others in the license areas, meaning that granting licensee’s request was not going to result in appreciable benefit of service being offered; and the licensee’s delay in acquiring equipment was its own decision and failed to account for standards changes expected to be part of wireless business).

⁵⁶ 47 CFR § 1.946(e)(1).

⁵⁷ 47 U.S.C § 309(j)(4)(B).

⁵⁸ See *Two-Twenty Order*, 24 FCC Rcd at 8606.

⁵⁹ Request at 2.

⁶⁰ See, e.g., *Longhorn Communications Inc.*, Letter Order, 26 FCC Rcd 6716, 6719-20 (WTB-MD May 6, 2011) (denying extension request because licensee offered only speculative options and failed to demonstrate or provide material evidence that further regulatory relief would result in its licenses being put to use in the near term, and because allowing an extension well beyond the license term to explore options or hope that a particular business model comes to fruition is not in the public interest); *Two-Twenty Order*, 24 FCC Rcd at 8606 (denying further extension request because petitioners failed to justify a specific period of time for the request).

⁶¹ Request at 2.

circumstances beyond a licensee's control within the meaning of Section 1.946 and, as such, do not warrant relief under that rule.⁶²

Moreover, in addition to extending the interim construction deadline, the Commission in the *Interoperability Report and Order* also extended the license term and end-of-term construction deadline to March 7, 2021, or March 7, 2020, if a Lower 700 MHz E Block licensee fails to meet its interim construction requirement as here.⁶³ Although Kurian failed the interim construction requirement, he still has nearly three years to satisfy his build-out obligations. Kurian has not explained why this period would be insufficient to meet the end-of-term construction requirement. Kurian may pair his Lower 700 MHz E Block spectrum with various spectrum bands,⁶⁴ and he has the option to make a population- rather than geographic-based coverage showing. Further, even if Kurian were to fail to meet the end-of-term construction requirement, under Section 27.14(g)(2)'s "keep-what-you-serve" rule, he could retain any portion of the License area to which he is providing service by March 7, 2020.

III. CONCLUSION AND ORDERING CLAUSE

Because we reject Kurian's Request, and because Kurian admits that he has not constructed any facilities and is not providing any service,⁶⁵ he has failed to meet the interim construction requirement, and his end-of-license-term is accelerated by rule one year to March 7, 2020, without further Commission action.⁶⁶ We will update the Commission's Universal Licensing System database accordingly. We also direct Kurian to file an interim construction notification within 15 days of this Letter Order's release date certifying that he has failed to meet the interim construction requirement and "includ[ing] information detailing meaningful efforts undertaken to put the spectrum to use."⁶⁷

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Sections 1.3, 1.925(b)(3), and 1.946(e) of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925(b)(3), 1.946(e), the Request for Waiver and/or Extension Interim Construction Benchmark of Thomas K. Kurian, filed on February 6, 2017, ULS File No. 0007650703, IS DENIED.

⁶² See, e.g., *Glenwood Order*, 28 FCC Rcd at 11172, para. 10 (licensee failed to show that its failure to obtain equipment was a matter beyond its control); *David G. Boyle*, Letter Order, 24 FCC Rcd 8600, 8601 (WTB-MD June 26, 2009) (licensee had made a business decision to seek further regulatory relief in lieu of deploying available equipment); *Redwood Wireless Minnesota, LLC*, Order, 17 FCC Rcd 22416, 22419, paras. 6-7 (WTB-CWD 2002) (construction delays resulting from business disputes were exercise of business judgment and were not outside petitioner's control); *Bristol MAS Partners*, Order, 14 FCC Rcd 5007, 5010, para. 8 (WTB-PSPWD 1999) (equipment installation or delivery not delayed for some unique reason and licensee failing to obtain equipment was business decision).

⁶³ *Interoperability Report and Order*, 28 FCC Rcd at 15147-48, paras. 56, 58.

⁶⁴ A review of Commission licensing records shows that there are spectrum bands in at least four radio services (700 MHz, Cellular, Personal Communications Service, and Advanced Wireless Services), from 698 MHz to 2.2 GHz, that could be paired with Kurian's spectrum to facilitate uplink/downlink service. Not including Kurian, there currently are more than 30 licenses in these bands in Guam/Northern Mariana Islands held by 10 licensees. See FCC, Universal Licensing System, Market Based License Search, <http://wireless2.fcc.gov/UlsApp/UlsSearch/searchMarket.jsp>.

⁶⁵ See generally Request.

⁶⁶ See CFR § 27.14(g)(1).

⁶⁷ *700 MHz Construction and Reporting Requirements*, Public Notice, 26 FCC Rcd 16442, 16445 (WTB 2011) (*700 MHz Requirements Public Notice*). See also 47 CFR § 27.14(k). Section 27.14(g)(1) states that licensees that fail to meet the interim construction requirement may be subject to enforcement action, including forfeitures. 47 CFR § 27.14(g)(1). The *700 MHz Requirements Public Notice* explains that "licensees undertaking no meaningful efforts to build out their networks may lose the authority to operate in part of the remaining unserved areas of the license, at the Commission's discretion." *700 MHz Requirements Public Notice*, 26 FCC Rcd at 16445.

And, IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.946(d), 27.14(k) and (g) of the Commission's rules, 47 C.F.R. §§ 1.946(d), 27.14(k) and (g), Thomas K. Kurian must file an interim construction notification within 15 days of the release date of this Letter Order as described above.

Action taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau