

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

In the Matter of)	
)	
SKYBRIDGE SPECTRUM FOUNDATION)	File Nos. 0007206924-0007207275
)	
352 Applications for Waiver and Extension of)	
Time to Meet First Buildout Requirement for)	File Nos. 0007206392-0007206411,
Multiple Address System Licenses)	0007206417-0007206459, 0007206461-
)	0007206517, 0007206519-0007206578,
352 Applications for Renewal of Multiple Address)	0007206580-0007206439, 0007206641-
System Licenses)	0007206752
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MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2018

Released: August 14, 2018

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

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address 352 applications filed by Skybridge Spectrum Foundation (“Skybridge”) for an extension of time to meet construction requirements for Multiple Address System (“MAS”) licenses, as well as 352 applications to renew the same MAS licenses. Skybridge seeks an extension of the construction requirement for 12 months, until March 29, 2017. For the reasons discussed below, we deny the Request for Limited Extension of Construction Deadlines (“Request”), dismiss the renewal applications, and note that Skybridge’s licenses automatically cancelled on March 29, 2016.

II. BACKGROUND

2. The licenses at issue here originally were assigned to Intelligent Transportation and Monitoring Wireless LLC (ITL), which won 352 MAS licenses in Auction 59 in May 2005. On March 29, 2006, ITL’s long form application was granted, and it was issued licenses for each of the markets for which it was the winning bidder. Under Section 101.1325(b) of the Commission’s Rules, ITL had until March 29, 2011, or five years after its licenses were granted, to provide service to at least one-fifth of the population within each service area or to demonstrate “substantial service.” Rather than file construction notifications on March 29, 2011, however, ITL filed applications seeking an extension of time to construct the licenses and applications seeking to disaggregate the 352 licenses into 704 licenses and assign 352 of them to Skybridge. Under the assignment applications, Skybridge agreed to assume the performance obligations for the entire Economic Area in which the individual licenses are located, as permitted by Section 101.1323(c) of the Commission’s rules. The Wireless Telecommunications Bureau (“Bureau”) granted the applications for extensions of time to construct the licenses and the applications to

disaggregate the 352 licenses.¹ Thus, ITL has no performance requirements attached to its 352 disaggregated licenses whereas Skybridge had to meet the performance requirements applicable to the entire Economic Area in which its licenses are located. There is no dispute that Skybridge was subject to a 5-year construction deadline that lapsed on March 29, 2016.

3. On February 6, 2016, the Bureau accepted applications seeking consent to the transfer of control of ITL and Skybridge to Susan L. Uecker in her capacity as a receiver. Until the appointment of Ms. Uecker, ITL and Skybridge were two of multiple entities that were under the control of Warren Havens.

4. On March 29, 2016, Skybridge filed two sets of applications with respect to its MAS licenses – applications for a 12-month extension of time to demonstrate substantial service, and separate applications to renew the licenses.² With each Extension Application, Skybridge filed an exhibit entitled “Request for Limited Extension of Construction Deadlines” (“Extension and Waiver Request”). Skybridge makes no showing that it used the 352 MAS licenses for any purpose or that it constructed any facilities. Rather, Skybridge first argues that the Bureau’s decision to grant the prior extension was an acknowledgement that Skybridge proposed to use the MAS licenses in conjunction with its Multilateration Location and Monitoring Service (M-LMS) licenses and that, at a minimum, the MAS licenses should therefore be extended at least until the September 4, 2016 deadline applicable to Skybridge’s LMS licenses.³ Second, Skybridge argues that the receiver faced unique and unanticipated circumstances that justify a one-year extension of the construction deadline. Specifically, Skybridge notes that, given the receiver’s “vast administrative duties,” it was impossible for her to complete construction in the four months between her appointment and the end of the license term.⁴ Third, Skybridge argues that not granting the Extension Applications would frustrate the purpose of the rules by making the spectrum unavailable for commercial applications. Skybridge notes that the receiver has been in talks with third parties concerning potential uses of the spectrum, and it argues that granting an extension would result in more expeditious use of the spectrum than cancelling the licenses and reauctuating the spectrum.⁵

III. DISCUSSION

5. 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.⁶ Within five years of license grant, geographic area MAS licensees were required to provide coverage to at least one-fifth of the population in their service areas or to demonstrate substantial service.⁷ At the end of the ten year period, licensees are required to

¹ See *Wireless Telecommunications Bureau Assignment of License Authorizations, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Eligibility Event Applications, and Designated Entity Annual Reports Action*, Public Notice, Report No. 10431 (Apr. 15, 2015) at 2; File Nos. 0004668905-0004669256 (granted Sep. 8, 2014).

² The Appendix to this *Memorandum Opinion and Order* contains the file numbers of the applications for extension of time (“Extension Applications”) and applications for renewal of license (“Renewal Applications”).

³ Extension and Waiver Request at 2-4.

⁴ Extension and Waiver Request at 5.

⁵ Extension and Waiver Request at 5-6.

⁶ *MAS Report and Order*, 15 FCC Rcd at 11994, para. 94, citing 47 U.S.C. § 309(j)(3).

⁷ *Id.*, see also 47 C.F.R. § 101.1325(b).

make a continued showing of substantial service in each licensed area.⁸ 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.”⁹ The Commission concluded that the coverage requirements that it adopted were consistent with the rules for other services and that they would “hinder warehousing, promote the rapid development of new technologies, and promote service to rural areas.”¹⁰

6. 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.”¹¹ 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.¹²

7. We conclude that Skybridge has failed to justify an extension of time to meet its construction requirement because Skybridge’s failure to meet the buildout deadline was attributable to factors wholly within its control. Initially, we reject the argument that the grant of a prior extension somehow supports or compels a grant of this Extension Request. In evaluating the current Extension Request, we evaluate the licensee’s efforts since the grant of the prior extension request.¹³ Skybridge has provided no concrete evidence that it made any efforts to deploy service since grant of the last extension applications in 2014. We cannot conclude that Skybridge acted diligently to place the MAS licenses into service. To the extent Skybridge has not constructed because it decided to use the MAS licenses in connection with its LMS licenses, the Commission consistently has found that a licensee’s own business decisions are not circumstances beyond the licensee’s control and are therefore not an appropriate basis for regulatory relief.¹⁴

8. Skybridge argues that the financial and time constraints of the Receiver caused Skybridge to miss the construction deadline.¹⁵ Skybridge’s argument (1) conflates the difficulties of the Receiver with those of the licensee and (2) fails to present extraneous causes for its failure to meet construction requirements. Our rules state, “Extension requests will not be granted for failure to meet a construction or coverage deadline because the licensee undergoes a transfer of control or because the licensee intends to

⁸ *Id.*, see also 47 C.F.R. § 101.1325(b).

⁹ *Id.*

¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.946(e)(1).

¹² 47 C.F.R. § 1.946(e)(2), (3).

¹³ See *SPEEDUSNY.COM, L.P.*, Memorandum Opinion and Order, 27 FCC Rcd 15321, 15327-28, para. 15 (WTB BD 2012). *Cope Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 14564, 14565, para. 5 (1998).

¹⁴ See, e.g., *Redwood Wireless Minnesota, LLC*, Order, 17 FCC Rcd 22416 (WTB CWD 2002) (construction delays resulting from business disputes were exercise of business judgment and were not outside Petitioner’s control); *Eldorado Communications LLC*, Order, 17 FCC Rcd 24613 (WTB CWD 2002) (licensee’s determination to initially deploy TDMA system and subsequently to adopt GSM with months remaining before construction deadline was business decision within its control); *Bristol MAS Partners*, Order, 14 FCC Rcd 5007 (WTB PSPWD 1999) (equipment installation or delivery not delayed for some unique reason and licensee failing to obtain equipment was business decision); *AAT Electronics Corporation*, 93 FCC 2d 1034 (1983) (decision not to market service aggressively because of equipment uncertainties is within licensee’s control); *Business Radio Communications Systems, Inc.*, 102 FCC 2d 714 (1985) (construction delay caused by zoning challenge not a circumstance beyond licensee’s control); *Texas Two-Way, Inc.*, 98 FCC 2d 1300 (1984), *aff’d sub nom.*, *Texas Two-Way, Inc. v. FCC*, 762 F.2d 138 (D.C. Cir. 1985) (licensee is responsible for delay resulting from interference caused by construction adjacent to construction site because site selection was an independent business decision).

¹⁵ Request at 5 (The Receiver, appointed four months before the construction deadline, had limited financial resources to administer over 5,000 licenses in the Receivership estate, including the MAS licenses at issue in this proceeding).

assign the authorization. The Commission will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct.”¹⁶ Extensions of time will be granted only if factors beyond the licensee’s control prevent the licensee from constructing a network.¹⁷ Further, our rules expressly prohibit granting an extension when the failure to construct was caused by a lack of financing.¹⁸ While Ms. Uecker may have faced difficulties in meeting the construction deadline, she did not assume control until approximately two months before the construction deadline, and the proximate cause of those difficulties was the licensee’s failure to act diligently to meet the construction deadline.

9. Skybridge argues that, by granting an extension, the spectrum could be made available to such users more quickly than if the licenses were terminated and subsequently auctioned.¹⁹ If the Commission were to grant an extension under such reasoning, any geographic area licensee could claim that it could put the spectrum to use more quickly than if the spectrum were reaucted and relicensed. Such an approach would fundamentally undermine the purpose of the Commission’s construction requirements, removing any incentive the rule provides to construct and allowing licensees to warehouse spectrum indefinitely.²⁰

10. To be granted a waiver of the March 29, 2016 construction deadline, Skybridge 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.²¹ While Skybridge cites the waiver standard,²² it does not attempt to show that a waiver is justified under either prong of that standard. For the reasons noted above, we conclude that applying the construction deadline in this case would be consistent with the purpose of the rule. Skybridge has also failed to cite any unique or unusual circumstances that would justify a waiver. We therefore conclude that Skybridge has failed to make the requisite showing and 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.²³ In light of our conclusion that grant of an extension to Skybridge is not in the public interest, we find that Skybridge’s licenses automatically terminated on March 29, 2016 under Section 101.1325(b) of the Commission’s rules.

IV. CONCLUSION AND ORDERING CLAUSES

12. Skybridge has failed to demonstrate that it met the first buildout deadline for the MAS licenses in question, and has also failed to justify its requested extension of time. We therefore deny the

¹⁶ 47 C.F.R. § 1.946(e)(3).

¹⁷ 47 C.F.R. § 1.946(e)(1).

¹⁸ 47 C.F.R. § 1.946(e)(2).

¹⁹ Request at 5-6.

²⁰ See *Northstar Technology, LLC*, Order, 18 FCC Rcd 800, 803, para. 6 (WTB CWD 2003), *recon. denied* 19 FCC Rcd 3015 (WTB MD 2004); *affirmed* 19 FCC Rcd 22275 (2004).

²¹ 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.

²² Request at 5.

²³ See 47 C.F.R. § 1.955(a)(2).

Extension Applications and declare that Skybridge's licenses automatically terminated as of March 29, 2016.

13. Accordingly, IT IS 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 Nos. 0007206924-0007207275) filed by Skybridge Spectrum Foundation on March 29, 2016 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 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 applications for renewal of licenses (File Nos. 0007206392 *et seq.*) filed by Skybridge Spectrum Foundation on March 29, 2016 and listed in the Appendix to this *Memorandum Opinion and Order* ARE DISMISSED.

15. 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 Skybridge Spectrum Foundation and listed in the Appendix to this *Memorandum Opinion and Order* ARE DECLARED TERMINATED as of March 29, 2016.

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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