



Federal Communications Commission
Washington, D.C. 20554

March 21, 2012

DA 12-435

LMDS Ventures
Attention: Reynard L. Bockart
P.O. Box 690
Almont, MI 48003

In re: LMDS Ventures
Request for Renewal and Extension
Call Signs WPOJ972 & WPOJ973
File Nos. 0004207852 & 0004207845

Dear Mr. Bockart:

On April 12, 2010, LMDS Ventures filed waiver requests¹ to file late-filed applications for the renewal of the licenses of Local Multipoint Distribution Service ("LMDS") Stations WPOJ972 and WPOJ973, which both expired on August 9, 2009. On August 13, 2010, LMDS Ventures amended the application for Station WPOJ972 to request an extension of time, until June 1, 2012, in which to establish compliance with the Commission's LMDS substantial service requirement.² For the reasons stated below, we deny the Renewal Waiver Request and dismiss its extension request as moot.

LMDS Ventures was the licensee of LMDS Stations WPOJ972 and WPOJ973. The licenses for WPOJ972 and WPOJ973 were issued on August 9, 1999 and expired on August 9, 2009.³ Section 1.949(a) of the Commission's Rules requires licensees to file renewal applications no later than the expiration dates of licenses.⁴ LMDS Ventures failed to do so, not filing until April 12, 2010, and requesting that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of its late-filed applications.⁵ LMDS Ventures claims that its partners were unaware that the licenses had expired until PC Management, which apparently acted as a manager for LMDS Ventures, informed the partners that the licenses had expired in a letter dated March 8, 2010.⁶ The partners had understood that PC Management would be filing renewal applications.⁷ The partners seek to renew the licenses in order to obtain "time to have a partnership meeting, find a new manager, contact the rest of the partners and develop a new business plan."⁸ Moreover, LMDS Ventures claims, "[G]iven the unique and dire

¹ Waiver Requests for Applications for Late-Filed Renewal and Reinstatement of Licenses, File Nos. 0004207852 & 0004207845 (filed Apr. 12, 2010) (April Waiver Requests).

² Request for Extension of Time to Complete Construction and Rule Waiver, File No. 0004207852 (filed Aug. 12, 2010) (Construction Extension Request).

³ File No. 0000014700 (granted Aug. 9, 1999).

⁴ See 47 C.F.R. § 1.949(a).

⁵ See April Waiver Requests. See also Application Resubmission and Supplement to Request for Waiver, File No. 0004207852 (filed Aug. 13, 2010) (August Waiver Request) at 1.

⁶ See April Waiver Requests.

⁷ *Id.*

⁸ *Id.*

circumstances faced by the LMDS industry generally, there was no feasible means for LMDS Ventures to satisfy substantial service requirements prior to filing for renewal, and thus renewal applications were not timely filed.”⁹

The Commission’s policy regarding reinstatement procedures in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission’s Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.¹⁰ Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹¹ In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.¹²

In considering whether to grant waivers to allow a late-filed renewal application, the Bureau may grant such waivers 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.¹³ LMDS Ventures argues that it qualifies for waivers under the aforementioned waiver standard and “Commission precedent.”¹⁴ However, taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that LMDS Ventures’ late-filed renewal applications should be dismissed.¹⁵

We do not believe that LMDS Ventures has satisfied either prong of the waiver standard. An inadvertent failure to renew a license in a timely manner is not so unique and unusual in itself as to warrant a waiver of the Commission’s Rules.¹⁶ Further, each licensee is solely responsible for knowing

⁹ August Waiver Request at 2.

¹⁰ Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

¹¹ *Id.* at 11486 ¶ 22.

¹² *Id.* at 11485 ¶ 22.

¹³ 47 C.F.R. § 1.925(b)(3).

¹⁴ August Waiver Request at 2-3.

¹⁵ *See, e.g.*, WSYX Licensee, Inc., *Order*, 15 FCC Rcd 19084 (WTB PSPWD 2000) (denying a request for waiver of Section 1.949 of the Commission’s Rules to allow submission of late-filed renewal applications after the licenses expired, and dismissing the subject applications).

¹⁶ *See* Mr. Roger Given, Vice President, Transmission and Storage Operations, Columbia Gas Transmission Company, *Letter*, 24 FCC Rcd 11769 (WTB BD 2009) (*Columbia Gas*); Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998, 11002 ¶ 11 (WTB PSPWD 2000) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

the terms of its license and submitting a renewal application to the Commission in a timely manner.¹⁷ The Commission has held that a licensee cannot rely on a third party's failure to perform as justification for a failure to meet regulatory requirements.¹⁸ LMDS Ventures makes no showing that the underlying purpose of the rule would not be served or would be frustrated by application to LMDS Ventures in the instant case. Nor does LMDS Ventures show how administrative oversight constitutes unique or unusual factual circumstances.¹⁹

Furthermore, while we note the advancements in millimeter wave transmission technology and the increasing suitability of LMDS for wireless backhaul applications cited by LMDS Ventures,²⁰ these factors, by themselves, do not justify a waiver. These technical considerations do not explain why the licensee did not properly file its renewal applications until several months after its licenses expired.

Finally, LMDS Ventures' reliance on a decision granting waivers of the renewal deadline to Educational Broadband Service (EBS) licensees is inapplicable.²¹ The decision to grant waivers to EBS licensees in that case was based on a lack of notice that unconstructed EBS stations had to file renewal applications.²² There is no such lack of notice in this case.²³ Moreover, while the Bureau has granted extensions of the substantial service deadline to LMDS licensees,²⁴ LMDS Ventures is unique in failing to file timely LMDS renewal applications without good cause.

In view of the foregoing, we find that grant of LMDS Ventures' requested waiver is not in the public interest. We therefore deny its request for waiver of Section 1.949(a) of the Commission's Rules and direct dismissal of its renewal applications. Its request for extension of the substantial service deadline is therefore moot.

¹⁷ *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 n.41 (1991).

¹⁸ See e.g., Daniel R. Goodman, Receiver, *Memorandum Opinion and Order*, 10 FCC Rcd 8537, 8548 ¶ 24 (1995) (investor reliance on fraudulent company does not excuse compliance with Commission rules); Kansas City Wireless Partners LLP, *Letter*, 24 FCC Rcd 8625, 8627 (WTB MD 2009); Stephen E. Coran, Esquire, *Letter*, 22 FCC Rcd 1921, 1923 (WTB MD 2007) (reliance on third party for financing does not justify extension).

¹⁹ See, e.g., Letter from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to J. Curtis Henderson, Senior Vice President & General Counsel, Nucentrix Spectrum Resources, Inc., 17 FCC Rcd 559, 561 (WTB AIAD 2002) (declining to grant a waiver for an administrative oversight in payments while the licensee was in negotiations to assign its license to a third party).

²⁰ August Waiver Request at 3.

²¹ August Waiver Request at 3-4, *citing* 116 Late-Filed Application for Renewal of Educational Broadband Service Stations and Fifty-Four Late-Filed Applications for Extension of Time to Construct Educational Broadband Service Stations, *Memorandum Opinion and Order*, 24 FCC Rcd 8108 (WTB BD 2009) (*116 Late-Filed Applications MO&O*).

²² *116 Late-Filed Applications MO&O*, 24 FCC Rcd at 8116-8117 ¶ 24.

²³ See 47 C.F.R. § 1.949(a) ("Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.")

²⁴ See 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).

Accordingly, IT IS ORDERED, 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 1.949 of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.949, that the request for waiver of Section 1.949(a) of the Commission's Rules filed on April 12, 2010 by LMDS Ventures, as supplemented on August 13, 2010, IS DENIED, and application File Nos. 0004207852 and 0004207845 SHALL BE DISMISSED.

IT IS FURTHER ORDERED, 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, 1.946, 101.1011 of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.946, 1.1011, that the request for extension or waiver of the requirement to demonstrate substantial service filed on August 13, 2010 by LMDS Ventures IS DISMISSED AS MOOT.

These actions are 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.

Sincerely,

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

cc: Brian W. Higgins, Esq.
Wilkinson, Barker, Knauer
2300 N Street NW, Suite 700
Washington, DC 20037