

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

In the Matter of)
Vertical Ventures II, LLC) FCC File Nos. 0007234177, 0007234187,
) 0007234207, 0007234221
)
L, W & C Network, LLC) FCC File Nos. 0007234895, 0007234904
)
LWH Network, LLC) FCC File No. 0007234908
)
Notice of Discontinuance and Request for Waiver)
and Extension of Time to Resume Operations)

ORDER ON RECONSIDERATON

Adopted: May 18, 2016

Released: May 19, 2016

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

1. Introduction. This Order on Reconsideration affirms an action by the Wireless Telecommunications Bureau’s Mobility Division (Division)1 granting the request of L, W & C Network, LLC; LWH Network, LLC; and Vertical Ventures II, LLC (collectively, the Licensees)2 for a waiver of Section 90.631(f) of the Commission’s rules.3 For the reasons set forth below, we deny the objection filed by M2M Spectrum Networks, LLC (M2M).4

2. Background. The Licensees were granted licenses for Trunked 800 MHz Specialized

1 Letter from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to L, W & C Network, LLC; LWH Network, LLC; and Vertical Ventures II, LLC (Apr. 20, 2016) (Letter Order).

2 Notice of L, W & C Network, LLC; LWH Network, LLC; and Vertical Ventures II, LLC of Discontinuance and Request for Waiver and Extension of Time to Resume Operations (Request). The Request was filed on April 18, 2016 by Vertical Ventures II, LLC (see FCC File Nos. 0007234177, 0007234187, 0007234207, and 0007234221), and on April 19, 2016 by L, W & C Network, LLC (see FCC File Nos. 0007234895 and 0007234904) and LWH Network, LLC (see FCC File No. 0007234908).

3 47 CFR § 90.631(f).

4 Informal Opposition and Request for Investigation of M2M Spectrum Networks, LLC to Notice of Discontinuance and Request for Waiver and Extension of Time to Resume Operations (filed Apr. 20, 2016) (Petition) (viewable in the Universal Licensing System under, e.g., File No. 0007234895). Because the Petition was received after the Request was granted, we will treat it as a petition for reconsideration of the Letter Order. See MariTEL, Inc., et al., Order on Reconsideration and Order, 28 FCC Rcd 7080, 7083, para. 11 (WTB MD 2013), recon. dismissed, Second Order on Reconsideration, 29 FCC Rcd 12827 (WTB MD 2014), recon. dismissed, Third Order on Reconsideration, 30 FCC Rcd 3702 (WTB MD 2015). The Licensees filed an opposition. Response of L, W & C Network, LLC; LWH Network, LLC; and Vertical Ventures II, LLC to Informal Opposition (filed May 2, 2016) (Opposition) (viewable in the Universal Licensing System under, e.g., Call Sign WQSG504). M2M filed a reply. Letter from Rob Somers, General Counsel, M2M, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 9, 2016) (Reply) (viewable in the Universal Licensing System under, e.g., File No. 0007234895).

Mobile Radio (SMR) Stations WQSG504, WQSG210, WQSG216, WQSG219, WQSG574, WQSG949, and WQTC646 (the Stations) between September 2013 and January 2014. Trunked 800 MHz SMR stations generally must be constructed and placed in operation within 12 months from the date of grant.⁵ In addition, a Part 90 authorization cancels automatically upon permanent discontinuance of operations.⁶ Section 90.631(f) provides that a trunked SMR licensee with facilities that have discontinued operations for 90 continuous days is presumed to have permanently discontinued operations unless the licensee notifies the Commission otherwise prior to the end of the 90-day period and provides a date not in excess of 30 additional days on which operation will resume.⁷

3. The Licensees contracted with M2M to construct and manage the Stations.⁸ In September 2014, the Licensees notified the Commission that the Stations had timely been placed in operation. On January 20, 2016, M2M informed the Commission that the Stations were no longer in operation.⁹

4. In April 2016, the Licensees notified the Commission that operation of the stations had been discontinued, and requested an extension of time to August 19, 2016 to resume operations before operation of the Stations was deemed permanently discontinued. Because August 19, 2016, is more than 30 days in excess of the 90-day period commencing January 20, 2016, they requested a waiver of Section 90.631(f). The Licensees explained that, following a business dispute, M2M had terminated the management agreements and discontinued operation of the Stations.¹⁰ The Licensees stated that they had made commercially reasonable efforts in the time since they were notified of the termination of service to resume operation of the Stations, but they would not be able to resume operations within 30 days of the end of the 90-day period following the discontinuance of operations.¹¹

5. The Division concluded that an extension of time to August 19, 2016, to resume operations was appropriate under the circumstances presented.¹² It directed the Licensees to notify the Commission on or before August 19, 2016, that the Stations had resumed operation, and stated that, in the event that no timely notification was received regarding any of the Stations, or if the notification did not establish that a station is in operation, the Commission's licensing records would be modified to reflect the cancellation of the license(s) of the relevant Station(s).¹³

6. M2M argues that the Licensees did not demonstrate good cause for grant of a waiver. It

⁵ 47 CFR § 90.155(a).

⁶ 47 CFR § 90.157(a).

⁷ 47 CFR § 90.617(f).

⁸ Request at 2.

⁹ Letter from M. Rob Somers, General Counsel, M2M, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 20, 2016).

¹⁰ See Request at 2.

¹¹ *Id.* at 3-4.

¹² See *Letter Order* at 2 (citing *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Notice of Proposed Rulemaking and Order, 25 FCC Rcd 6996, 7019, para. 58, 7023, para. 69 (2010); *Reese Telecommunications Inc.*, Order, 17 FCC Rcd 5775, 5776-77, paras. 4-6 (WTB CWD 2002) (*Reese*)).

¹³ See *id.*

states that the Licensees were informed on December 3, 2015, that non-payment would result in termination of the management agreements, and that they have not explained why they cannot reinstate service within 30 days of the end of the 90-day period following the discontinuance of operations.¹⁴ M2M argues that grant of a waiver is contrary to Section 90.631(f)'s purpose of ensuring that licensed SMR spectrum is put to use and not warehoused.¹⁵ In M2M's view, "[w]hat has happened here is that the Licensees failed to adequately prepare to relocate the licenses and therefore should not be given additional time."¹⁶

7. *Discussion.* To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of 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.¹⁷ We conclude that the waiver was correctly granted under the first prong of the waiver standard.

8. M2M owns the equipment used in the original systems,¹⁸ and holds the leases for the authorized sites.¹⁹ Due to the termination of the management agreements, the Licensees must complete the entire process of obtaining sites, procuring equipment, constructing stations, and commencing operation. The Licensees have demonstrated that a waiver is warranted. We agree with their observation that, under the circumstances presented, the purpose of the rule – to facilitate efficient spectrum use by recovering unused spectrum following permanent abandonment by an existing licensee²⁰ – is better served by this extension than it would be by terminating the licenses and assigning the channels to new parties, who would then have 12 months to commence operations.²¹

9. 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 Commission's Rules, 47 CFR § 1.106, the Informal Opposition and Request for Investigation to Notice of Discontinuance and Request for Waiver and Extension of Time to Resume Operations, filed by M2M Spectrum Networks, LLC, on April 20, 2016, IS DENIED.

¹⁴ See Petition at 1-2.

¹⁵ *Id.* at 1.

¹⁶ *Id.* at 2.

¹⁷ 47 CFR § 1.925(b)(3).

¹⁸ Request at 3.

¹⁹ Reply at 2.

²⁰ *Reese*, 17 FCC Rcd at 5776, para. 5.

²¹ See Opposition at 6.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau