



Federal Communications Commission
Washington, D.C. 20554

June 13, 2016

DA 16- 651

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Dear Ms. Goodwyn:

On October 28, 2015, the Shekinah Network filed a “Motion for Declaratory Ruling” (Motion) with the Federal Communication Commission.¹ In its Motion, Shekinah Network asks the Commission to use its authority under Section 1.2 of the Commission’s rules to clarify whether the ITFS Air Time Lease Agreement (Lease) between Shekinah Network and Des Moines F MPSG Partnership (Partnership) for the use of the excess capacity of EBS Station WND401 in Des Moines, Iowa can continue.² For the reasons stated below, we deny the Motion.³

The Commission has broad discretion whether or not to consider a request for declaratory relief.⁴ In this case, we conclude that the Motion should not be considered because the Commission is not the appropriate forum for the relief Shekinah seeks.

In 2004, the Commission applied the spectrum leasing rules established in the Secondary Markets proceeding to EBS (formerly ITFS) excess capacity leases for new leases entered into after the effective date of that order (which was January 10, 2005), while grandfathering existing leases under the previous ITFS rules, which limited such leases to a term of no more than fifteen years.⁵ There were disputes between commercial parties and EBS licensees concerning how to apply the fifteen year limit for grandfathered leases. Finally, in 2009, the Commission adopted a compromise proposal jointly submitted by the Wireless Communications Association International and the National EBS Association.⁶ Among other things, the proposal adopted by the Commission provided:

¹ Shekinah Network, Motion for Declaratory Ruling (filed Oct. 28, 2015) (Motion).

² *Id.* at 1. In the original Motion, the Station was erroneously identified as Station WND471. *See* Erratum to Motion for Declaratory Ruling (filed Oct. 28, 2015).

³ Des Moines F MPSG Partnership filed its opposition on November 6, 2015. Des Moines F MPSG Partnership, Opposition and Request for Summary Dismissal (filed Nov. 6, 2015) (Opposition). Shekinah replied to this Opposition. Shekinah Network, Reply (filed Nov. 11, 2015) (Reply).

⁴ *See, e.g., Yakima Valley Cablevision, Inc. v. F.C.C.*, 794 F.2d 737, 747 (D.C. Cir. 1986).

⁵ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169 para. 6 (2004).

⁶ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Fifth Memorandum Opinion and Order and Third Further Notice of Proposed Rulemaking, 24 FCC Rcd 12258, 12259-65 paras. 4-16 (2009) (*BRS/EBS Fifth MO&O*).

“any agreement entered into between January 24, 1999 and January 9, 2005 that provided for the spectrum leasing to commence at a point following execution of the document will be grandfathered for up to 15 years from the spectrum leasing start date agreed to by the parties in the agreement.”⁷

In order to determine the limitation on a lease executed prior to 2005, the Commission needs to know the actual start date of said lease. The Lease was executed on August 15, 2000; thus, its effect is limited to 15 years after the start date, as defined by the parties.⁸ We cannot determine the start date of the lease because the start date is conditional on multiple events.⁹ Neither party has provided evidence of when, if at all, all these conditions were met, nor is the Commission the proper authority to adjudicate such matters. To the extent there is a factual dispute regarding the start date of the lease, we believe the proper forum for resolving that dispute is a forum that normally handles contractual disputes, such as a court of competent jurisdiction or an arbitrator. Our decision here is consistent with prior Commission precedent where the Commission has consistently refused to become involved in private contractual matters that can best be resolved in a court of competent jurisdiction.¹⁰ The Commission has held that it “generally does not adjudicate private contractual disputes, but instead attempts to reach a fair accommodation between its exclusive authority over licensing matters and the authority of state and local courts through procedures that defer contractual matters to courts to decide under state and local law.”¹¹ We see no reason to depart from that principle in this case. Our denial of the Motion is without prejudice to either Shekinah or the Partnership filing such requests for relief as they deem appropriate following the conclusion of any civil litigation or arbitration proceeding.

⁷ *Id.* at 12263 para. 13. Shekinah states that the lease was executed on August 15, 2000. Motion at 1.

⁸ *BRS/EBS Fifth MO&O*, 24 FCC Rcd 12263 ¶ 13.

⁹ Because the lease was filed on a confidential basis, we will not discuss in this letter the specifics of how the start date is defined in the lease.

¹⁰ *S.A. Dawson*, Memorandum Opinion and Order, 17 FCC Rcd 472, 474 n.15 (WTB 2002) citing *Airtouch Paging, Inc.*, Order, 14 FCC Rcd 9658 (WTB CWB P&RB 1999); *Listeners’ Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987). See also *Antilles Wireless, L.L.C. d/b/a USA Digital*, Order on Reconsideration, 24 FCC Rcd 4696, 4699 ¶ 8 (WTB 2009).

¹¹ *S.A. Dawson, supra*, 17 FCC Rcd at 474 n.15.

For the reasons stated above, IT IS ORDERED, pursuant to Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Motion for Declaratory Ruling filed by the Shekinah Network on October 28, 2015 IS DENIED.

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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