

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Metropolitan Area Networks, Inc.)	File Nos.
)	0003867372-0003867871,
Requests for Waiver and Applications for)	0003867874-0003868373,
Extensions of Time to Extend Buildout Deadlines for)	0003868378-0003868936,
2,456 Microwave Industrial/Business Pool Fixed)	0003869344-0003869843,
Point-to-Point Licenses)	0003869908 ¹
)	

OPPOSITION TO APPLICATION FOR REVIEW

Pursuant to Section 1.115(d) of the Commission’s Rules, the Fixed Wireless Communications Coalition (FWCC) submits this Opposition to the Application for Review filed by Metropolitan Area Networks (MAN) on May 9, 2012.²

MAN requests Commission review of the Wireless Telecommunications Bureau decision of April 10, 2012, variously dismissing and denying MAN’s applications for extensions of time to meet the construction deadlines for 2,456 Part 101 Industrial/Business Pool fixed point-to-point microwave licenses (“Order on Reconsideration”).³

¹ MAN’s licenses have been consolidated under call sign WQJE757, File No. 0003869908.

² The FWCC is a coalition of companies, associations, and individuals interested in the Fixed Service—i.e., in terrestrial fixed microwave communications. Our membership includes manufacturers of microwave equipment, fixed microwave engineering firms, licensees of terrestrial fixed microwave systems and their associations, and communications service providers and their associations. The membership also includes railroads, public utilities, petroleum and pipeline entities, public safety agencies, cable TV providers, backhaul providers, and/or their respective associations, communications carriers, and telecommunications attorneys and engineers. Our members build, install, and use both licensed and unlicensed point-to-point, point-to-multipoint, and other fixed wireless systems, in frequency bands from 900 MHz to 95 GHz. For more information, see www.fwcc.us.

³ *Metropolitan Area Networks, Inc., Requests for Waiver and Applications for Extensions of Time to Extend Buildout Deadlines for 2,456 Microwave Industrial/Business Pool Fixed*

1. BACKGROUND

Between January 11, 2008, and March 3, 2009, the Commission granted to MAN 2,456 Part 101 licenses in the Industrial/Business Pool fixed point-to-point microwave service. Such licenses must commence operation within 18 months or they expire automatically.⁴ MAN's licenses were originally set to expire on various dates between July 11, 2009 and September 3, 2010.

In an attempt to forestall expiration, on June 12, 2009, MAN filed requests to extend the construction deadlines for all 2,456 licenses through March 3, 2011. MAN paid the requisite application fee for only one of those extension applications, and as to the others, requested a waiver of the fees. By rule, such a waiver request must accompany either an upfront fee payment or a deferral request.⁵ MAN submitted neither. On July 1, 2009, the Bureau dismissed all but one of MAN's extension applications as procedurally defective for failure to pay the fee.⁶

On July 31, 2010, MAN sought reconsideration of the dismissal, arguing that the Bureau should have considered the fee waiver requests and granted them on the merits. On January 17, 2012, after seeing no action on MAN's reconsideration petition for almost eighteen months, the FWCC asked the Bureau to delete MAN's licenses from the ULS database. Both the original expiration dates and the requested extension date had long since passed, the FWCC explained, and the continuing presence of the defunct licenses in the database impeded the coordination of

Point-to-Point Licenses, Order on Reconsideration and Memorandum Opinion and Order, DA 12-561 (released April 10, 2012).

⁴ 47 C.F.R. §§ 101.63(a), (c).

⁵ 47 C.F.R. § 1.1119(e). The Commission refunds fees as to which it grants a waiver.

⁶ See Order on Reconsideration, *supra* note 3, ¶ 7. No action was taken on the one license for which MAN paid the application fee.

other links. Following further pleadings by MAN and the FWCC, the Bureau denied MAN's Petition for Reconsideration. As to all but the one license for which the extension application fee had been paid, the Bureau upheld its earlier dismissal of the extension requests on the ground of lack of payment.⁷ The Bureau considered the paid-for request on its merits, and determined that MAN's failure to meet the construction deadline was due to its voluntary business decision rather than to a cause outside its control.⁸ The same Order directed the Commission's licensing staff to delete all of the licenses from the database.⁹

2. MAN'S APPLICATION FOR REVIEW

MAN now reiterates its claim that the Bureau wrongly dismissed its waiver requests for failure to comply with the Commission's rules regarding upfront fee payment or deferral.¹⁰ The Bureau, MAN argues, should have considered the waiver requests on the merits. MAN further insists that the Bureau's denial of the extension request for the one paid application was inconsistent with precedent.¹¹

3. FWCC OPPOSITION

MAN's Application for Review relies heavily on a 2008 Office of the Managing Director decision for the proposition that MAN need neither have submitted the fee it sought to have

⁷ Order on Reconsideration, *supra* note 4, ¶ 9.

⁸ Order on Reconsideration, *supra* note 3, ¶ 11.

⁹ Order on Reconsideration, *supra* note 3, ¶ 15.

¹⁰ MAN Application for Review at 3-6.

¹¹ MAN Application for Review at 6-8.

waived nor requested a deferral.¹² But the facts underlying that case are very different from MAN's, in two key respects. First, the licensee in that case, EchoStar, held a single, blanket license covering all of the earth stations at issue. Although MAN's licenses were subsequently consolidated under one call sign, MAN's original Request for Waiver on its face covered 2,457 distinct licenses.¹³ Second, the *EchoStar Fee Decision* acknowledged "the absence of any provision under the Commission's rules specifying a charge for this type of application in the DBS service[.]"¹⁴ Whether EchoStar's applicable fee was \$170 or \$170,000,000 was a matter of genuine doubt. The rules on per-license fees for a Part 101 extension of construction deadline, in contrast, are unmistakably clear.¹⁵

But in the end, the merits of MAN's legal arguments are beside the point. Even if MAN were to prevail on its Application for Review, and thus secure the grant of its June 12, 2009, request for extension of time, that would only extend the construction deadline through March 3, 2011—now 14 months in the past. MAN has still not constructed its formerly-licensed facilities. Thus, MAN has not requested any relief that could save its licenses from automatic expiration

¹² *Letter from Mark Stephens, Chief Financial Officer, FCC to Pantelis Michalopoulos, Esq., counsel to EchoStar Corporation, Fee Control Number RROG-07-000010514 (Oct. 23, 2008) (EchoStar Fee Decision).*

¹³ Metropolitan Area Networks, Inc., Petition for Waiver of Application Fees at 1-2 (filed June 11, 2009) (now accessible under application file no. 0003869908).

¹⁴ *EchoStar Fee Decision* at 1.

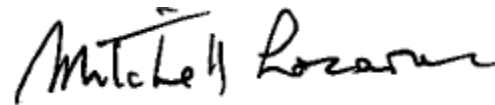
¹⁵ The appropriate fee was likewise an open question in another case cited by MAN, *Letter from Mark A. Reger, Chief Financial Officer, FCC, to Gary M. Epstein, Esq., counsel to DIRECTV Enterprises, Fee Control Number 0401218160117001 (June 15, 2004)*. In yet another fee decision cited by MAN, the applicant actually *did* request deferral under the rules. *Letter from Mark Reger, Chief Financial Officer, FCC, to Patricia J. Paoletta, Esq., Fee Control Number 0201108160051001 (June 24, 2002)*.

due to failure to construct by March 4, 2011, at the latest.¹⁶ MAN's Application for Review therefore must be dismissed as moot.

CONCLUSION

The Wireless Telecommunications Bureau properly deleted MAN's licenses from the ULS database, as MAN failed to meet both its original and requested construction deadlines.

Respectfully submitted,



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May 24, 2012

¹⁶ 47 C.F.R. § 101.63(s) ("Failure to timely begin operation means the authorization cancels automatically.")

Certificate of Service

I, Joan P. George, a secretary in the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that true copies of the foregoing " Opposition to Application for Review" were mailed first class, postage prepaid, this 24th day of March, 2012, to the attached service list, except that persons having an address at the Federal Communications Commission in Washington, DC were served by hand.

Joan P. George

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