

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

In the Matter of)
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)
Petition of Members of the Rural LMDS Group)
for Waiver of Section 101.1011 of the)
Commission's Rules and Extension of)
Construction Deadline)
Request by Members of the LMDS Coalition for)
Waiver and Limited Extension of Deadline for)
Establishing Compliance with Section 101.1011(a))
LMDS Substantial Service Requirements)
Petition of IDT Spectrum, LLC for Waiver and)
Extension of Time to Meet Substantial Service)
Requirements Found in Section 101.1011 of the)
Commission's Rules)

MEMORANDUM OPINION AND ORDER

Adopted: April 11, 2008

Released: April 11, 2008

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address 678 applications filed by licensees in the Local Multipoint Distribution Service ("LMDS") seeking waivers of Section 101.1011 of the Commission's Rules¹ and extensions of time to build out their licenses and demonstrate substantial service within their licensed areas.² For the reasons discussed below, we find that the public interest is served by extending the ten-

¹ 47 C.F.R. § 101.1011.

² The applications are listed in the Appendix to this Memorandum Opinion and Order. On December 19, 2007, the Wireless Telecommunications Bureau ("Bureau") released a Public Notice seeking comment on pending extension applications. See Wireless Telecommunications Bureau Seeks Comment on 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, Public Notice, 22 FCC Rcd 21703 (WTB 2007) (December Public Notice); see also Wireless Telecommunications Bureau Seeks Comment on 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, Public Notice, 23 FCC Rcd 162 (WTB 2008) (January Public Notice). The Commission received four comments and seven reply comments.

year construction requirement under Section 101.1011(a) of the Commission's Rules³ for those licenses listed in the Appendix until June 1, 2012. For the reasons discussed below, we otherwise deny the waiver requests to the extent that they seek additional relief, and we decline to consider requests for clarification of how the Bureau may act on future applications to renew LMDS licenses.

II. BACKGROUND

2. The Commission has allocated 1,300 megahertz of LMDS spectrum in each basic trading area ("BTA").⁴ Specifically, the Commission allocated two LMDS licenses per BTA – the "A Block" and "B Block" licenses.⁵ The A Block license is comprised of 1,150 MHz of total bandwidth, and the B Block license is comprised of 150 MHz of total bandwidth.⁶ The A Block consists of the sub bands 27.50-28.35 GHz (the A1 Band); 29.10-29.25 GHz (the A2 Band); and 31.075-31.225 GHz (the A3 Band).⁷ The B Block consists of the sub bands 31.00-31.075 (the B1 Band) and 31.225-31.30 GHz (the B2 Band).⁸ The same entity may hold the licenses for both the A and B Blocks of spectrum in an individual BTA, but each license is auctioned and licensed separately.

3. LMDS licensees may provide any service consistent with the Commission's Rules and their regulatory status,⁹ subject to a ten-year term from the initial license grant date.¹⁰ At the end of the ten year period, licensees are required to submit an acceptable showing to the Commission demonstrating that they are providing "substantial service" in each licensed area.¹¹ Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.¹²

4. The final LMDS band allocation was adopted by the Commission on March 20, 1997.¹³ Since allocating the LMDS spectrum, the Commission has thus far held two LMDS auctions: Auction 17

³ 47 C.F.R. § 101.1011(a).

⁴ See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies For Local Multipoint Distribution Service and For Fixed Satellite Services, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12605 ¶ 136 (1997) ("*Second LMDS Report and Order*"); see also Rand McNally Commercial Atlas & Marketing Guide 36-39 (123rd ed. 1992). Rand McNally is the copyright owner of the Major Trading Area (MTA) and BTA Listings, which list the BTAs contained in each MTA and the counties within each BTA, as embodied in Rand McNally's Trading Area System MTA/BTA Diskette, and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide. The conditional use of Rand McNally copyrighted material by interested persons is authorized under a blanket license agreement dated February 10, 1994 and covers use by LMDS applicants. This agreement requires authorized users of the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally ownership. There are a total of 493 BTAs in the LMDS.

⁵ See *Second LMDS Report and Order*, 12 FCC Rcd at 12556 ¶ 12.

⁶ See *id.*

⁷ See 47 C.F.R. § 101.1005.

⁸ See 47 C.F.R. § 101.1005.

⁹ See 47 C.F.R. § 101.1013(b).

¹⁰ See *Second LMDS Report and Order*, 12 FCC Rcd at 12657 ¶ 259. Pursuant to 47 C.F.R. § 101.67, LMDS licenses are issued for a period not to exceed ten years.

¹¹ See 47 C.F.R. § 101.1011(a); see also *Second LMDS Report and Order*, 12 FCC Rcd at 12658 ¶¶ 261-262.

¹² See 47 C.F.R. § 101.1011(a).

¹³ See *Second LMDS Report and Order*, 12 FCC Rcd at 12556 ¶ 13; see also Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies For Local Multipoint Distribution Service and For Fixed Satellite

and Auction 23.¹⁴ Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998.¹⁵ In Auction 17, 104 bidders won 864 licenses.¹⁶ Auction No. 23 began on April 27, 1999, and closed on May 12, 1999.¹⁷ In Auction 23, 40 bidders won 161 licenses.¹⁸ According to the Commission's Universal Licensing System (ULS), there are 976 active LMDS licenses.¹⁹

5. *Rural LMDS Group Waiver Request.* The Rural LMDS Group²⁰ seeks a ten year extension of time for its members to construct and demonstrate substantial service in their licensed areas.²¹ The Rural LMDS Group asserts that its members cannot economically build out their planned LMDS systems prior to their 2008 and 2009 construction deadlines due to the lack of affordable

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Services, CC Docket No. 92-297, *First Report and Order and Fourth Notice of Proposed Rulemaking*, 11 FCC Rcd 19005, 19025 ¶ 45 (1996) (*First LMDS Report and Order*) (allocating the initial 1 GHz of spectrum for LMDS and seeking comment on the allocation of an additional 300 MHz of spectrum at 31.0-31.3 GHz).

¹⁴ See, e.g., LMDS Auction Closes, *Public Notice*, 13 FCC Rcd 18217 (1998) (*Auction 17 Closing PN*); Local Multipoint Distribution Service Auction Closes, *Public Notice*, 14 FCC Rcd 8543 (1999) (*Auction 23 Closing PN*). The NY BTA is the only BTA for which an LMDS license was issued, by waiver, prior to Auctions 17 and 23. Specifically, in 1991, the Commission granted a waiver authorizing Hye Crest Management, Inc. (Hye Crest) to provide service on 1 GHz of contiguous spectrum at 27.5- 28.5 GHz in eight of the twenty-six counties that now comprise the NY BTA. See Hye Crest Management, Inc., *Memorandum Opinion and Order*, 6 FCC Rcd 332 (1991) (*Hye Crest MO&O*). In the wake of the *Hye Crest MO&O* and the flood of waiver applications requesting similar relief, the Commission initiated a rulemaking proceeding on January 8, 1993 to amend the Commission's Rules to reallocate spectrum for LMDS use and to establish rules governing LMDS. See Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Multipoint Distribution Service, CC Docket No. 92-297, *Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration*, 8 FCC Rcd 557 (1993) (*First LMDS NPRM*). For a more thorough discussion of the evolution of LMDS and of the unique history of the NY BTA, see SpeedUSNY.com, Request for Finding of Substantial Service for Local Multipoint Distribution Service (LMDS) Station WLT379, New York, New York; IDT Spectrum, LLC, Request for Waiver and Extension of Time of Section 101.1011 of the Commission's Rules or, in the Alternative, a Finding of Substantial Service for Local Multipoint Distribution Service (LMDS) Station WPOI485, New York, New York, *Memorandum Opinion and Order and Order on Reconsideration*, 22 FCC Rcd 13974 (WTB 2007) (*NY LMDS Order*).

¹⁵ See FCC Announces Spectrum Auction Schedule for 1998, *Public Notice*, 12 FCC Rcd 19726 (1997); *Auction 17 Closing PN*, 13 FCC Rcd at 18217. Although the New York BTA (BTA321) consists of twenty-six counties, the A Block license that was available for auction did not include the LMDS spectrum for the eight counties that comprised the licensed area granted to Hye Crest in 1991. See, e.g., *Second LMDS Report and Order*, 12 FCC Rcd at 12604 ¶ 135.

¹⁶ See *Auction 23 Closing PN*, 14 FCC Rcd at 8543.

¹⁷ See Auction of 168 Local Multipoint Distribution Service Licenses, *Public Notice*, 14 FCC Rcd 6163 (1999) (*Auction 23 Eligibility PN*); *Auction 23 Closing PN*, 14 FCC Rcd at 8543. The second LMDS auction is otherwise known as the LMDS re-auction.

¹⁸ *Auction 23 Closing PN*, 14 FCC Rcd at 8543.

¹⁹ According to ULS, of the 976 active LMDS licenses, 496 are in the A Block and 480 are in the B Block.

²⁰ See Rural LMDS Group, Petition for Waiver of Section 101.1011 of the Commission's Rules and Extension of Construction Deadline (filed May 25, 2007) ("Rural LMDS Group Waiver Request"). The members of the Rural LMDS Group are listed in Appendix A to the *December Public Notice*. See *December Public Notice*, Appendix A. We note that the members of the Rural LMDS Group also individually filed applications electronically in the Universal Licensing System (ULS) seeking extensions of time for 112 LMDS licenses. See, e.g., Farmers Telephone Cooperative, Inc., File No. 0003064168 (June 8, 2007) ("Farmers Application").

²¹ Rural LMDS Group Waiver Request at 1. The members of the Rural LMDS Group individually filed applications seeking extensions of time for 112 LMDS licenses, of which 57 are in the A Block and 55 are in the B Block.

equipment.²² The Rural LMDS Group explains that the market for LMDS equipment did not develop as anticipated and that the only equipment currently available to its members is either limited to point-to-point backhaul on certain frequencies or is cost prohibitive for licensees to deploy at this time.²³ More specifically, the Rural LMDS Group notes that the only manufacturers producing LMDS equipment that is available for purchase by their members and capable of providing point-to-multipoint broadband services are Ericsson and Hughes.²⁴ The Rural LMDS Group contends that none of this equipment is suitable for their members' needs due to cost²⁵ and technical limitations.²⁶ The Rural LMDS Group states that equipment vendors have been unable to offer their members any timetable for when affordable equipment may become available and that to obtain "a firm commitment for the production of a sufficient number of product units to ensure affordability will take years."²⁷ The Rural LMDS Group estimates that it will take approximately two to three years from the date affordable point-to-multipoint LMDS equipment becomes available for them to construct and operate an LMDS system.²⁸ The Rural LMDS Group is hopeful that such equipment will be available by 2016.²⁹

6. *LMDS Coalition Waiver Request.* The LMDS Coalition³⁰ asks that the Commission extend the construction deadline until July 1, 2011 for each of its members' A-Block licenses and until July 1, 2013 for each of its members' B Block licenses.³¹ The LMDS Coalition argues that the requested extension of time will afford its members sufficient time to design, construct, and deploy economically rational LMDS networks capable of competing in the growing backhaul and broadband access sectors.³² According to the LMDS Coalition, a competitive LMDS industry never materialized because unexpectedly high equipment costs, driven in large part by technical restraints and unfavorable

²² Rural LMDS Group Waiver Request at 1.

²³ Rural LMDS Group Waiver Request at 2.

²⁴ Rural LMDS Group Waiver Request at 3.

²⁵ Rural LMDS Group Waiver Request at 3. The Rural LMDS Group argues that LMDS equipment is cost prohibitive because it is only being produced in small quantities and not in mass production. *Id.*

²⁶ According to the Rural LMDS Group, LMDS equipment only operates in a small portion of the bandwidth and has a limited range of only one to five miles due to the significant propagation loss of the band. In addition, the Rural LMDS Group contends that LMDS equipment requires line-of-sight between the customer premises equipment (CPE) and base station hub. Rural LMDS Group Waiver Request at 3.

²⁷ Rural LMDS Group Waiver Request at 4.

²⁸ Rural LMDS Group Waiver Request at 4.

²⁹ Rural LMDS Group Waiver Request at 4. The Rural LMDS Groups cites to a study conducted by BROADWAN from December 1, 2003 through May 31, 2006 for the proposition that "broadband point-to-multipoint equipment capable of operating at 20 GHz and above is not expected to become technically and financially viable for another ten years." *See id.* (citing BROADWAN, Broadband Services for Everyone over Fixed Wireless Access Networks, *Final Activity Report*, at Appendix 1 (Aug. 30, 2006) (*BROADWAN Report*)). The *BROADWAN Report* may be accessed at <http://www.telenor.no/broadwan/>. As explained in the Discussion below, this is a misinterpretation of the language in the *BROADWAN Report*.

³⁰ *See* LMDS Coalition, Request for Waiver and Limited Extension of Deadline for Establishing Compliance with Section 101.1011(a) LMDS Substantial Service Requirements (filed June 14, 2007) ("LMDS Coalition Waiver Request"). The members of the LMDS Coalition are listed in Appendix B to the *December Public Notice*. *See December Public Notice*, Appendix B. The members of the LMDS Coalition also individually filed applications electronically in ULS seeking extensions of time for 440 LMDS licenses. *See, e.g.*, Alltel Communications, Inc., File No. 0003071271 (June 14, 2007) ("Alltel Application").

³¹ LMDS Coalition Waiver Request at 2. The members of the LMDS Coalition individually filed applications seeking extensions of time for 440 LMDS licenses, of which 140 are in the A Block and 300 are in the B Block.

³² LMDS Coalition Waiver Request at 15, 18.

propagation characteristics, prevented LMDS from emerging as a viable competitor to either the local telephone exchange or cable television businesses.³³ However, the LMDS Coalition notes that a number of equipment vendors re-entered the LMDS marketplace in 2006 with technologically advanced equipment designs that have the potential to stimulate growth in the industry.³⁴ The LMDS Coalition anticipates that equipment prices will continue to drop and that equipment performance will continue to improve as additional technological improvements occur over the next 18 months.³⁵ However, the LMDS Coalition contends that, while next generation equipment, offering better throughput at lower prices, started becoming available for the LMDS A Block in 2006, there is still no equipment currently available that operates on the LMDS B-Block.³⁶ Accordingly, the LMDS Coalition requests a longer extension of time with respect to the B-Block licenses.

7. The LMDS Coalition also asks that the Commission clarify that it will grant renewal applications for these licenses notwithstanding the failure to demonstrate substantial service by the end of their initial license term, conditioned on a demonstration of substantial service by the extended deadline.³⁷ The LMDS Coalition further requests that the Commission not accept competing applications that would be mutually exclusive with a renewal application filed by one of its members.³⁸

8. *IDT Spectrum Request.* On September 28, 2007, IDT Spectrum filed applications to extend the construction deadline for 16 LMDS licenses by an additional ten years.³⁹ IDT Spectrum notes that it has experienced the same difficulties recounted by the Rural LMDS Group and the LMDS Coalition.⁴⁰ Although IDT Spectrum recognizes that “improvements in LMDS technology are underway, . . . there is substantial uncertainty as to when the equipment will be available at prices conducive to economically justifiable construction of facilities and initiation of services.”⁴¹ IDT Spectrum believes

³³ LMDS Coalition Waiver Request at 5. More specifically, the LMDS Coalition states that first generation LMDS equipment was significantly more expensive than comparable equipment used in lower frequency bands because equipment capable of operating in the relatively high LMDS bands could not use customary, silicon-based circuit designs. *Id.* at 6. In addition, the LMDS Coalition contends that the unfavorable propagation characteristics of the band require the deployment of far more LMDS base stations to cover the same geographic area than that required for networks operating in lower bands. *Id.*

³⁴ LMDS Coalition Waiver Request at 9. As a result of technological advances, the LMDS Coalition states that LMDS equipment prices have dropped 30 to 50 percent, and that equipment throughput has increased from approximately 155 Megabits-per-second (“Mbps”) in 2001 to 400 Mbps currently, with throughput speeds of up to 800 Mbps possible in the near future. *Id.* at 10.

³⁵ LMDS Coalition Waiver Request at 15.

³⁶ LMDS Coalition Waiver Request at 9.

³⁷ Letter from Paul J. Sindebrand, Esq., counsel to the LMDS Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 16, 2007) at 2 (*October Letter*). Specifically, the LMDS Coalition proposes that the Bureau release a Public Notice, subsequent to the revised construction deadlines, to open a window for the filing of applications for LMDS authorizations to operate in those BTAs where licenses were terminated for failure to provide substantial service. *See id.*

³⁸ *See id.* Specifically, the LMDS Coalition requests that we clarify that no LMDS “competing applications” will be accepted except as specified in that future Public Notice. *See id.*

³⁹ *See e.g.*, File No. 0003185188, Petition for Waiver and Extension of Time to Meet Substantial Service Requirements Found in Section 101.1011 of the Commission’s Rules (filed Sep. 28, 2007) (“IDT Spectrum Waiver Request”) at 5. IDT Spectrum holds 10 A Block licenses and six B Block licenses.

⁴⁰ IDT Spectrum Waiver Request at 6-8.

⁴¹ IDT Spectrum Waiver Request at 8.

that a ten year extension is necessary to allow for the development of affordable equipment and market demand.⁴²

9. *Corr Wireless Request.* In addition, Corr Wireless filed an application for the extension of the construction deadline for LMDS Station WPLM443 on December 26, 2007.⁴³ Corr Wireless agrees with the representations made by the LMDS Coalition and the Rural LMDS Group and emphasizes the issues faced by rural licensees.⁴⁴ Corr Wireless requests a five year extension of time to demonstrate substantial service because it will permit equipment for the LMDS A Block to become more widely available to rural licensees.⁴⁵

10. *Comments.* On December 19, 2007, the Bureau released a *Public Notice* seeking comment on applications filed by members of the Rural LMDS Group and the LMDS Coalition. On January 9, 2008, the Bureau released a second *Public Notice* providing updated file numbers for Qwest Corporation, which is a member of the LMDS Coalition,⁴⁶ clarifying the nature of the relief sought by IDT Spectrum, LLC (IDT Spectrum),⁴⁷ and including an additional extension application that had been filed since the release of the *December Public Notice*.⁴⁸ Comments and reply comments were due on or before January 18, 2008 and February 1, 2008, respectively.⁴⁹ The Commission received four comments⁵⁰ and seven reply comments supporting the waiver requests.⁵¹

11. Commenting parties in this proceeding generally agree that a waiver is warranted to extend the deadlines by which LMDS licensees must demonstrate the provision of substantial service within their licensed areas. Although the specifics offered by the parties differ, commenting parties generally contend that LMDS licensees will be unable to meet their construction deadlines due to the lack

⁴² IDT Spectrum Waiver Request at 5-10.

⁴³ See File No. 0003268451 (filed Dec. 26, 2007) (“Corr Wireless Application”).

⁴⁴ See *id.*, Request for Waiver of Build-Out Deadline (“Corr Wireless Waiver Request”) at 1.

⁴⁵ *Id.*

⁴⁶ In the *December Public Notice*, Appendix B incorrectly listed the file numbers associated with the extension applications for Stations WPLM325, WPLM326, WPLM327, WPLM328, WPLM329, WPLM330, WPLM331, WPLM332. Appendix B to the *January Public Notice* listed the correct file numbers and also correctly reflected that the licenses are held by Qwest Corporation.

⁴⁷ In the *December Public Notice*, the extension applications filed by IDT Spectrum were incorrectly listed in the appendix for applications filed by members of the LMDS Coalition. See *December Public Notice*, Appendix B. The file numbers associated with IDT Spectrum’s applications were therefore listed in a separate appendix to the *January Public Notice*. See *January Public Notice*, Appendix C.

⁴⁸ See Corr Wireless Application.

⁴⁹ See *December Public Notice* at 1. The *January Public Notice* did not modify the comment and reply comment deadlines.

⁵⁰ Alliance of Small Market LMDS Licensees, Comments (filed Jan. 18, 2008) (“Alliance Comments”); Blooston, Mordkofsky, Dickens, Duffy, and Prendergast, LLP (filed Jan. 18, 2008) (“Blooston Comments”); Fixed Wireless Communications Coalition, Comments (filed Jan. 18, 2008) (“FWCC Comments”); National Telecommunications Cooperative Association, Comments (filed Jan. 18, 2008) (“NTCA Comments”).

⁵¹ Clearwire Corporation, Reply Comments (filed Jan. 31, 2008) (“Clearwire Reply Comments”); Cloudnine Communications, LLC and LMDS, L.P., Reply Comments (filed Feb. 1, 2008) (“Cloudnine Reply Comments”); FiberTower Corporation, Reply Comments (filed Feb. 1, 2008) (“FiberTower Reply Comments”); IDT Spectrum, LLC, Reply Comments (filed Feb. 1, 2008) (“IDT Spectrum Reply Comments”); LMDS Coalition, Reply Comments (filed Feb. 1, 2008) (“LMDS Coalition Reply Comments”); Rural LMDS Group, Reply Comments (filed Feb. 1, 2008) (“Rural LMDS Group Reply Comments”); Star Search Rural TV & Cellular, Inc., Reply Comments (filed Feb. 1, 2008) (“Star Search Reply Comments”).

of available, affordable, or viable equipment for use in this band.⁵² For example, the National Telecommunications Cooperative Association (“NTCA”) asserts that the only equipment available is either limited to point-to-point wireless backhaul on certain frequencies or is cost prohibitive for many licensees to deploy.⁵³ The Alliance of Small Market LMDS Licensees (“Alliance”) notes that its members have been unable to identify a supplier of mass produced and affordable transmitting equipment that is authorized for operation on the LMDS frequency bands.⁵⁴ Although the LMDS Coalition believes that “viable, cost-effective equipment is on the horizon, it will come too late for most LMDS licensees to deploy new, economically rational networks in time to satisfy the Commission’s requirement.”⁵⁵ Similarly, Clearwire Corporation (“Clearwire”) contends that cost effective equipment only recently became available, and, as a result, there is currently insufficient time remaining in which to plan, purchase, construct and deploy service over these licenses prior to the upcoming substantial service deadlines.⁵⁶

12. Commenting parties offered limited information to support a specific timeline as to the availability of affordable, viable equipment for use in the band. As noted above, some commenting parties state that equipment is now available for deployment in the LMDS A Block, albeit that it will still take some time to reach the point of deploying sufficient facilities to demonstrate substantial service within each licensed area.⁵⁷ Blooston, Mordkofsky, Dickens, Duffy, and Prendergast, LLP (“Blooston”) notes that, “[w]hile equipment is now starting to become available by manufacturers such as Hughes and Ericsson, it will take several years for mass production to bring prices down to an affordable level for rural subscribers; and it will likely take even longer for sufficient equipment to be available to meet demands of rural citizens, since larger carriers are likely to dominate delivery schedules at first.”⁵⁸

13. Commenting parties either remain silent or differ from one another on the necessary length of an extension of the substantial service deadlines. For example, Clearwire believes that grant of “some extension of time is in order.”⁵⁹ Blooston believes that a three to five year extension of time is the minimum necessary for LMDS licensees to provide service to non-rural areas and that a ten year extension of time is more appropriate for rural LMDS licensees to provide substantial service.⁶⁰ The Alliance contends that a ten-year extension is more appropriate especially in markets smaller than the top-50 in the United States.⁶¹ NTCA and the Rural LMDS Group contend that rural licensees should be

⁵² See, e.g., LMDS Coalition Reply Comments at 3 (noting that there is general agreement in the record that the lack of economical equipment availability is the primary reason that LMDS has not become commercially viable thus far); Rural LMDS Group Reply Comments at 1-2 (noting a consensus among commenters as to the lack of affordable equipment for point-to-multipoint applications); NTCA Comments at 2 (“good cause to grant a waiver and extension of time due to the lack of available equipment”); see also Alliance Comments at 1-2; Cloudnine Reply Comments at 1-2; Blooston Comments at 2-3.

⁵³ NTCA Comments at 2.

⁵⁴ Alliance Comments at 2; see also Cloudnine Reply Comments at 2.

⁵⁵ LMDS Coalition Reply Comments at 4.

⁵⁶ Clearwire Reply Comments at 1-2; see also NTCA Comments at 2 (noting that there “is optimism that recent technological advances will bring the LMDS promise to fruition, but it is not possible for licensees to meet their current construction requirements”).

⁵⁷ See LMDS Coalition Reply Comments at 3-4; Clearwire Reply Comments at 1-2; see also FWCC Comments at 1-2; FiberTower Reply Comments at 1-2.

⁵⁸ Blooston Comments at 2.

⁵⁹ Clearwire Reply Comments at 2.

⁶⁰ Blooston Comments at 3 n.7.

⁶¹ Alliance Comments at 3; see also Cloudnine Reply Comments at 2.

granted an additional ten year extension of time to build out their licenses in order to provide advanced wireless broadband services using point-to-multipoint equipment for the band.⁶²

14. *Additional Waiver Requests Filed Since the Release of the Public Notice.* Since the Bureau released the *December Public Notice*, a number of other LMDS licensees have filed applications seeking waivers of Section 101.1011 of the Commission's Rules and extensions of time to build out their licenses and demonstrate substantial service within their licensed areas. Specifically, since the release of the *December Public Notice*, the licensees of an additional 109 LMDS stations have filed extension applications. Accordingly, there are now pending extension applications for 678 of the 976 active LMDS licenses. In addition, the licensees of 41 LMDS stations have filed construction notifications stating that they meet the substantial service requirements in their licensed areas.⁶³

15. The Virginia Tech Foundation (Foundation) filed applications seeking two year extensions of time to build out its four A Block licenses.⁶⁴ Virginia Tech uses the LMDS licenses to engage in research and development related to the spectrum and to promote rural broadband infrastructure development.⁶⁵ According to Virginia Tech, it has leveraged LMDS spectrum in several areas of research and outreach.⁶⁶ Virginia Tech explains that it is in the process of developing an LMDS service project to provide diversity for fiber optic cabling in a university campus research network environment and also to provide access for remote laboratory and office locations not served by fiber.⁶⁷ The manufacturer of the equipment identified by Virginia Tech as capable of operating in the gigabit per second range has notified them that the specific equipment "is currently unreleased though release is expected."⁶⁸ Virginia Tech requests the additional time necessary to acquire this equipment and to work through any technical challenges which will likely be presented.⁶⁹

16. SpeedUSNY.com, L.P. ("SpeedUSNY") and T-Mobile License, LLC ("T-Mobile") filed applications seeking extensions of time consistent with the LMDS Coalition Waiver Request. Specifically, on January 7, 2008, SpeedUSNY, which is a member of the LMDS Coalition, filed an application seeking a three year extension of time to build out its A Block license.⁷⁰ T-Mobile filed applications on February 27, 2008 seeking three and five year extensions of time to build out its A Block and B Block licenses, respectively.⁷¹ T-Mobile states that it "plans to have the equipment needed to

⁶² NTCA Comments at 3; Rural LMDS Group Reply Comments at 1-2.

⁶³ Those substantial service showings will be addressed separately.

⁶⁴ *See, e.g.*, File No. 0003344210 (filed Mar. 4, 2008), Waiver to Allow Extension of Build Outs.

⁶⁵ *See id.* at 1.

⁶⁶ *See id.* For example, in 1998, the university led the creation of the LMDS Research Consortium which brought together several licensees, equipment manufacturers, and research laboratories to develop and promote LMDS technology. *See id.*

⁶⁷ *See id.* Virginia Tech also notes that it is working with the Mid-Atlantic Broadband Cooperative (MBC) to utilize LMDS to provide high capacity service to extend MBC's fiber optic footprint. *See id.*

⁶⁸ *Id.* at 1-2.

⁶⁹ *See id.* at 2.

⁷⁰ *See* File No. 0003278300 (filed Jan. 7, 2008) ("SpeedUSNY Application"). On July 31, 2007, SpeedUSNY had been granted an extension of time to demonstrate substantial service for Station WLT379 to October 6, 2008. *See NY LMDS Order*, 22 FCC Rcd at 13975 ¶ 1. SpeedUSNY now requests a further extension of time to July 1, 2011 to construct and demonstrate substantial service for Station WLT379 consistent with the terms of the LMDS Coalition Waiver Request.

⁷¹ *See, e.g.*, 0003338472 (filed Feb. 27, 2008), Request for Extension of Time to Complete Construction ("T-Mobile Waiver Request"). T-Mobile holds five A Block licenses and 11 B Block licenses.

incorporate LMDS into its business operations as soon as vendors can make it available. . .” but requires the additional time to deploy service.⁷²

17. Clearwire Corporation (“Clearwire”), which holds two LMDS licenses through its subsidiary, Fixed Wireless Holdings, LLC, filed applications on February 14, 2008, requesting that the Commission extend the build out deadlines for its two A Block licenses by three years to July 31, 2011.⁷³ Clearwire contends that a waiver is warranted due to the fact that cost effective 28 GHz equipment only recently became available, and, as a result, there is currently insufficient time remaining in which to plan, purchase, construct and deploy service over these licenses prior to the substantial service deadline.⁷⁴

18. Pinnacle LMDS, L.L.C. (“Pinnacle”) filed an application seeking a five year extension of time to build out its A Block license.⁷⁵ Pinnacle has “investigated” various applications of LMDS in its licensed area and agrees with the representations made by the LMDS Coalition and the Rural LMDS Group concerning the state of the LMDS industry and the lack of commercially viable LMDS equipment.⁷⁶ Pinnacle emphasizes the issues faced by rural licensees because LMDS stations require an extraordinary multiplicity of sites to cover large areas.⁷⁷ Pinnacle believes a five year extension of time will permit equipment for the LMDS A Block to become more widely available to rural licensees.⁷⁸

19. Consolidated Telecom, G.W. Wireless, Inc. (“G.W. Wireless”), IT&E Overseas, Inc. (IT&E), Rainier Connect, Inc. (“Rainier”), South Slope Cooperative Telephone Company (“South Slope”), Townes Telecommunications, Inc. (“Townes”), Venture Wireless, Inc. (“Venture Wireless”), and Webster-Calhoun Cooperative Telephone Association (“Webster-Calhoun”) filed similar requests seeking extensions of at least five years, and preferably ten years, beyond their current license build out and renewal deadlines.⁷⁹ They argue that an extension is needed due to the lack of affordable LMDS

⁷² T-Mobile Waiver Request at 3. T-Mobile repeats the request of the LMDS Coalition for the Commission to clarify that it will conditionally license T-Mobile’s renewals subject to a demonstration of substantial service prior to the expiration of the extended construction period. *See id.* at 4.

⁷³ File Nos. 0003326077; 0003325976 (filed Feb. 14, 2008), Request for Waiver and Extension of Time to Construct (“Clearwire Waiver Request”).

⁷⁴ *See id.*

⁷⁵ File No. 0003298311 (filed Jan. 23, 2008), Request for Waiver of Buildout Deadline (“Pinnacle Waiver Request”).

⁷⁶ *See id.* at 1.

⁷⁷ *See id.*

⁷⁸ *See id.*

⁷⁹ Venture Wireless, Inc., Request for Waiver and Extension of Time to Construct (filed Jan. 28, 2008) (“Venture Wireless Waiver Request”) at 1; South Slope Cooperative Telephone Company, Request for Waiver and Extension of Time to Construct (filed Jan. 18, 2008) (“South Slope Waiver Request”) at 1; Consolidated Telecom, Request for Waiver and Extension of Time to Construct (filed Jan. 30, 2008) (“Consolidated Telecom Waiver Request”) at 1; G.W. Wireless, Inc., Request for Waiver and Extension of Time to Construct (filed Jan. 29, 2008) (“G.W. Wireless Waiver Request”) at 1; IT&E Overseas, Inc., Request for Waiver and Extension of Time to Construct (filed Feb. 8, 2008) (“IT&E Waiver Request”) at 1; Rainier Connect, Inc., Request for Waiver and Extension of Time to Construct (filed Jan. 28, 2008) (“Rainier Waiver Request”) at 1; Townes Telecommunications, Inc., Request for Waiver and Extension of Time to Construct (filed Jan. 18, 2008) (“Townes Waiver Request”) at 1; Webster-Calhoun Cooperative Telephone Association, Request for Waiver and Extension of Time to Construct (filed Jan. 18, 2008) (“Webster-Calhoun Waiver Request”) at 1; *see also* Command Connect, LLC, Request for Waiver and Extension of Time to Construct (filed Jan. 23, 2008) at 1-2 (requesting a ten year extension because “prudence dictates a ten-year extension request to preclude further requests in view of the possibility of unforeseen delays”); Cable and Communications Corporation, Request for Waiver and Extension of Time (filed Mar. 10, 2008) at 1-2 (same).

equipment and a larger collapse in the fixed broadband wireless market that has made it economically unfeasible for LMDS licensees (and especially licensees in rural markets) to construct their networks and to initiate service.⁸⁰ They hope that “five years will allow sufficient time for recent advances in LMDS technology to take hold, and for the next generation of fixed wireless network and customer premises equipment (“CPE”) to become available for small and rural carriers.”⁸¹ They estimate that, once cost effective equipment is available, the time period for design, construction and deployment of an LMDS system could be as long as 24 to 36 months.⁸²

20. Fleming-Mason Service Corporation (“Fleming-Mason”), Spectra Wave, Inc. (“Spectra Wave”), Sycamore Telephone Company (“Sycamore”), Star Search Rural TV & Cellular, Inc. (“Star Search”), BTA Associates, LLC (“BTA Associates”), LMDS, L.P., and Northern Communications, Inc. (“Northern”) filed waiver requests seeking to extend the substantial service deadline for their LMDS licenses by an additional ten years.⁸³ They note that they have faced “the same issues that have delayed construction that were described in applications filed by members of the Rural LMDS Group.”⁸⁴ Star Search contends that it has been unable to procure the equipment necessary to build a viable network to serve its existing customer base.⁸⁵ Moreover, Star Search argues that this problem of a lack of commercially viable equipment is exacerbated in rural areas like southeastern Oklahoma and northeastern Texas due to the propagation characteristics of the LMDS service.⁸⁶ Similarly, Northern states that it cannot economically build out its licenses due to the lack of affordable equipment.⁸⁷ LMDS, L.P. reiterates that it cannot efficiently construct, operate, and provide any service that would meaningfully benefit the public using its LMDS spectrum due to the lack of either affordable equipment or a developed marketplace for LMDS services.⁸⁸

⁸⁰ See, e.g., Venture Wireless Waiver Request at 1. Specifically, they contend that the only equipment available to “small/rural licensees is limited to point-to-point backhaul transmitters that are only suitable for support of wireless systems that serve relatively closely spaced base stations, and first generation multipoint broadband equipment that is not mass marketed, and is not priced in a range that will be feasible for rural deployment.” See, e.g., Venture Wireless Waiver Request at 2-3.

⁸¹ See, e.g., Venture Wireless Waiver Request at 1. They note that “discussions with equipment manufacturers regarding the availability of suitable LMDS equipment indicate that there is no firm timetable that for the production of sufficient quantities of equipment to translate into reasonable prices for rural carriers and their customers. Venture Wireless Waiver Request at 4.

⁸² See, e.g., Venture Wireless Waiver Request at 4.

⁸³ Fleming-Mason Service Corporation, Request for Waiver and Extension of Time to Construct (filed Jan. 23, 2008 (“Fleming-Mason Waiver Request”) at 1; Spectra Wave, Inc., Request for Waiver and Extension of Time to Construct (filed Jan. 23, 2008) (“Spectra Wave Waiver Request”) at 1; Sycamore Telephone Company, Request for Waiver and Extension of Time to Construct (filed Jan. 23, 2008) (“Sycamore Waiver Request”) at 1; Star Search Rural TV & Cellular, Inc., Petition for Waiver and Extension of Time to Meet the Substantial Service Requirements in Section 101.1011(a) of the Commission’s Rules (filed Feb. 1, 2008) (“Star Search Waiver Request”); BTA Associates, LLC, Request for Waiver of Build-Out Deadline (filed Feb. 12, 2008) (“BTA Associates Waiver Request”); LMDS, L.P., Petition for Waiver and Extension of Time to Construct (filed Mar. 17, 2008) (“LMDS L.P. Waiver Request”); Northern Communications, Inc., Petition for Waiver of Section 101.1011(a) of the Commission’s Rules and Extension of Construction Deadline (“Northern Waiver Request”).

⁸⁴ Fleming-Mason Waiver Request at 1.

⁸⁵ Star Search Waiver Request at 2.

⁸⁶ Star Search Waiver Request at 2.

⁸⁷ Northern Waiver Request at 1.

⁸⁸ LMDS L.P. Waiver Request at 1.

21. On March 17, 2008, Swayzee Telephone Company, Inc. (“Swayzee”) filed a waiver request seeking an unspecified extension of time to build out its A Block license in Marion, Indiana.⁸⁹ Swayzee contends that an extension of time is necessary and the “direct result of lack of an economic form of delivery technology available for this bandwidth.”⁹⁰ Swayzee states that there is not a viable solution for this technology as of March 17, 2008 but that it is hopeful that a solution will be available reasonably soon.⁹¹

III. DISCUSSION

22. LMDS licensees may provide any service consistent with the Commission’s Rules and their regulatory status,⁹² subject to a ten-year term from the initial license grant date.⁹³ At the end of the ten year period, licensees are required to submit an acceptable showing to the Commission demonstrating that they are providing “substantial service” in each licensed area.⁹⁴ The Commission defined “substantial service” as “service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal.”⁹⁵ In adopting a substantial service requirement for LMDS licensees, the Commission concluded that, “[a]lthough LMDS licensees will have incentives to construct facilities to meet the service demands in their licensed service areas, . . . minimum construction requirements can promote the efficient use of the spectrum, encourage the provision of service to rural, remote, and insular areas, and prevent the warehousing of spectrum.”⁹⁶ Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.⁹⁷

23. 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.”⁹⁸ 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.⁹⁹ Section 1.925 of the Commission’s Rules¹⁰⁰ provides that a waiver of the Commission’s Rules may be granted if it is shown 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

⁸⁹ Swayzee Telephone Company, Inc, FCC Waiver Request (filed Mar. 17, 2008) (“Swayzee Waiver Request”).

⁹⁰ *Id.* at 1.

⁹¹ *Id.*

⁹² See 47 C.F.R. § 101.1013(b).

⁹³ See *Second LMDS Report and Order*, 12 FCC Rcd at 12657 ¶ 259. Pursuant to 47 C.F.R. § 101.67, LMDS licenses are issued for a period not to exceed ten years.

⁹⁴ See 47 C.F.R. § 101.1011(a); see also *Second LMDS Report and Order*, 12 FCC Rcd at 12658 ¶¶ 261-262.

⁹⁵ *Second LMDS Report and Order*, 12 FCC Rcd at 12658 ¶ 261; see also *id.* 12660 ¶ 269. The Commission elaborated on what may constitute “substantial service” for LMDS by offering some specific examples, which are sometimes referred to as “safe-harbors.” See *id.* at 12660-12661 ¶¶ 269-270.

⁹⁶ *Second LMDS Report and Order*, 12 FCC Rcd at 12659 ¶ 266. The Commission believed that adopting such a “liberal build-out requirement” would provide LMDS licensees with the flexibility to offer a range of services using the LMDS spectrum. See *id.* at 12659 ¶ 267. The Commission also expressed concern that, “given the undeveloped nature of equipment for use in this band . . . strict construction requirements might have the effect of discouraging participation in the provision of services over the LMDS spectrum.” *Id.* at 12660 ¶ 268.

⁹⁷ See 47 C.F.R. § 101.1011(a).

⁹⁸ 47 C.F.R. § 1.946(e)(1).

⁹⁹ 47 C.F.R. § 1.946(e)(2), (3).

¹⁰⁰ 47 C.F.R. § 1.925.

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.¹⁰¹

24. We find that the LMDS licensees before us have demonstrated that they faced factors beyond their control, including difficulties in obtaining viable, affordable equipment, that warrant granting a limited extension of time to permit these licensees to continue to build out their licenses. We note that the applications before us in this proceeding represent a majority of LMDS licenses for which buildout requirements are approaching, and that the types of challenges faced by these applicants in developing service for the band have been nearly uniform.

25. A number of LMDS licensees before us state that equipment is becoming available, at least for the A Block, and that there is potential for LMDS and other upper microwave frequencies to be used over time as a high-capacity, broadband access service to consumers or as a backhaul solution for licensees in the 700 MHz Band,¹⁰² the Advanced Wireless Services (AWS-1),¹⁰³ and other bands suitable for mobile broadband service.¹⁰⁴ We note that the Commission has issued licenses for the AWS-1 band in the past 18 months¹⁰⁵ and recently has completed an auction for the 700 MHz Band.¹⁰⁶ We anticipate that, in the next several years, services in these bands will develop robustly,¹⁰⁷ along with other mobile and fixed wireless broadband services.

¹⁰¹ *Id.*; 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.

¹⁰² The 700 MHz Band licenses may be used for flexible fixed, mobile, and broadcast uses, including fixed and mobile wireless commercial services (including FDD-based and TDD-based services); fixed and mobile wireless uses for private, internal radio needs; and mobile and other digital new broadcast operations. These uses may include two-way interactive, cellular, and mobile television broadcasting services.

¹⁰³ Advanced Wireless Service (AWS) is a collective term for new and innovative fixed and mobile terrestrial wireless applications using bandwidth that is sufficient for the provision of a variety of applications, including those using voice and data (such as Internet browsing, message services, and full-motion video) content. The services ultimately provided by AWS licensees are only limited by the fixed and mobile designation of the spectrum we allocate for AWS and the service rules we ultimately adopt for the bands.

¹⁰⁴ See, e.g., Clearwire Waiver Request at 1 (stating that it intends to utilize this spectrum for backhaul purposes); T-Mobile Waiver Request at 2 (*citing* FWCC Comments at 2) (stating that the rollout of 3G and 4G services as well as the deployment of services in the 700 MHz band will stimulate the market for wireless broadband and create demand for LMDS frequencies to provide broadband backhaul services); Rural LMDS Group Reply Comments at 2 (stating that additional time is required in order to allow for the development and deployment of affordable point-to-multipoint equipment capable of providing advanced broadband services over their licensed LMDS frequencies); Venture Wireless Waiver Request at 2-7 (same).

¹⁰⁵ See, e.g., Wireless Telecommunications Bureau Grants Advanced Wireless Services Licenses, *Public Notice*, 22 FCC Rcd 7293 (WTB 2007).

¹⁰⁶ See Auction of 700 MHz Band Licenses Closes, *Public Notice*, DA 08-595 (WTB rel. Mar. 20, 2008).

¹⁰⁷ Licensees in the Lower 700 MHz A, B, and E Blocks and in the Upper 700 MHz C Block must meet their first buildout requirement by February 17, 2013 (assuming their licenses are granted before February 17, 2009). See 47 C.F.R. § 27.14(g), (h). In addition, we anticipate that AWS-1 service will be rolled out in a number of markets over the next several years as federal incumbents are relocated. For more information on the relocation, see <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>.

26. Under those circumstances, we determine that strict enforcement of Section 101.1011(a) of the Commission's Rules¹⁰⁸ would not serve the rule's underlying purpose, as it would tend to slow, rather than accelerate, equipment development and service deployment. We believe the public interest would best be served by granting these LMDS licensees a limited amount of additional time in which to construct their licenses, to allow the equipment market to develop further and to give them the option to coordinate their buildout with licensees in the 700 MHz and AWS bands. Accordingly, we extend the ten-year construction requirement under Section 101.1011(a) of the Commission's Rules¹⁰⁹ for those licenses listed in the Appendix until June 1, 2012, nearly four years from the end of the first license term for many of the applicants before us.¹¹⁰

27. We find that grant of a longer extension would not promote the Commission's goals regarding efficient use of spectrum and timely deployment of service.¹¹¹ Moreover, requests for longer extensions of time are also unsupported on the record and without precedent. To the extent that applicants rely upon the *BROADWAN Report*¹¹² to support the proposition that LMDS equipment is not expected to become technically and financially viable for another ten years,¹¹³ this reliance is misplaced.¹¹⁴ Applicants appear to rely on the conclusion in the *BROADWAN Report* that it will take approximately 10 years to develop all of the "deliverables" needed to develop the system contemplated in the report.¹¹⁵ The system contemplated in the *BROADWAN Report*, however, goes far beyond LMDS related technology and includes the project's work towards the creation of hybrid architectures combining wireline (e.g., DSL, cable modem and fiber) and wireless technologies (e.g., LMDS and satellite) to deliver broadband services.¹¹⁶ Moreover, the *BROADWAN Report* is limited and dated in terms of being instructive as to the state of LMDS technology development. In particular, we note that the underlying study discussed in the *BROADWAN Report* concluded in May of 2006.¹¹⁷ The record in this proceeding indicates that the cost of LMDS A Block equipment has significantly fallen since 2006 even as

¹⁰⁸ 47 C.F.R. § 101.1011(a).

¹⁰⁹ 47 C.F.R. § 101.1011.

¹¹⁰ Licenses were awarded on a rolling basis with a license term of ten years from the date of grant. See *Second LMDS Report and Order*, 12 FCC Rcd at 12657 ¶ 259. The first LMDS auction closed on March 25, 1998 with 864 licenses being won. See *Auction 17 Closing PN*, 13 FCC Rcd at 18217. In the second LMDS auction, which closed on May 12, 1999, 161 licenses were awarded to winning bidders. See *Auction 23 Closing PN*, 14 FCC Rcd at 8543.

¹¹¹ See *Second LMDS Report and Order*, 12 FCC Rcd at 12659 ¶ 256.

¹¹² The *BROADWAN Report* may be accessed at <http://www.telenor.no/broadwan/>.

¹¹³ Rural LMDS Group Waiver Request at 4 (citing *BROADWAN Report* at Appendix 1); see also, e.g., Venture Wireless Waiver Request at 4.

¹¹⁴ See discussion *infra* at n.29. The *BROADWAN Report* is part of a project with the following goals: development of an economical realistic network architecture for the provision of broadband services for all citizens in Europe; positioning of European industry in the lead for next generation broadband fixed wireless access (BFWA) solutions; and motivating advanced utilization of broadband services at all levels of society by performing demonstrations and trials in some rural areas. *BROADWAN Report* at 2.

¹¹⁵ *BROADWAN Report* at Appendix 1 at 97.

¹¹⁶ See *BROADWAN Report* at Appendix 1. Moreover, the *BROADWAN Report* states that those entities participating in the project employ new technology deployments as and when they become technically and financially viable and not that any particular technology will be unavailable for another ten years. *Id.* In this respect, we note that the LMDS Coalition also discussed the *BROADWAN Report* in more detail without contending that the findings of the *BROADWAN Report* support a ten-year extension of LMDS construction deadlines. See, e.g., LMDS Coalition Waiver Request at 10-11.

¹¹⁷ See *BROADWAN Report*.

manufacturers increase the performance and efficiency of the equipment.¹¹⁸ Accordingly, we find nothing in the record to support such a broad extension of time.

28. We decline to consider at this time the requests of those applicants seeking clarification of how the Bureau may act on future applications to renew their licenses.¹¹⁹ Because those applicants have not filed renewal applications at this time, a ruling on prospective renewal requests would be premature.¹²⁰ Thus, while we are extending the deadline to meet the construction requirements, we remind LMDS licensees that they must timely file a renewal application in compliance with the Commission's Rules for their licenses.¹²¹

IV. ORDERING CLAUSES

29. 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 1.3, 1.925, and 1.946 of the Commission's Rules, 47 C.F.R. §§ 1.3, 1.925, 1.946, that the applications for waivers and extensions of time to demonstrate substantial service listed in the Appendix to this *Order* ARE GRANTED to the extent indicated and are otherwise DENIED, and the deadline for those licenses listed in the Appendix to demonstrate substantial service IS EXTENDED until June 1, 2012.

30. 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 Sections 0.331 and 1.949 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.949, the requests filed by the LMDS Coalition and T-Mobile to conditionally grant applications for LMDS license renewal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Fred B. Campbell, Jr.
Chief, Wireless Telecommunications Bureau

¹¹⁸ See, e.g., LMDS Coalition Waiver Request at 9-10.

¹¹⁹ See, e.g., *October Letter* at 2; T-Mobile Waiver Request at 4; see also LMDS L.P. Waiver Request at 14 (requesting that the Commission should either (a) extend the existing license terms to match an extended construction time-frame or (b) formally specify that licensees who are challenged at renewal will be permitted to utilize all construction efforts taken within the extended construction period in demonstrating their right to an expectancy of renewal).

¹²⁰ In fact, renewal applications may not be filed until ninety days prior to license expiration. See 47 C.F.R. § 1.949. Moreover, pursuant to 47 C.F.R. § 101.67, LMDS licenses are issued for a period not to exceed ten years. LMDS, L.P. did not seek a waiver of 47 C.F.R. § 101.67, and we do not find that it would be in the public interest or consistent with precedent to extend the license term.

¹²¹ 47 C.F.R. § 1.949(a). We further remind licensees that section 1.946 of the Commission's rules provides that "If a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires." 47 C.F.R. § 1.946(c).