

**Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
LICENSE ACQUISITIONS, LLC)	File Nos.: 0008266390/3
)	Call Signs: WPLM227/30
Applications for Late-Filed Renewal of)	
800 MHz Enhanced Specialized)	
Mobile Radio Stations)	

**OPPOSITION TO REQUEST FOR
WAIVER AND RENEWAL**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), by its attorneys and pursuant to Section 1.41 of the Federal Communications Commission (“FCC” or “Commission”) rules, hereby submits its Opposition to grant of the waiver request (“Waiver Request”) and late-filed renewal applications for the above-identified Enhanced Specialized Mobile Radio (“ESMR”) licenses (“ESMR Licenses”) filed by License Acquisitions, LLC (“LA”).¹ The Waiver Request falls woefully short of the Commission’s standard for considering relief in such situations and should be denied promptly.

¹ EWA has standing to oppose the Waiver Request. It represents numerous Part 90 licensees, some of which have been denied waiver relief identical to that sought by LA as discussed below. Moreover, also as discussed below, LA has a pending Petition for Reconsideration (“Rescission Recon Request”) filed on April 9, 2018, seeking reconsideration of the FCC’s March 12, 2018 denial of LA’s request to rescind its ESMR election. *See* License Acquisitions, LLC, *Order*, WT Docket No. 02-55, 33 FCC Rcd 2211 (PSHSB 2018) (“Rescission Denial Order”). The underlying premise of this Waiver Request is that the Rescission Recon Request will be granted, and LA will be allowed to operate site-based systems in the 800 MHz Guard Band. Waiver Request at 4. Should both LA appeals be granted, LA would claim Guard Band spectrum that otherwise would be available to EWA members. The Alliance’s ongoing involvement in WT Docket No. 16-261 evidences the serious interest its members have in securing access to 800 MHz Guard Band spectrum.

I BACKGROUND

LA is part of a web of intertwined entities including M2M Spectrum Networks LLC (“M2M”); Smartcomm, LLC; Spectrum Acquisitions Group, LLC; Spectrum Networks Group, LLC; and members of the Downs family,² all of which are identified as disclosable interest holders in LA’s FCC Ownership Report and most of which currently hold or have held FCC licenses. While the full scope of the relationship among these entities remains murky, at best, and troubling to EWA, they unquestionably are experienced FCC licensees and are represented by the seasoned FCC counsel that filed the Waiver Request on their behalf. The Commission has every reason to hold them to the highest standard of knowledge with regard to their licensing requirements.³

As explained in the Waiver Request, LA holds a total of only 11 FCC authorizations, all of which are ESMR Licenses because the prior licensee elected to be relocated from its original Specialized Mobile Radio (“SMR”) channels to spectrum in the ESMR allocation and LA reaffirmed that election. Inexplicably, LA proved unable to keep track of the renewal deadline for four of those 11 licenses. It failed to file timely renewal applications even though the FCC, as a courtesy, sent renewal reminders as it does to all wireless licensees, which reminders were mailed to the address provided by LA. It failed to file timely renewal applications even though LA had submitted its Rescission Recon Request on April 9, 2018, which still was within the 30-day license renewal grace period for these ESMR Licenses that is granted automatically by the FCC.⁴

² Even the companies’ attorney, Rob Somers, is understood to be part of the Downs family.

³ It also must be noted that Preferred Communication Systems, Inc., a predecessor to these affiliated entities, requested and was denied a waiver request seeking the reinstatement of 76 SMR licenses. *See* Letter to Christopher R. Bjornson, Counsel to Preferred Communication Systems, Inc., from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, 29 FCC Rcd 16323 (MD WTB 2014). This lack of attention to the most basic of FCC licensing requirements seemingly is a genetic deficiency.

⁴ In the Matter of Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing

Apparently LA made that filing without looking at the ESMR Licenses in the Universal Licensing System (“ULS”) database where the expiration date is prominently identified. In fact, had the 800 MHz Transition Administrator not notified LA on June 11, 2018 that the ESMR Licenses had expired, it is anyone’s guess when the company would have discovered that fact, even though the FCC has made tracking upcoming renewal deadlines in ULS so extraordinarily simple that a child could perform the task easily.

LA’s explanation for this failure is the equivalent of “the dog ate my homework.” First, it notes that these four ESMR Licenses have a different expiration date than its seven other authorizations. Why that fact is relevant is not obvious, since the Part 90 licenses held by any entity rarely have the same expiration date. Actually, LA was more fortunate than many licensees as it had only two expiration dates to track; one for the seven renewal applications that remain pending and a second for the four ESMR Licenses that have expired. LA also complains that it did not receive the FCC’s renewal notices with the disingenuous explanation that this was “perhaps due to conflicting addresses in the Universal Licensing System,”⁵ conflicting addresses provided by LA itself.⁶

Having failed to offer even a credible, much less justifiable, explanation for having missed its renewal date, LA then proffers several theories about how it satisfies the FCC’s waiver standard and why the FCC should renew these ESMR Licenses *nunc pro tunc*. None of its claims withstand scrutiny or justify deviation from the Commission’s treatment of similarly situated licensees whose

System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476 at ¶ 22.

⁵ Waiver Request at 3.

⁶ It strains credulity to believe that 3131 E. Camelback Road, a four-story building, so befuddled the USPS that it could not deliver mail to whichever of suite numbers 430 and 450 is actually occupied by LA.

public interest arguments were more compelling than LA's and whose performances as FCC licensees were superior.

II LA's ATTEMPT TO BOOTSTRAP ITS FAILURE TO CONSTRUCT FACILITIES PURSUANT TO THE ESMR LICENSES INTO SUPPORT FOR FORGIVING ITS FAILURE TO TIMELY RENEW THOSE LICENSES MUST BE REJECTED.

Almost incredibly, LA has attempted to justify its request for waiver relief on the fact that it has not placed any of its 11 licenses into service in the eight years since it acquired them because of an ongoing FCC proceeding. The Waiver Request explains that when LA filed renewal applications for the other seven licenses in 2011, it also asked that it not be required to complete rebanding and offer ESMR service pursuant to an ESMR election it had reaffirmed, "due to the impossibility and burden of doing so due to the uncompleted nature of the rebanding process."⁷ It claims that the 800 MHz rebanding process has been lengthy and has made "construction and use of the licenses problematic, if not impossible."⁸

What that situation has to do with the renewal of these four ESMR Licenses is not explained, most likely because there is no relationship. There is no exemption from the obligation to file timely renewal applications for expiring licenses because the authorizations are the subject of an FCC proceeding. Arguably, the fact that the renewal of LA's other seven licenses remains an issue, if anything, should have heightened its awareness of the FCC's renewal requirement.

EWA is not involved in the protracted dispute between LA and Sprint Corporation ("Sprint") regarding the renewal of those seven ESMR authorizations and whether LA had documented its preparedness to provide ESMR service once Sprint cleared ESMR spectrum for its use. Whatever the outcome of that matter, it is a fact that LA has relied entirely on the lengthy

⁷ Waiver Request at 2.

⁸ *Id.* at 3-4.

pendency of that proceeding to avoid taking any steps to place this spectrum into productive use – consistent with the ESMR election it reaffirmed voluntarily – that is, until November 2017, when it belatedly sought rescission of that election.⁹ LA described its Rescission Request as beneficial to the public, to Sprint, and to the FCC, because it would allow Sprint to maintain its current operations without having to accommodate LA ESMR facilities. That request mentioned offhandedly that it “will also allow LA to expand its operations to provide machine-to-machine network services to mobile devices.”¹⁰ What LA meant by “expanding” its operations is unknown, as LA has acknowledged that it has never initiated operation on this spectrum at all.

Only now, first in its Rescission Recon Request and then in this Waiver Request, does LA clarify that if the rescission is granted, it intends to lease all its spectrum to M2M for what LA describes as a “new, nationwide network dedicated to machine-to-machine communications.”¹¹ It states in the Waiver Request that “it has had to change its business plans several times”¹² and now intends to abandon its ESMR interest in favor of an M2M spectrum lease arrangement. This change in plans is particularly surprising, since LA told the FCC in its 2011 renewal request that it “has already purchased real property, repeater station equipment and portable radios for construction of [its ESMR] License[s] and has a commitment of tower space for the repeater equipment.”¹³ What it has done with the equipment it purportedly purchased, with the real property it claimed to have acquired, and with the tower leases to which it allegedly committed is

⁹ Letter from Rob Somers, Esq., General Counsel, License Acquisitions, LLC to Marlene H. Dortch, Secretary, FCC, Nov. 28, 2017 (“Rescission Request”).

¹⁰ *Id.* at 2.

¹¹ Rescission Recon Request at 2.

¹² Waiver Request at 2.

¹³ *See, e.g.*, Request for Waiver of the Deadline for Completion of 800 MHz Rebanding, WT Docket No. 02-55, filed by License Acquisitions, LLC (May 20, 2011).

yet another mystery of this group of affiliated entities. As the FCC noted in denying the Rescission Request:

Prior to filing this request, License Acquisitions consistently represented to the Commission that it was fully prepared to implement an ESMR system and that it had purchased equipment and obtained site leases in preparation for construction of such a system. License Acquisitions has not provided any justification for its eleventh-hour reversal of its position or demonstrated that it would be inequitable or burdensome to require License Acquisitions to continue to abide by the ESMR election that has applied to these licenses since 2006.¹⁴

Not only does this change in plans raise troubling questions about LA's prior representations to the Commission; it also has a direct bearing on LA's right to waiver relief.

III THE COMMISSION HAS CONSISTENTLY AND REPEATEDLY DENIED WAIVER REQUESTS FROM SIMILARLY SITUATED LICENSEES THAT FAILED TO FILE TIMELY LICENSE RENEWAL APPLICATIONS.

LA advances two arguments as justification for the waiver relief it requests. Neither is persuasive and neither would warrant retroactive license reinstatement under FCC precedent.

First, LA claims that a failure to allow license renewal would mean that this spectrum could remain unused for an extended period, until the FCC accepts application for site-based licensing in the 800 MHz Guard Band.¹⁵ That argument is almost laughable from a licensee that has made no use of its spectrum, either in an ESMR or SMR configuration, for many years, indeed seemingly from the time of assignment from the previous licensee in 2010. Moreover, even if the FCC were to reinstate these licenses *nunc pro tunc*, which EWA believes it should not, they are classified as ESMR, a service offering LA has foresworn in favor of a narrowband lease arrangement with M2M. EWA takes LA at its word in this regard. Unless the FCC reverses its recent Rescission Denial Order, there is no reason to believe that LA will ever initiate service pursuant to these

¹⁴ Rescission Denial Order at 3-4.

¹⁵ Waiver Request at 3.

ESMR Licenses, much less in a foreseeable future. Reinstatement without rescission approval will leave this spectrum in precisely the regulatory limbo in which it has languished for almost a decade.

Second, LA seems to argue that its alleged inability to operate even an SMR system during pendency of the 800 MHz rebanding process constitutes a unique and unusual factual circumstance that justifies its failure to file timely renewal applications and, thereby, satisfies the FCC's waiver standard as set out in FCC Rule Section 1.915. The correlation between LA's continued inoperation that it attributes to rebanding and its failure to file renewal applications is not obvious. Such an interpretation certainly would come as a surprise to the several thousand licensees whose systems were subject to rebanding and yet somehow managed to remember to renew their licenses during that process. Moreover, it is an argument that the FCC has considered and rejected from other 800 MHz licensees even when, as in this instance, the licensee would not be able to file for a replacement authorization.

For example, the FCC denied the waiver request from G & D Communications, Inc. ("G & D") and declined to reinstate its expired 800 MHz license.¹⁶ G & D argued that it misunderstood the licensing implications of rebanding and believed its license would be renewed when Sprint (then Nextel Communications, Inc.) filed the rebanding-related application. As the Commission stated, citing multiple precedent, "...each licensee is solely responsible for knowing the terms of its license and filing a renewal application in a timely manner."¹⁷ The FCC was not persuaded by the public interest argument that G & D's customers would be disrupted. It noted that there were

¹⁶ See Letter dated June 30, 2011 to Elizabeth R. Sachs, Counsel, G & D Communications, Inc., from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau (File No. 0003571633; Station WNYV719).

¹⁷ *Id.* at 4.

other commercial systems in the area, including cellular, PCS, and ESMR systems. It concluded that “G & D...makes no showing on how the cost or disruption to itself or its customers in the instant case constitutes unique or unusual factual circumstances” and, further, that “...G & D does not show that termination of service to its customers would leave them without service alternatives or result in loss of a unique service.”¹⁸ The Commission did grant G & D Special Temporary Authority (“STA”) “to make arrangements to discontinue its station operations in an orderly manner.”¹⁹

The Commission reached a similar conclusion when it denied a waiver request from Mobile Radio of Kokomo, Inc. (“Mobile Radio ”), which had failed to renew an 800 MHz license that had been reconfigured.²⁰ Mobile Radio explained that its failure to file was inadvertent and requested relief so that it could continue providing service to its customers. The Commission denied the waiver, citing numerous instances where late-filed renewal requests had been rejected. It granted relief only to the extent that it authorized an STA so Mobile Radio could wind down its operations in an orderly fashion

Christine Busby received the same answer when she requested a waiver to reinstate expired Part 22 geographic licenses purchased at auction.²¹ Ms. Busby also argued that the loss of her licenses would deprive her customers of a valuable service, but the FCC concluded that she had not identified “any specific harm to public safety or consumer welfare that would result from license termination.”²² Again, it authorized her to wind down her operations pursuant to an STA.

¹⁸ *Id.* at 5.

¹⁹ *Id.*

²⁰ Mobile Radio of Kokomo, Inc., *Order*, 27 FCC Rcd 15015 (MD WTB 2012).

²¹ Christine M. Busby, *Order*, 28 FCC Rcd 1012 (MD WTB 2013).

²² *Id.* at 5.

The Commission seemingly was not troubled by the fact that this spectrum would revert to the FCC and remain unused until acquired in a subsequent auction. As of 2018, it has not been assigned to a new entity.

Unlike these three licensees, and the many others cited by the Commission in these proceedings including cities, counties, fire departments, electric cooperatives, and school districts, LA has no operations and no customers. There is no public interest argument to support its Waiver Request, and the situation it has described does not constitute a unique or unusual circumstance under the Commission's waiver standard, as evidenced by the decisions reached in the cases cited above.

IV CONCLUSION

For the reasons above, EWA respectfully requests that the Commission deny the Waiver Request and reaffirm the expiration of these LA ESMR Licenses.

Respectfully submitted,

ENTERPRISE WIRELESS ALLIANCE


By: _____

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CERTIFICATE OF SERVICE

I, Linda J. Evans, on behalf of Lukas, LaFuria, Gutierrez & Sachs, LLP, hereby certify that I have on this 6th day of July, 2018, provided a copy of the foregoing Opposition to Request for Waiver and Renewal via e-mail and first-class mail, postage prepaid, to the following:

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