



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

DA 05-1279  
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## WIRELESS TELECOMMUNICATIONS BUREAU'S BROADBAND DIVISION GRANTS REQUESTS FOR RECONSIDERATION OF DISMISSAL OF BRS/EBS APPLICATIONS

In this *Public Notice*, the Wireless Telecommunication Bureau's (WTB) Broadband Division (Division) grants various petitions for reconsideration of the decisions to dismiss modification and new station applications in the Educational Broadband Service (EBS) and Broadband Radio Service (BRS) (formerly the Instructional Television Fixed Service (ITFS) and Multipoint Distribution Service (MDS), respectively).

In July 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking*,<sup>1</sup> in which it comprehensively restructured our rules with respect to BRS and EBS. One of the changes the Commission made was to institute geographic area licensing for BRS and EBS facilities. Under the new rules, BRS and EBS licensees may modify or add to their facilities without Commission approval so long as the facilities comply with the Commission's new technical rules.<sup>2</sup> The only instances in which compliant facilities would require prior application to the Commission are: (1) international agreements require coordination; (2) submission of an Environmental Assessment is required under Section 1.1307 of the Commission's Rules; or (3) the station would affect the radio quiet zones under § 1.924 of the Commission's Rules.<sup>3</sup>

In the *BRS/EBS R&O & FNPRM*, the Commission directed WTB to "dismiss all pending applications to modify MDS or ITFS stations, except for modifications that could change an applicant's PSA [protected service area] or applications for facilities that would have to be separately applied for under the rules we adopt today."<sup>4</sup> In accordance with that order, WTB dismissed the applications listed in the appendix to this *Public Notice*.<sup>5</sup>

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<sup>1</sup> 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, *et al.*; WTB Docket Nos. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O & FNPRM*).

<sup>2</sup> 47 C.F.R. §§ 27.1207(b), 27.1209(b).

<sup>3</sup> *Id.*

<sup>4</sup> *BRS/EBS R&O & FNPRM*, 19 FCC Rcd at 14191 ¶ 58.

<sup>5</sup> See Wireless Telecommunications Bureau Site-By-Site Action, Report No. 2038, *Public Notice*, (WTB rel. Jan. 12, 2005), Wireless Telecommunications Bureau Site-By-Site Action, Report No. 1953, *Public Notice*, (WTB rel. Oct. 6, 2004), Wireless Telecommunications Bureau Site-By-Site Action, Report No. 1947, *Public Notice*, (WTB

On October 29, 2004, the Commission released a modification to the *BRS/EBS R&O & FNPRM*.<sup>6</sup> In that modification, the Commission clarified that it did not intend to have the Bureau dismiss applications to add or modify frequency assignments.<sup>7</sup>

On the dates indicated in the Appendix to this *Public Notice*, the applicants listed in the Appendix filed timely petitions for reconsideration of the dismissal of the applications listed in the Appendix. After reviewing the petitions, we conclude that the applications listed in the Appendix should not have been dismissed, either because (1) the application sought to add or modify frequency assignments, (2) the application proposed to change a license's protected service area, or (3) the application proposed changes that would require a prior authorization under the new rules.<sup>8</sup> Accordingly, we will grant the petitions for reconsideration and reinstate the applications in question.

Accordingly IT IS ORDERED that pursuant to Sections 4(i), 309 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petitions for Reconsideration listed in the Appendix to this *Public Notice* ARE GRANTED, and the applications listed in the Appendix ARE REINSTATED.

IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 27.1207 and 27.1209 of the Commission's Rules, 47 C.F.R. §§ 27.1207, 1209, that the licensing staff of the Broadband Division SHALL PROCESS the applications listed in the Appendix in accordance with this *Public Notice* and the Commission's Rules.

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.

Action by the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau

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rel. Sep. 29, 2004), Wireless Telecommunications Bureau Site-By-Site Action, Report No. 1941, *Public Notice*, (WTB rel. Sept. 22, 2004).

<sup>6</sup> See 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, *et al.*; WTB Docket Nos. 03-66, *et al.*, *Order*, 19 FCC Rcd 22284 (2004).

<sup>7</sup> *Id.* at ¶ 8.

<sup>8</sup> In the case of Daytona Beach Community College and Palomar Community College District, the applications in question were applications for extension of time to construct modified facilities. Based upon our review, we conclude that these applications should not have been dismissed because the modifications in question would require prior Commission approval under the new rules.

**APPENDIX – GRANTED PETITIONS FOR RECONSIDERATION**

<b>Licensee</b>	<b>File Number(s)</b>	<b>Call Sign</b>	<b>Community of License</b>	<b>Date Petition for Reconsideration Filed</b>
Board of County Commissioners, Palm Beach County	20031007AAA	WPY38	Loxahatchee, Florida	10/22/2004
Caribbean University	20000818CZL	WLX315	Aguas Buenas, Puerto Rico	10/28/2004
Catholic Archdiocese of San Juan	20000818CZK	WLX321	Aguas Buenas, Puerto Rico	10/28/2004
Daytona Beach Community College	20020826AAA	WLX780	Daytona Beach, Florida	02/01/2005
Eaton Rapids Public Schools	19951020CA	New Station	Lansing, Michigan	11/04/2004
Emerson College	19960919AA	New Station	Boston, Massachusetts	10/22/2004
Palomar Community College District	20021122AAF	WGR707	San Marcos, California	02/01/2005
Salt Lake Educational Foundation	20010420AGR	WND552	Salt Lake City, Utah	10/29/2004
WBSCB Licensing Corporation	19961105UO, 19961105UP	New Station	Coos Bay, Oregon	10/29/2004
WBSH Licensing Corporation	19961105UU, 19961105UV	New Station	Helena, Montana	10/29/2004
WBSK Licensing Corporation	19961115UQ, 19961115UR	New Station(s)	Klamath Falls, Oregon	10/29/2004
WBSR Licensing Corporation	19961216US, 19961216UT	New Station(s)	Roseburg, Oregon	10/29/2004