

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

In the Matter of)	
)	
FIXED WIRELESS HOLDINGS, LLC)	
)	
Licensee of Broadband Radio Service Station)	
WMH601, Jacksonville, North Carolina)	
)	
Application for Renewal of Broadband Radio)	File No. 20010321AAU
Service Station WMH601, Jacksonville, North)	
Carolina)	

MEMORANDUM OPINION AND ORDER

Adopted: February 7, 2005

Released: February 7, 2005

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On August 4, 2000, Wireless One of North Carolina, L.L.C. (Wireless One) filed a request for acknowledgement of license forfeiture and correction of database regarding Multipoint Distribution Service (MDS)¹ Station WMH601 (E-Group channels), Jacksonville, North Carolina.² At the time Wireless One filed its pleadings, the licensee for Station WMH601 was National Television Company (National Television).³ Wireless One holds the Jacksonville MDS Basic Trading Area (“BTA”) authorization and argued that pursuant to Section 21.44(a)(3) of the Commission’s rules, National Television forfeited its license for call sign WMH601 because it had not operated the station for more than 30 days.⁴ National Television filed an opposition to Wireless One’s request on August 9, 2001.⁵ For the reasons discussed below, we deny the Forfeiture Request.

¹ On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* that transforms the rules governing MDS and the Instructional Television Fixed Service (ITFS) in order to encourage the deployment of broadband services by commercial and educational entities. 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.*; WT Docket Nos. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*MDS/ITFS R&O & FNPRM*). To better reflect the forward-looking vision for these services, the Commission renamed MDS the Broadband Radio Service and ITFS the Educational Broadband Service. Because the new rules have taken effect, we will refer to the service by its new name.

² Wireless One of North Carolina, L.L.C., Request for Acknowledgement of License Forfeiture and Correction of Database, File No.50559-CN-MP-96, filed Aug. 4, 2000 (Forfeiture Request).

³ After the filing of the Forfeiture Request, the license for Station WMH601 was subsequently assigned from National Television to Fixed Wireless Holdings, LLC. *See* File No. 20040624AAA (filed June, 24, 2004, granted August 24, 2004, consummated October 12, 2004). *See* Wireless Telecommunications Bureau Site-By-Site Actions, Report No. 1927, *Public Notice* (rel. Sep. 1, 2004).

⁴ 47 C.F.R. § 21.44(a)(3).

⁵ National Television Company, Opposition to Request for Acknowledgement of License Forfeiture and Correction of Database, File No.50559-CN-MP-96, filed Aug. 9, 2001 (Opposition).

II. BACKGROUND

2. On August 4, 2000, Wireless One filed a request asking the Commission to deem National Television's license for station WMH601 automatically forfeited pursuant to Section 21.44(a)(3) of the Commission's Rules.⁶ Wireless One argued that pursuant to section 21.44(a)(3) of the Commission's rules, a license is automatically forfeited upon "the voluntary removal or alteration of the facilities so as to render the station not operational for a period of 30 days or more"⁷ and that because station WMH601 had not been operating for more than 30 days, the Station has been automatically forfeited. Wireless One stated that it hired an engineer who made two visits to the transmit site for the station on June 8, 2000 and July 17, 2000.⁸ At each visit, the engineer conducted spectrum scans of the frequencies authorized for the station but found no signals at and around the transmit site.⁹ Wireless One also stated that the engineer found no homes with Multichannel Multipoint Distribution Service receive antennas in the Jacksonville area near the tower and that when the engineer contacted the Jacksonville Chamber of Commerce, he learned that there were no records of a wireless cable provider in the Jacksonville/Onslow County area.¹⁰ Furthermore, Wireless One also claimed that upon review of the Commission's station files for Station WMH601, it could not find an annual report filed for 1998 and 1999. Wireless One therefore urged the Commission to declare the license for Station WMH601 forfeited.

3. On August 9, 2001, National Television filed its Opposition.¹¹ National Television argued that it had not voluntarily removed or altered its facilities for the Station and that voluntary removal is required for Section 21.44 to apply.¹² National Television explained that it was unaware that its station was not operational until Wireless One filed its Forfeiture Request indicating that the station was not on the air.¹³ Upon receiving the Forfeiture Request, National Television conducted an audit of the station's facilities and determined that several key pieces of equipment were missing. National Television believes it was the victim of an apparent theft and asserted that its station was non-operational but not as result of a calculated business decision.¹⁴ National Television stated that once it learned about what had occurred, it immediately ordered the equipment that was needed, completed the installation of such equipment on August 28, 2000, and returned the station to the air. National Television claimed that it made an investment of several thousand dollars in order to replace the missing equipment.¹⁵ National Television therefore argued that because the removal or alteration of facilities rendering the station non-

⁶ Forfeiture Request.

⁷ See 47 C.F.R. § 21.44(a)(3).

⁸ Forfeiture Request at 2; Reply at 2-3.

⁹ *Id.*

¹⁰ Forfeiture Request at 2.

¹¹ Opposition. We do not condone National Television's failure to file a timely response to the Forfeiture Request. See 47 C.F.R. § 1.45(b) (oppositions shall be filed within 10 days after a motion or request is filed). We direct National Television to be more diligent in the future in filing timely responses to pleadings filed before the Commission. We conclude, however, that the public interest would be better served by considering National Television's Opposition.

¹² *Id.* at 1-2.

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

operational were not voluntary occurrences on the part of National Television, Section 21.44(a)(3) should not apply.¹⁶

4. On August 21, 2001, Wireless One filed its Reply.¹⁷ First, Wireless One argued that National Television's Opposition is procedurally defective because it was filed more than one year late.¹⁸ Second, National Television emphasized that National Television's license was automatically forfeited because it was not transmitting a signal for at least 80 days from June 8, 2000, through August 28, 2000, and that the reason the station was not operational is because of National Television's voluntary decision not to monitor the station.¹⁹ Furthermore, Wireless One asserted that National Television provided no evidence to support its claim that its station transmitting equipment must have been stolen, and the fact that National Television admits that it does not know how or why the station ceased operating demonstrates that National Television voluntarily abdicated its responsibility for the station.²⁰

5. Wireless One also contended that National Television does not seem to be providing service to the community and has failed to demonstrate how it would serve the public interest for it to continue on as licensee of station WMH601.²¹ Wireless One claimed that it appears that there are no subscribers to the station because if there were, they would have notified National Television or its local representative that its service had ceased.²² Additionally, Wireless One stated that National Television did not list any subscribers served during the year 2000 in its "Section 21.911 Annual Report" filed with the Commission.²³ Instead, National Television indicated that it did not consummate a channel lease with a wireless operator and is seeking a new lessee.²⁴ Thus, Wireless One asserted that National Television has not operated Station WMH601 pursuant to the Commission's Rules or in any manner that would serve the public interest.²⁵

III. DISCUSSION

6. We conclude that Wireless One has failed to establish that there was a voluntary removal of equipment that would trigger Section 21.44 of the Commission's Rules. We find that Wireless One's allegations are insufficient to justify declaring the license for Station WMH601 to be forfeited.

7. Section 21.44(a)(3) of the Commission's Rules requires automatic forfeiture of a station license upon "[t]he voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more."²⁶ National Television denied that it had removed or voluntarily altered its facilities in a way that would trigger the forfeiture provisions of Section 21.44.²⁷

¹⁶ *Id.*

¹⁷ Wireless One of North Carolina, L.L.C., Reply to Opposition to Request for Acknowledgement of License Forfeiture and Correction of Database, File No. 050559-CN-MP-96, filed Aug. 21, 2001 (Wireless One Reply)

¹⁸ *Id.* at 1-2.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 3-4.

²¹ *Id.* at 5.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 6.

²⁶ 47 C.F.R. § 44(a)(3).

²⁷ Opposition at 1-2.

National Television asserted that such removal was not “voluntary” because it had no knowledge nor had it approved of the removal of certain equipment at the station. Indeed, National Television stated that it believes that its equipment had been stolen, and we have no reason to doubt the validity of that claim.²⁸ Under those circumstances, though it appears that the station was non-operational for a period of 30 days or more, this was not the result of National Television’s voluntary action so as to trigger the requirements of Section 21.44. For that reason, we do not find that National Television has taken any actions that would trigger forfeiture of its license pursuant to Section 21.44.²⁹

8. We also reject Wireless One’s contention that National Television has failed to demonstrate how it would serve the public interest for it to continue on as licensee of Station WMH601. We find that upon learning that its station was not operating, National One took action and invested the necessary resources to bring its station back into operation. We find that this demonstrates National Television’s commitment to run the station and serve the public interest.

IV. CONCLUSION AND ORDERING CLAUSES

9. For the reasons stated above, we conclude that Wireless One has failed to demonstrate that National Television has removed or altered its equipment in a way that would trigger the forfeiture provisions of Section 21.44. We therefore deny the Forfeiture Request.

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 21.44 and 21.303(d) of the Commission’s Rules, 47 C.F.R. §§ 21.44 and 21.303(d), that the “Request for Acknowledgement of License Forfeiture and Correction of Database” filed by Wireless One of North Carolina, L.L.C., on August 4, 2000 **IS DENIED**.

11. **IT IS FURTHER ORDERED**, pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d) and Section 21.30 of the Commission’s Rules, 47 C.F.R. § 21.30, that the licensing staff of the Broadband Division **SHALL PROCESS** the application for renewal of license filed by National Television Company on March 21, 2001 (File No. 20010321AAU) in accordance with this *Memorandum Opinion and Order* and the Commission’s Rules.

12. 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

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

²⁸ We note that the Opposition was filed with a Declaration Under Penalty of Perjury signed by the president of the company. See Opposition, Declaration Under Penalty of Perjury by B. Waring Partridge III.

²⁹ See Eagleview Technologies, Inc., *Memorandum Opinion and Order*, DA 05-40 (WTB BD rel. Jan. 10, 2005) at ¶ 11.