

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

In the Matter of Application of )
)
GULF COAST CHRISTIAN SCHOOL ) File No. 0001655506
)
For Renewal of License for Educational Broadband )
Service Station WNC238, Pensacola, Florida )
)

ORDER ON RECONSIDERATION

Adopted: September 6, 2006

Released: September 7, 2006

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

I. INTRODUCTION

1. On April 8, 2005, Gulf Coast Christian School (Gulf Coast) filed a petition for reconsideration. Gulf Coast seeks reconsideration of a March 1, 2005 letter dismissing its application for renewal of Educational Broadband Service (EBS) Station WNC238. For the reasons set forth below, we grant the Petition, reinstate the license for Station WNC238, and reinstate the Renewal Application.

II. BACKGROUND

2. On March 18, 1994, Gulf Coast was authorized to construct facilities for Station WNC238, with a construction completion date of September 18, 1995. Subsequently, Gulf Coast filed

1 Petition for Reconsideration, Gulf Coast (filed April 8, 2005) (Petition).

2 Letter from the Federal Communications Commission to Dave Williams, Ref. No. 3344306 (Mar. 1, 2005) (Dismissal). Public notice of the dismissal of the application and termination of the license was given on March 9, 2005. Wireless Telecommunications Bureau Site-By-Site Action, Public Notice, Report No. 2089 (rel. Mar. 9, 2005) at 14, 20.

3 File No. 0001655506 (Renewal Application).

4 On July 29, 2004, the Commission released a Report and Order and Further Notice of Proposed Rulemaking that transforms the rules governing the Multipoint Distribution Service (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). 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 EBS by its new name.

5 File No. BPLIF-931117DA.

an application to make minor modifications to Station WNC238.<sup>6</sup> On July 31, 1995, Gulf Coast filed a certification that construction for the initial authorization was complete.<sup>7</sup>

3. On October 18, 2002, the Bureau released a Public Notice in which it sought to ensure that it had a complete and accurate listing of all BRS and EBS licenses and pending applications.<sup>8</sup> WTB required that all BRS and EBS licensees and applicants review and verify the information contained in these tables. Worldcom Broadband Solutions, Inc. (Worldcom) filed a data correction on behalf of Gulf Coast in response to the *October Public Notice* to reflect that the station had been constructed.<sup>9</sup> Worldcom supplied a certification of completion of construction with a date stamp indicating that the certification was filed January 21, 1997, 16 months after the construction deadline.<sup>10</sup> However, this construction certification referenced the completion of facilities pursuant to the Minor Modification Application, not the initially authorized facilities.<sup>11</sup> On September 3, 2003, based on the data correction as submitted, the Bureau sent a letter to Michael Ray of Worldcom stating that it appeared that Gulf Coast had missed its construction deadline.<sup>12</sup>

4. On March 12, 2004, Gulf Coast filed the Renewal Application.<sup>13</sup> On March 1, 2005, the Renewal Application was dismissed and their license was forfeited as of December 22, 1995 for failure to meet the construction deadline.<sup>14</sup> On April 8, 2005, Gulf Coast filed the Petition as a result of the forfeiture of their license.<sup>15</sup> Gulf Coast argues that the Bureau's statement that the station was constructed on January 21, 1997 is incorrect.<sup>16</sup> Gulf Coast provided the Initial Certification that is stamped received by the Commission on July 31, 1995.<sup>17</sup>

### III. DISCUSSION

5. At the time Gulf Coast was required to construct their station, Section 73.3599 of the Commission's Rules provided:<sup>18</sup>

A construction permit shall be declared forfeited if the station is not ready for operation within the time specified therein or within such further time as the FCC may have

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<sup>6</sup> File No. BPLIF-950327DZ (Minor Modification Application).

<sup>7</sup> Letter from Jenny L. Hurd, Wireless One, to Secretary, Federal Communications Commission (filed Jul. 31, 1995) (Initial Certification).

<sup>8</sup> Wireless Telecommunications Bureau Seeks to Verify ITFS, MDS, and MMDS License Status and Pending Applications, *Public Notice*, DA 02-2751, 67 Fed. Reg. 69010 (2002) (*October Public Notice*).

<sup>9</sup> Letter from Michael Ray, Worldcom Broadband Solutions, Inc. to Federal Communications Commission (filed Jan. 27, 2003). (Modified Certification).

<sup>10</sup> *Id.*

<sup>11</sup> Petition at 2.

<sup>12</sup> Letter from Federal Communications Commission to Michael Ray, Worldcom Broadband Solutions, Inc. (filed Aug. 28, 2003).

<sup>13</sup> Renewal Application.

<sup>14</sup> Dismissal.

<sup>15</sup> Petition at 1.

<sup>16</sup> *Id.*

<sup>17</sup> Initial Certification.

<sup>18</sup> 47 C.F.R. § 73.3599 (1995).

allowed for completion, and a notation of the forfeiture of any construction permit under this provision will be placed in the records of the FCC as of the expiration date.

In this case, at the time the Renewal Application was filed it was not apparent that the station had been timely constructed because the Modified Certification, which was filed with the data correction, actually referenced the completion of modified facilities.<sup>19</sup> The Bureau used the date the Modified Certification was filed as the date construction for the initial authorization was complete.<sup>20</sup> This date fell outside the deadline for construction for the initial authorization.<sup>21</sup> Now, however, Gulf Coast has provided the Initial Certification stamped received by the Commission on July 31, 1995, which establishes that the station was constructed by the September 18, 1995 construction deadline.<sup>22</sup> In light of this evidence, we will grant the Petition, reinstate the license and Renewal Application, and direct processing of the Renewal Application.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 of the Commission's Rules, 47 C.F.R. §§ 1.106 the Petition for Reconsideration filed by Gulf Coast Christian School on April 8, 2005 IS GRANTED.

7. 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 Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, that the Broadband Division SHALL REINSTATE the license for Educational Broadband Service stations WNC238, as well the application for renewal of license filed by Gulf Coast Christian School (File No. 0001655506).

8. 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 Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, that the licensing staff of the Broadband Division SHALL PROCESS the application for renewal of license filed by Gulf Coast Christian School (File No. 0001655506) in accordance with this *Order on Reconsideration* and the Commission's rules and policies.

9. These actions are taken under designated 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 Telecommunication Bureau

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<sup>19</sup> Modified Certification.

<sup>20</sup> Dismissal Letter.

<sup>21</sup> *Id.*

<sup>22</sup> Initial Certification.