

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

In the Matter of Applications of)
DEMOPOLIS CITY BOARD OF EDUCATION) File No. 0001781953
For Renewal of License of Educational Broadband)
Service Station WNC330, Demopolis, Alabama)
and)
MARENGO COUNTY BOARD OF EDUCATION) File No. 0001781941
For Renewal of License for Educational Broadband)
Service Station WNC331, Demopolis, Alabama)

ORDER ON RECONSIDERATION

Adopted: November 27, 2006

Released: November 28, 2006

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

I. INTRODUCTION

1. On April 7, 2005, the Demopolis City Board of Education (Demopolis) and Marengo County Board of Education (Marengo County) filed separate petitions for reconsideration. Demopolis and Marengo County seek reconsideration of March 1, 2005 letters dismissing their applications for renewal of Educational Broadband Stations (EBS) WNC330 and WNC331 and declaring the authorizations for those stations terminated. For the reasons set forth below, we grant the Petitions, reinstate the licenses for Stations WNC330 and WNC331, and reinstate the Renewal Applications.

1 Petition for Reconsideration and Reinstatement, Demopolis City Board of Education (filed Apr. 7, 2005) (Demopolis Petition); Petition for Reconsideration and Reinstatement, Marengo County Board of Education (filed Apr. 7, 2005) (Marengo County Petition) (together, Petitions).

2 File Nos. 0001781953, 0001781941 (Renewal Applications).

3 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.

4 Letter from Wireless Telecommunications Bureau to Demopolis City Board of Education, Ref. No. 3344305 (Mar. 1, 2005); Letter from Federal Communications Commission to Marengo County Board of Education, Ref. No. 3344307 (Mar. 1, 2005) (collectively, Dismissal Letters). Public notice of the dismissal of the applications and (continued...)

II. BACKGROUND

2. On June 22, 1994, Demopolis and Marengo County were authorized to construct EBS stations on the B channel group (Demopolis) and C channel group (Marengo County) at Demopolis, Alabama.⁵ On November 14, 1997 and November 12, 1997, respectively, Demopolis and Marengo County were issued authorizations to make minor modifications to their facilities.⁶ After their authorizations were modified, Demopolis had a construction deadline of May 14, 1998 and Marengo County had a construction deadline of May 12, 1998.⁷

3. On October 18, 2002, the Wireless Telecommunications Bureau (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.⁸ 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 data corrections on behalf of both Demopolis City and Marengo County in response to the *October Public Notice* to reflect that the stations had been constructed.⁹ Worldcom supplied certifications of completion of construction for both stations with a date stamp indicating that the certifications were filed on May 21, 1998, after the construction deadlines.¹⁰ The Certifications did not contain the exact date that construction was completed but merely stated that “the station is being operated in accordance with the...Commission’s Rules and applicable engineering standards.”¹¹

4. On June 22, 2004, Demopolis and Marengo County filed the Renewal Applications. On March 1, 2005, the Bureau dismissed the Renewal Applications and declared the licenses forfeited as of May 14, 1998 and May 12, 1998 respectively for failure to meet the construction deadline.¹²

5. The Petitions were filed on March 31, 2005. Demopolis and Marengo County argue that the Bureau’s statement that the stations were constructed on May 21, 1998 is incorrect.¹³ They provide affidavits stating that they constructed their stations on May 8, 1998.¹⁴ Demopolis and Marengo County admit that the date of construction was not provided in the Certifications but emphasize that the stations were constructed prior to their construction deadline.¹⁵

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termination of the licenses 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.

⁵ File Nos. BPIF-19931022DC, BPIF-19931022DA.

⁶ File Nos. BNPIF-1990405DF, BNPIF-19960405DD.

⁷ *Id.*

⁸ 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*).

⁹ Letter from Michael Ray, Worldcom Broadband Solutions, Inc. to Federal Communications Commission (filed Jan. 27, 2003).

¹⁰ Letters from Jenny L. Hurd, Wireless One, to Secretary, Federal Communications Commission (filed May 21, 1998) (Certifications).

¹¹ *Id.*

¹² Dismissal Letters.

¹³ Petitions at 2.

¹⁴ Demopolis Petition, Affidavit of W. Wesley Hill; Marengo County Petition, Affidavit of Luke Hallmark.

¹⁵ Petitions at 2-3.

III. DISCUSSION

6. At the time Demopolis and Marengo County were required to construct their stations, Section 73.3599 of the Commission's Rules provided:¹⁶

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 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 Applications were filed, it was not apparent that the stations had been timely constructed because the Certifications were filed after the construction deadline and did not state when construction had taken place. When Worldcom filed data corrections on behalf of Demopolis City and Marengo County, it simply refiled the original construction notifications that had been stamped when received at the Commission and returned to the respective parties.¹⁷ Accordingly, the Bureau assumed the date the construction notifications were filed, which was stamped at the top of each notification, was the date construction was complete.¹⁸ Those dates fell outside the deadline for construction. Now, however, both Demopolis and Marengo County have provided affidavits¹⁹ stating that their stations were constructed on May 8, 1998, prior to the construction deadline. In light of this new evidence, and in light of the fact that the rule did not require that the certification of completion of construction be filed prior to the construction deadline, we will grant the Petitions, reinstate the licenses and Renewal Applications, and direct processing of the Renewal Applications.

IV. ORDERING CLAUSES

7. 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 Petitions for Reconsideration filed by Demopolis City Board of Education and Marengo County Board of Education on March 31, 2005 ARE GRANTED.

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 Broadband Division SHALL REINSTATE the licenses for Educational Broadband Service stations WNC331 and WNC330, as well the applications for renewal of license filed by Demopolis City Board of Education (File No. 0001781953) and Marengo County Board of Education (File No. 0001781941).

9. 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 applications for renewal of license filed by Demopolis City Board of Education (File No. 0001781953) and Marengo

¹⁶ 47 C.F.R. § 73.3599 (1998).

¹⁷ Certifications.

¹⁸ Dismissal Letters.

¹⁹ See n.14, *supra*.

County Board of Education (File No. 0001781941) in accordance with this *Order on Reconsideration* and the Commission's rules and policies.

10. 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

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