

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

In re Application of)
)
LOIS HUBBARD) File No. 20031128AAA
)
For Renewal of Broadband Radio Service)
Station WMI307, South Bend, Indiana)
)

ORDER ON RECONSIDERATION

Adopted: December 1, 2006

Released: December 1, 2006

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

I. INTRODUCTION

1. On November 12, 2004, Lois Hubbard (Hubbard) filed a petition seeking reconsideration¹ of the dismissal² of the application for renewal of Broadband Radio Service WMI307, South Bend, Indiana and the October 26, 2004 decision of the Broadband Division of the Wireless Telecommunications Bureau’s (WTB) denying her waiver request to allow a late-filed renewal.³ For the reasons discussed below, we grant the Petition.

II. BACKGROUND

2. On March 25, 2002, the WTB assumed responsibility from the Mass Media Bureau for the administration of the Instructional Television Fixed Service (ITFS), Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS) (collectively the “Services”).⁴ As the WTB began migrating data from the Broadband Licensing System (BLS) to the Universal Licensing System (ULS),⁵ it sought to ensure that it had a complete and accurate listing of all licenses, pending applications, and other pertinent legal matters. To that end, WTB released a public notice on October 18, 2002, requiring all licensees, applicants, and petitioners to review and verify the information contained in

¹ Petition for Reconsideration, Lois Hubbard (filed Nov. 12, 2004) (Petition).

² Lois Hubbard, *Memorandum Opinion and Order*, 19 FCC Rcd 21113 (WTB BD 2004) (*Hubbard Order*).

³ See File No. 20031128AAA (Waiver Request).

⁴ 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, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket Nos. 03-66, *et al.*, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O and FNPRM*). To better reflect the forward-looking vision for these services, the Commission renamed MDS and ITFS as the Broadband Radio Service and the Educational Broadband Service, respectively. Because the new rules are currently in effect, we will refer to the services by their new names. Because the rules adopted in the *BRS/EBS R&O and FNPRM* were not in effect when Hubbard filed her renewal application, however, we will cite to the rules in effect at the time of filing, unless otherwise required.

⁵ See Wireless Telecommunications Bureau Suspends Electronic Filing for the Broadband Licensing System on October 11, 2002, *Public Notice*, 17 FCC Rcd 18365 (WTB 2002); see also Wireless Telecommunications Bureau to Complete Conversion of MDS, MMDS, and ITFS Services to the Universal Licensing System, *Public Notice*, 19 FCC Rcd 2716 (WTB 2004).

the six different tables that were attached to it.⁶ The *October Public Notice* warned all interested parties that:

IT IS VERY IMPORTANT THAT ALL ITFS, MDS, AND MMDS LICENSEES AND APPLICANTS CAREFULLY REVIEW THIS PUBLIC NOTICE AND THE TABLES OF LICENSING INFORMATION DESCRIBED BELOW. FAILURE TO FOLLOW THE INSTRUCTIONS IN THIS PUBLIC NOTICE MAY RESULT IN THE CANCELLATION OF LICENSES AND/OR DISMISSAL OF PENDING APPLICATIONS.⁷

In addition, the WTB required that all applicants respond in writing by December 18, 2002 if they desired the Commission to continue processing pending applications that were filed prior to March 25, 2002.⁸ Although the WTB originally provided a sixty-day window (ending December 18, 2002) in which to comply with its request,⁹ it later extended the filing deadline to February 21, 2003.¹⁰

3. On April 2, 2001, Hubbard submitted a timely application for renewal of license for BRS Station WMI307.¹¹ She did not, however, respond to the *October Public Notice*, nor did she file a timely petition for reconsideration of the decision in the *June Public Notice* dismissing her license.¹² On November 28, 2003, Hubbard filed a petition to accept a late-filed renewal application *nunc pro tunc*.¹³ In her Waiver Request, Hubbard asserted that she was not represented by Washington, D.C. counsel, was unfamiliar with Commission practice and procedure and therefore, was unaware of the *October Public Notice*.¹⁴ She also maintains that she filed the Waiver Request as soon as she realized that the application

⁶ Wireless Telecommunications Bureau Seeks To Verify ITFS, MDS, and MMDS License Status and Pending Applications, *Public Notice*, 17 FCC Rcd 20543 (WTB 2002) (*October Public Notice*). Specifically, the *October Public Notice* referenced six different tables of licensing information. Table A listed all ITFS licenses including main station and two-way stations shown in BLS. Table B listed all MDS and MMDS licenses, including Basic Trading Area (BTA) authorizations, main stations and two-way stations contained in BLS. Table C listed all granted modifications and construction permits for ITFS for which certifications of construction have not yet been filed. Table D listed all granted MDS/MMDS modifications and conditional licenses for which certifications of construction have not yet been filed. Table E listed all pending applications for ITFS, and Table F listed all pending applications for MDS and MMDS.

⁷ *Id.* (emphasis in original).

⁸ *See id.*

⁹ *See id.*

¹⁰ Wireless Telecommunications Bureau Seeks To Verify ITFS, MDS, and MMDS License Status and Pending Applications – Request for Extension of Response Date, *Order*, 17 FCC Rcd 24620 (WTB PSPWD 2002) (extending the deadline to February 3, 2003); Letter from D’wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC, to Paul J. Sinderbrand, Esq., Wilkinson, Barker, and Knauer LLP (dated Feb. 20, 2003) (extending the deadline to February 21, 2003).

¹¹ File No. 20010402ABD.

¹² Wireless Telecommunications Bureau Announces Action On Responses To Public Notice Regarding ITFS, MDS, And MMDS Pending Applications, *Public Notice*, 18 FCC Rcd 12,277 (WTB 2003) (*June Public Notice*). On June 20, 2003, the WTB released another public notice in which it announced the action it had taken on the responses to the *October Public Notice*. The dismissed applications were clearly listed in Appendix B of the *June Public Notice* by licensee name, file number, call sign, facility ID, and transmitter city and state.

¹³ Waiver Request.

¹⁴ *Id.*

was dismissed.¹⁵ Hubbard indicated that her brother-in-law put her on notice that the application was dismissed but does not provide specifics on how he learned about the dismissal.¹⁶

4. On October 24, 2004, the WTB released an order denying Hubbard's Waiver Request and dismissing her resubmitted application.¹⁷ In the *Hubbard Order*, the Bureau said that granting the Waiver Request and reinstating the forfeited license under the circumstances presented by Hubbard would frustrate the goal of providing a date certain upon which one may file an application for an area covered by an expired license and the goal of ensuring uninterrupted, authorized service to the public.¹⁸ The Bureau determined that Hubbard had not shown how granting a waiver due to unfamiliarity with Commission practice and procedures would ensure that parties would have a date certain after which they may file applications for an area covered by an expired license and ensure service to the public.¹⁹

5. Hubbard filed the instant Petition on November 12, 2004.²⁰ Hubbard claims that the Bureau failed to process her application and Waiver Request under the correct standard and that a more lenient standard that should have been applied in her case.²¹ Hubbard asks the Commission to take into account here age and inexperience, the fact that she had timely filed the original renewal, the absence of any negative impact on any other potential filer, and that she notified the Commission of her continued interest in the application although outside of the deadline for petitions for reconsideration.²² Hubbard also claims that the Commission failed to provide proper notice of the potential dismissal of her license because the tables that listed the applications subject to dismissal were not published in the Federal Register, FCC Reports, FCC Record or Pike and Fischer.²³

III. DISCUSSION

6. Initially, we conclude that the *Hubbard Order* applied the correct legal standard to Hubbard's Waiver Request.²⁴ The Bureau may grant such a waiver if the purpose of the rule will not be served or would be frustrated by its application in the case and that grant of the waiver is otherwise in the public interest.²⁵ While we agree that the *Hubbard Order* applied the correct legal standard, when taking into account the circumstances articulated in the Petition, we now conclude that Hubbard has made the requisite showing that a waiver is warranted. We conclude that Hubbard met the underlying purposes of the rule by originally filing a timely renewal application and by promptly acting to file her waiver request after she learned of the dismissal of her original application. Accordingly, we find that Hubbard generally acted with sufficient diligence such that it would be inequitable to terminate her license.

¹⁵ Petition at 2.

¹⁶ Waiver Request at 3.

¹⁷ See *Hubbard Order*.

¹⁸ *Id.* at 21115 ¶ 9.

¹⁹ *Id.*

²⁰ See Petition.

²¹ Petition at 2-4, citing *BRS/EBS R&O and FNPRM*; Eastern New Mexico University, *Memorandum Opinion and Order and Order on Reconsideration*, 19 FCC Rcd 19540 (WTB 2004).

²² Petition at 5.

²³ *Id.* at 5.

²⁴ See *Hubbard Order*, 19 FCC Rcd at 21114 ¶ 6.

²⁵ 47 C.F.R. § 21.19.

IV. CONCLUSION AND ORDERING CLAUSES

7. We conclude that Hubbard has shown good cause to grant her waiver request. Accordingly, we grant the Petition.

8. 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 Reinstatement and the accompanying Request for Waiver filed by Lois Hubbard on November 28, 2003 ARE GRANTED.

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 Broadband Division SHALL REINSTATE the license for Broadband Radio Service Station WMI307, as well the application for renewal of license filed by Lois Hubbard (File No. 20031128AAA).

10. 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 Lois Hubbard (File No. 20031128AAA) in accordance with this *Order on Reconsideration* and the Commission's rules and policies.

11. 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