



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

DA 07-1809
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WIRELESS TELECOMMUNICATIONS BUREAU'S BROADBAND DIVISION GRANTS REQUESTS FOR WAIVER OF EBS DISCONTINUANCE OF SERVICE RULE

In this *Public Notice*, the Broadband Division grants a request for waiver of the Commission's discontinuance of service rule for the Educational Broadband Service (EBS)¹ station to Wilson Technical Community College (WTCC), licensee of EBS Station WND301, and Counterpoint Communications, Inc., licensee of EBS Stations WNC235, WNC992, and WND411, in order to facilitate the transition to new rules.²

Under the rule that was in effect prior to January 10, 2005, former Section 74.932(d) of the Commission's Rules required that an EBS license be forwarded to the Commission for cancellation in case of permanent discontinuance of operation.³ A station which had not operated for one year was considered to have permanently discontinued operation.⁴

¹ 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) (*BRS/EBS 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 are now in effect, we will refer to these services by their new names.

² The Broadband Division has granted similar requests for discontinuance waivers. *See* Wireless Telecommunications Bureau's Broadband Division Grants Request for Waiver of EBS Discontinuance of Service Rule, *Public Notice*, 2006 WL 3702817 (WTB BD 2006); Wireless Telecommunications Bureau's Broadband Division Grants Requests for Waiver of BRS and EBS Discontinuance of Service Rules, *Public Notice*, 21 FCC Rcd 10079 (WTB BD 2006); Wireless Telecommunications Bureau's Broadband Division Grants Requests for Waiver of BRS and EBS Discontinuance of Service Rules, *Public Notice*, 20 FCC Rcd 5275 (WTB BD 2005); Wireless Telecommunications Bureau's Broadband Division Grants Requests for Waiver of MDS and ITFS Discontinuance of Service Rules, *Public Notice*, 20 FCC Rcd 54 (WTB BD 2005); Wireless Telecommunications Bureau's Broadband Division Grants Requests for Waiver of MDS and ITFS Discontinuance of Service Rules, *Public Notice*, 19 FCC Rcd 18752 (WTB BD 2004).

³ 47 C.F.R. § 74.932(d).

⁴ *Id.*

On December 20, 2006, WTCC filed a request for waiver of former Section 74.932(d) of the Commission's Rules. On February 28, 2007, Counterpoint filed three separate requests for waiver of former Section 74.932(d) of the Commission's Rules. Grant of these waivers would allow Stations WND301, WNC235, WNC992, and WND411 to remain silent beyond the time contemplated in the rules. Based upon the record before us, we conclude that WTCC and Counterpoint have made sufficient showings to justify a waiver.⁵

On July 29, 2004, the Commission released the *BRS/EBS R&O & FNPRM* that fundamentally restructured the band to provide BRS and EBS licensees with greater flexibility, and took numerous steps to promote competition, innovation, and investment in wireless broadband services and educational services.⁶ Among other actions, the *BRS/EBS R&O & FNPRM* eliminated the discontinuance of service rules for the new BRS and EBS.⁷ The discontinuance of service rules no longer apply to non-common carrier BRS and EBS licensees. Because the discontinuance of service rules applied at the time for which the applicants are seeking a waiver, however, the licensees require a waiver in order to avoid forfeiting their licenses. In order to facilitate the transition to the new rules, we will grant a waiver of the former rules.

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 Section 74.932(d) of the Commission's Rules, 47 C.F.R. § 74.932(d), the waiver request filed by Wilson Technical Community College on December 20, 2006 IS GRANTED, and EBS Station WND301 IS AUTHORIZED to remain silent.

IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 74.932(d) of the Commission's Rules, 47 C.F.R. § 74.932(d), the waiver requests filed by Counterpoint Communications, Inc. on February 28, 2007 ARE GRANTED, and EBS Stations WNC235, WNC992, and WND411 ARE AUTHORIZED to remain silent.

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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⁵ Our decision to grant this waiver request should not be construed as evidence that the Broadband Division agrees with the arguments made in the waive request. Instead, our decision to grant the waiver request is based upon our independent review of the record as a whole.

⁶ *BRS/EBS R&O & FNPRM*.

⁷ *Id.*, 19 FCC Rcd at 14255-57 ¶¶ 231-239.