

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

In the Matter of)
)
BYRON PUBLIC SCHOOL DISTRICT #531)
)
Petition for Reconsideration of Termination of)
License for Educational Broadband Service)
Station WLX511)
)

ORDER ON RECONSIDERATION

Adopted: June 15, 2009

Released: June 16, 2009

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On October 26, 2007, Byron Independent School District #531 (Byron ISD) filed a petition for reconsideration¹ of an October 19, 2007 letter² issued by the Broadband Division of the Wireless Telecommunications Bureau (Division) declaring terminated its license for Educational Broadband Service (EBS) Station WLX511. Attached to the Petition is an application for renewal of license of Station WLX511.³ Sprint Nextel Corporation (Sprint Nextel) opposed the Petition on November 15, 2007.⁴ Byron ISD filed a reply on November 27, 2007.⁵ For the reasons set forth below, we dismiss the Opposition and Reply, deny the Petition, and dismiss the Application.

II. BACKGROUND

2. The license for Station WLX511 expired on March 31, 2002.⁶ Under former Section 74.15(e) of the Commission’s Rules, which was in effect until January 10, 2005, renewal applications for the Instructional Television Fixed Service (ITFS), the predecessor-in-interest to EBS, were due the first day of the fourth full calendar month prior to license expiration.⁷ Thus, a renewal application for Station WLX511 was due by November 1, 2001.⁸ On March 21, 2002, Byron ISD attempted to file a late-filed

¹ Petition for Reconsideration and Reinstatement and Waiver Request (filed Oct. 26, 2007) (Petition).

² Letter from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau to Byron Independent School District #531 (Oct. 19, 2007) (Termination Letter).

³ Petition, Attachment C (Application).

⁴ Opposition of Sprint Nextel Corporation (filed Nov. 15, 2007) (Opposition).

⁵ Reply to Opposition (filed Nov. 27, 2007) (Reply).

⁶ See File No. BPIF-19910118DJ (granted Mar. 31, 1992).

⁷ 47 C.F.R. § 74.15(e) (2002).

⁸ *Id.*

application for renewal of license of Station WLX511.⁹ The application was returned because the application did not contain an FCC Registration Number.¹⁰

3. On September 27, 2002, Byron ISD filed another application for renewal of license for Station WLX511.¹¹ On July 29, 2004, the Division returned the 2002 Renewal Application, noting the following deficiencies: (a) the Commission's records did not contain any evidence that the station had been constructed; (b) the Application did not contain information that the Station was being used for educational purposes; and (c) Byron ISD was required to request a waiver because the Application was not timely filed.¹² Byron ISD had sixty days to respond to the Return Letter.¹³ Byron ISD did not respond to the Return Letter. On October 18, 2004, the 2002 Renewal Application was dismissed.¹⁴

4. On October 29, 2004, Byron ISD filed a petition for reconsideration of the dismissal with the Commission's Gettysburg office.¹⁵ On November 28, 2006, the Division dismissed the 2004 Petition because it was not properly filed with the Office of the Secretary in Washington, D.C.¹⁶ Byron ISD did not seek reconsideration or Commission review of the Dismissal Order. On October 19, 2007, the Division issued a letter terminating the license for Station WLX511 because it had not met its construction deadline and because its license had expired and it did not have on file an application for renewal of license.¹⁷

5. Byron ISD filed its Petition of the Termination Letter on October 26, 2007.¹⁸ Byron ISD claims that the Termination Letter is erroneous because Station WLX511 was constructed on August 19, 1994 and the file number referenced in the Termination Letter was a modification, not the originally authorized facility.¹⁹ With respect to the renewal of its license, Byron ISD claims its original renewal application was timely filed²⁰ and that it has been attempting to renew its license since that time.²¹ It submits another renewal application and asks that that application be accepted and processed.²² Byron ISD fails to explain why it did not respond to the Return Letter in 2004 or why it did not seek review of the Dismissal Order.

⁹ Petition at 2.

¹⁰ *Id.*

¹¹ File No. 20020927AAB (filed Sep. 27, 2002) (2002 Renewal Application).

¹² Letter to Byron Independent School District, Ref. No. 2942582 (Jul. 29, 2004) (Return Letter).

¹³ *Id.*

¹⁴ Letter to Byron Independent School District, Ref. No. 3091029 (Oct. 18, 2004) (Dismissal Letter).

¹⁵ Waiver Request Petition for Reconsideration (filed Oct. 29, 2004) (2004 Petition).

¹⁶ Byron Independent School District #531, *Order on Reconsideration*, 21 FCC Rcd 13777 (WTB BD 2006) (Dismissal Order).

¹⁷ *See* Termination Letter.

¹⁸ Petition.

¹⁹ *Id.* at 4.

²⁰ That claim is incorrect. As noted in Paragraph 2, *supra*, the deadline for Byron ISD to file a renewal application was November 1, 2001.

²¹ *Id.* at 5.

²² *Id.*, Exhibit C.

6. Sprint Nextel contends that the Petition is untimely and repetitious.²³ It argues that the license for Station WLX511 automatically terminated in 2002²⁴ and that Byron ISD has failed to justify a waiver to allow consideration of a late-filed renewal application.²⁵ According to Sprint Nextel, reinstating Byron ISD's license would violate a requirement "to assign vacant spectrum rights through an auction" and violate the Commission's current freeze on applications for new EBS stations.²⁶ Byron ISD responds that Sprint Nextel's Opposition is untimely²⁷ and that it has justified a waiver given the Commission's historically lenient treatment of EBS licensees.²⁸

III. DISCUSSION

7. Initially, we will dismiss the Opposition as untimely. Under Section 1.106(g) of the Commission's Rules, oppositions to the Petition were due on November 8, 2007.²⁹ Sprint Nextel Corporation (Sprint Nextel) opposed the Petition on November 15, 2007.³⁰ Sprint Nextel did not seek leave to file its opposition out of time. We therefore dismiss the Opposition as untimely. Because the Opposition is being dismissed, we will dismiss Byron ISD's Reply as moot.

8. Section 1.106 of the Commission's Rules requires petitions to cite the findings of fact and/or conclusions of law which the petitioner believes are erroneous, and state with particularity the respects in which such findings and conclusions should be changed.³¹ With respect to its renewal of license,³² Byron ISD provides no basis on which to conclude that the Termination Letter was improper. It is undisputed that, at the time the Termination Letter was issued, Byron ISD's license had expired as of March 31, 2002 and that no application for renewal of license was pending. As noted in the Termination Letter, a license is subject to termination if the license has expired and no application for renewal of license is pending.³³ Consequently, we find that Byron ISD has failed the threshold requirement to obtain reconsideration.

9. We also find that reconsideration would not be in the public interest. The Commission has noted: "Strict adherence to the principle of administrative finality in licensing matters advances the public interest. This policy promotes the prompt initiation of service without undue delay."³⁴ Absent a showing of Commission error in terminating the licenses, we believe that reinstating these licenses would be inconsistent with the principle of administrative finality and could cause undue disruption to other

²³ Opposition at 2-4.

²⁴ *Id.* at 6-9.

²⁵ *Id.* at 9-14.

²⁶ *Id.* at 15-17.

²⁷ Reply at 1 n.1.

²⁸ Reply at 5-7.

²⁹ 47 C.F.R. § 1.106(g).

³⁰ Opposition of Sprint Nextel Corporation (filed Nov. 15, 2007) (Opposition).

³¹ See Mike Gruss, *Order on Reconsideration*, 17 FCC Rcd 466 ¶ 3 (WTB PSPWD 2002); Federal Express Corporation, *Order*, 15 FCC Rcd 4289, 4293 n.40 (WTB PSPWD 2000); 47 C.F.R. § 1.106(d)(1).

³² Byron ISD does demonstrate that it had been in compliance with the construction requirements because its originally authorized facility was constructed in 1994. Petition at 4. Because the failure to renew the license is an independent basis on which to terminate the license for Station WLX511, the reference to construction requirements is harmless error.

³³ See 47 C.F.R. § 1.955(a)(1).

³⁴ See Crystal Broadcast Partners, Assignor and Thomas E. Ingstad Broadcasting, Inc., Assignee, *Memorandum Opinion and Order*, 11 FCC Rcd 4680 ¶ 6 (1996).

licensees in the band. If we reinstated these licenses when no good cause has been shown for reinstatement, we could cause uncertainty concerning the status of other terminated licenses. Such uncertainty could hinder the plans of active licensees to provide service. In the absence of any demonstration of Commission error, we conclude that the public interest in administrative finality outweighs the licensees' private interest in having their licenses reactivated.

IV. ORDERING CLAUSES

10. 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 Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed on October 26, 2007 by Byron Independent School District #531 IS DENIED.

11. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.115(d) of the Commission's Rules, 47 C.F.R. § 1.06(g), that the Opposition of Sprint Nextel Corporation on November 15, 2007 and the Reply to Opposition filed by Byron Independent School District on November 27, 2007 ARE DISMISSED.

12. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), and Section 1.934(f) of the Commission's Rules, 47 C.F.R. § 1.934(f), that the application attached to the Petition for Reconsideration IS DISMISSED WITH PREJUDICE.

13. 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

Blaise A. Scinto
Chief, Broadband Division
Wireless Telecommunications Bureau