



Federal Communications Commission  
Washington, D.C. 20554

June 24, 2009

DA 09-1402

Todd D. Gray, Esq.  
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Re: Petition for Reconsideration of Dismissal of Application  
for Major Modification to Station WBE805 - File No. 20000818AIV

Dear Mr. Gray:

On August 14, 2007, the School Board of Lee County Florida (Lee County) filed a petition for reconsideration<sup>1</sup> of the Wireless Telecommunications Bureau's dismissal<sup>2</sup> of the School Board's earlier application<sup>3</sup> for major modification of Educational Broadband Service (EBS) Station WBE805 originally filed in August 2000.<sup>4</sup> For the reasons stated below, we grant the Petition and order reinstatement of the Application.

On August 18, 2000, Lee County filed the Application to make a major modification of Station WBE805.<sup>5</sup> In that application the School Board sought to add Channel B4 to its license for Station WBE805, pursuant to the FCC's August 2000 filing window for major change applications.<sup>6</sup> On July 17, 2007, the Application was dismissed again on the basis that Lee County had failed to file all necessary consent letters from co-channel and adjacent-channel licensees.<sup>7</sup>

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<sup>1</sup> See Petition for Reconsideration, File No. 0003138395 (filed Aug. 14, 2007) (Petition). Lee County created a new application, File No. 0003138395, solely for the purpose of allowing it to file the Petition. See File No. 0003138395, Explanation of Application. For administrative purposes, we will dismiss File No. 0003138395 as moot. File No. 20000818AIV will be reinstated and processed.

<sup>2</sup> See Notice of Dismissal, Ref. No. 4618187 (rel. Jul. 17, 2007) (Dismissal Letter).

<sup>3</sup> File No. 20000818AIV (Application).

<sup>4</sup> See *Id.*

<sup>5</sup> See *Id.*

<sup>6</sup> See *Id.* This application has twice previously been dismissed and reinstated. See Letter from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau, to Todd D. Gray, Esq., Counsel for The School Board of Lee County Florida (dated Jun. 6, 2007); Wireless Telecommunications Bureau Grants Petitions for Reconsideration of ITFS, MDS, and MMDS Applications that Were Dismissed Without Prejudice on June 20, 2003, *Public Notice*, 18 FCC Rcd 20522 (WTB PSPWD 2003).

<sup>7</sup> Dismissal Letter. The stations in question are WNC676, WND370, WNC902, WLX678 and WNC803.

On August 14, 2007, Lee County filed the Petition.<sup>8</sup> Lee County claims that the Application as originally filed contains consent letters from each of the stations for which consent letters were required.<sup>9</sup>

At the time Lee County filed its Application, it was required to provide an interference analysis for all co-channel and adjacent-channel stations within 50 miles of its proposed station.<sup>10</sup> In lieu of such an analysis, Lee County could provide a statement from an affected licensee stating that any resulting interference would be acceptable.<sup>11</sup> The Commission required that such letters be provided with the original application.<sup>12</sup>

We will grant the Petition and order reinstatement of the Application. Lee County provides a date-stamped copy of the Application as originally filed which contains letters from each of the stations at issue. While the copies of the Application in the Commission's records do not contain the letters, we will credit Lee County's representation that the Application as originally filed contained the letters. Accordingly, we will grant the Petition, reinstate the Application, and direct processing of the Application as requested.

ACCORDINGLY, IT IS ORDERED, 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 by The School Board of Lee County, Florida on August 14, 2007 IS GRANTED.

IT IS FURTHER ORDERED, pursuant to Sections 4(j) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.946 of the Commission's Rules, 47 C.F.R. §1.946, that the licensing staff of the Broadband Division SHALL REINSTATE AND PROCESS the application for major modification of Educational Broadband Service Station WBE805 (File No. 20000818AIV) filed on August 18, 2000 in accordance with this letter and the Commission's rules and policies.

IT IS FURTHER ORDERED, pursuant to Sections 4(j) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309 that the licensing staff of the Broadband Division SHALL DISMISS, for the reasons stated in note 1, dismiss the filing made by The School Board of Lee County, Florida on August 14, 2007 from the Universal Licensing System (File No. 0003138395).

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 and 0.331.

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<sup>8</sup> Petition.

<sup>9</sup> Petition at 4.

<sup>10</sup> 47 C.F.R. § 74.903(b)(1) (2000).

<sup>11</sup> 47 C.F.R. § 74.903(b)(4) (2000).

<sup>12</sup> See Educational Television Association of Metropolitan Cleveland, Inc., *Memorandum Opinion and Order*, 18 FCC Red 15117, 15120 ¶ 7 (2003).

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Wireless Telecommunications Bureau