



Federal Communications Commission
Washington, D.C. 20554

August 31, 2009

DA 09-1971

Mr. Robert L'Heureux
Chief Financial Officer
Iowa Lakes Community College
300 South 18th Street
Estherville, IA 51334

Dear Mr. L'Heureux:

On April 11, 2008, Iowa Lakes Community College (ILCC), licensee of Educational Broadband Service (EBS) Station WHF247, filed an application for renewal of license for Station WHF247.¹ In the Renewal Application, ILCC states that it recently learned that two of the channels associated with the license for Station WHF247 were operating from an unauthorized location.² ILCC requests that the Commission waive its rules regarding the channels' unauthorized operation.³ For the reasons stated below, we deny the Waiver Request and admonish ILCC for its violation of the rules.⁴

ILCC received an authorization for Station WHF247 on Channels A1-A4 on March 19, 1982.⁵ ILCC originally used the station to operate a wireless distance learning service to distribute video programming from its campus to schools and residences in the surrounding rural areas.⁶ On April 20, 2001, ILCC filed a modification application to change the transmitter site for channels A3 and A4 from its authorized location near Spencer, Iowa to a location near Fairmont, Minnesota (coordinates 43-33-19.8 N, 94-29-12.9 W).⁷ This application was filed pursuant to an agreement with Starcom, Inc. (Starcom) under which ILCC would lease the channels to Starcom for use in its wireless cable system in return for Starcom's parent installing fiber in the Iowa communities served by ILCC.⁸ ILCC alleges that Dalager Engineering, the engineering firm that prepared the Modification Application, told Starcom in late 2001 that the Modification Application had been granted.⁹ Pursuant to that advice, Starcom, pursuant to the lease with ILCC, began operating on Channels A3 and A4 from a location very near the coordinates specified in the Modification Application (coordinates 43-33-20.0 N, 094-29-11.0 W).¹⁰

¹ File No. 0003394127 (filed Apr. 11, 2008) (Renewal Application).

² Renewal Application, Response to Question 55 and Request for Waiver (Waiver Request).

³ *Id.*

⁴ 47 C.F.R. §1.903(a) (2008).

⁵ File No. BPIF-19810115MC (granted Mar. 19, 1982)

⁶ See Letter from Robert L'Heureux, Chief Financial Officer, Iowa Lakes Community College to Ruth Taylor, Wireless Telecommunications Bureau (dated Jun. 23, 2009) (June 23 Letter) at 2.

⁷ File No. 20010420AET (filed Apr. 20, 2001) (Modification Application).

⁸ June 23 Letter at 2.

⁹ *Id.*

¹⁰ *Id.*

The Wireless Telecommunications Bureau dismissed the Modification Application on September 17, 2004 because, at that time, EBS licensees were no longer required to obtain site specific licenses.¹¹ ILCC claims that it either did not receive the letter dismissing the Modification Application or that the person who received the letter did not forward the letter to appropriate ILCC personnel.¹²

On April 11, 2008, ILCC filed an application for renewal of license of Station WHF247.¹³ In the course of preparing the Renewal Application, Starcom's regulatory counsel discovered that the Modification Application had been dismissed.¹⁴ ILCC claims that was the first time it learned it did not have authority to operate on Channels A3 and A4 from the Fairmont, Minnesota site.¹⁵ Operations from the unauthorized location were terminated on May 1, 2008.¹⁶ In the Renewal Application, ILCC stated, "To the extent necessary, ILCC requests waiver of the Commission's rules with regard to its unauthorized operations."¹⁷

Section 301 of the Communications Act of 1934, as amended (Act), provides in pertinent part that no person shall transmit radio signals "except under and in accordance with this Act and with a license in that behalf granted under the provision of this Act."¹⁸ Similarly, Section 1.903(a) of the Commission's Rules provides, with exceptions not pertinent here, "Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part. . . ."¹⁹ An applicant seeking a waiver of the Commission's Rules must demonstrate either that: (i) the underlying purpose of the rule(s) will not be served or would be frustrated by application to the instant case, and that a grant of the waiver would be in the public interest;²⁰ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²¹

We deny ILCC's request for waiver of these rules because it made no attempt to make the showing required by Section 1.925 of the Commission's Rules. Given the importance of preventing harmful interference, granting a waiver under these circumstances would be inconsistent with the underlying purposes of the rule and would be inappropriate. Furthermore, ILCC has not demonstrated that there are any unique or unusual factual circumstances. We therefore conclude that ILCC has not justified a waiver of Section 301 of the Act and Section 1.903(a) of the Commission's Rules. Taking into consideration all of the circumstances, we conclude the appropriate sanction is to and admonish ILCC for operating from an unauthorized location.

¹¹ Notice of Dismissal, Ref. No. 3045363 (Sep. 20, 2004). The letter was sent to P.O. Box 548, Bath, SD 57427.

¹² June 23 Letter at 3.

¹³ Renewal Application.

¹⁴ June 23 Letter at 3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Waiver Request.

¹⁸ 47 U.S.C. § 301.

¹⁹ 47 C.F.R. § 1.903(a).

²⁰ 47 C.F.R. § 1.925(b)(3)(i).

²¹ 47 C.F.R. § 1.925(b)(3)(ii).

Mr. Robert L'Heureux

ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 301 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, and Sections 1.903(a) and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.903(a), 1.925, that the request for waiver of Section 1.903(a) of the Commission's Rules filed by Iowa Lakes Community College on April 11, 2008 IS DENIED, and Iowa Lakes Community College IS ADMONISHED for its violations of Section 301 of the Act and Section 1.903(a) of the Commission's Rules.

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 renewal application filed by Iowa Lakes Community College on April 11, 2008 (File No. 0003394127) in accordance with this letter and the Commission's Rules and policies.

These actions are 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