

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

In the matter of
DAVENPORT SCHOOLS, INC. D/B/A GREAT LAKES JR. COLLEGE
Request for Reinstatement of Authorization for Educational Broadband Service Station WLX253

ORDER ON RECONSIDERATION

Adopted: March 4, 2010

Released: March 5, 2010

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This Order on Reconsideration grants a petition filed by Davenport Schools, Inc. d/b/a Great Lakes Jr. College (Great Lakes) seeking reconsideration of a decision that terminated its authorization to operate an Educational Broadband Service (EBS) station, and directs Great Lakes to electronically file a renewal application for the station, along with an associated request for waiver to permit late filing, within 30 days of the release of this Order on Reconsideration.

II. BACKGROUND

2. On October 19, 2007, the Division terminated Great Lakes's license to operate Station WLX253 because Great Lakes had not constructed the station by June 7, 1992, the deadline required by former Section 73.3534(a) of the Commission's Rules, did not have on file an extension of time to construct the station, and did not timely file an application to renew Station WLX253. On November 5, 2007, Great Lakes filed a petition for reconsideration of the Division's decision, an application to renew Station WLX253, and a request for waiver of Section 1.949(a) of the Commission's Rules to permit it to late-file the application. On November 15, 2007, Sprint Nextel filed an opposition to Great Lakes's waiver request. Great Lakes filed a reply on November 27, 2007.

III. DISCUSSION

3. Section 1.106(c) of the Commission's Rules provides that we will accept a petition for reconsideration relying on facts not previously presented to the Commission only in one of three scenarios: (1) the petition relies on facts which relate to events which have occurred or circumstances which have

1 Letter from Joel D. Taubenblatt, Federal Communications Commission to Davenport Schools, Inc. at 1-2 (dated Oct. 9, 2007) (Termination Letter). Former Section 73.3534(a) of the Commission's Rules required licensees to construct within eighteen months of the original authorization. 47 C.F.R. § 73.3534(a) (2003).

2 Petition for Reconsideration and Waiver Request, Davenport Schools, Inc. (filed Nov. 5, 2007) (Petition).

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

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

changed since the last opportunity to present such matters;⁵ (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity;⁶ or (3) the designated authority determines that consideration of the facts relied on is required in the public interest.⁷

4. We find that it is in the public interest to reconsider our decision terminating Great Lakes's license to operate Station WLX253 because our decision was based, in part, on incorrect information, *i.e.*, that Great Lakes had not constructed Station WLX253 before June 17, 1992, the construction deadline.⁸ Great Lakes has attached to its Petition two documents that prove that Great Lakes constructed Station WLX253 before the deadline established under former Section 73.3534(a) of the Commission's Rules.⁹ First, Great Lakes attached an authorization from the Commission granting Great Lakes an extension of time to construct until December 14, 1992.¹⁰ Second, Great Lakes attached a copy of the Certificate of Construction that it had filed with the Commission on December 7, 1992, seven days before its construction deadline.¹¹ Thus, we find that Great Lakes has shown that Station WLX253 was timely constructed. Therefore, the rationale used by the Division to terminate Great Lakes's license was, in part, factually inaccurate.

5. Although the Division cited Great Lakes's failure to timely renew its license to operate Station WLX253 as an another basis for terminating the license,¹² we believe Great Lakes' apparent failure to construct was an essential basis for the action taken in the Termination Letter. In light of our conclusion that Great Lakes complied with the construction requirement, we believe that the license should be reinstated and Great Lakes should be given the opportunity to submit late-filed renewal applications with requests for waiver.

6. In response to the Termination Letter, Great Lakes submitted a manually-filed renewal application with a request for waiver of Section 1.949(a) of the Commission's Rules to permit it to file an untimely renewal application.¹³ We dismiss the Renewal Application without prejudice because the Commission's Rules require that renewal applications must be filed electronically using Form 601.¹⁴ Thus, we direct Great Lakes to file a renewal application for Station WLX253 with an appropriate request for waiver within 30 days of the release of this *Order on Reconsideration*. Should Great Lakes fail to file the application within the designated time period, we will take this as an indication that Great Lakes is no longer interested in the license and will terminate the license.

7. In its Opposition, Sprint Nextel offers a series of arguments why it believes Great Lakes should not receive a waiver of the requirement to file a timely renewal application.¹⁵ These arguments are

⁵ 47 C.F.R. § 1.106(c)(1)(i).

⁶ 47 C.F.R. § 1.106(c)(1)(ii).

⁷ 47 C.F.R. § 1.106(c)(2).

⁸ Termination Letter at 1.

⁹ Petition at Appendices B and C.

¹⁰ Petition at Appendix B (Radio Broadcast Station License, Call Sign WLX253, File No. BMPLIF-910802DA).

¹¹ Petition at Appendix C (Letter from Jennifer L. Richter, Esq., Counsel for Davenport Schools, Inc. d/b/a Great Lakes Jr. College to Ms. Donna R. Searcy, Secretary, Federal Communications Commission (filed Dec. 7, 1992).

¹² Termination Letter at X.

¹³ Renewal Application.

¹⁴ 47 C.F.R. § 1.913(b).

¹⁵ Opposition at 2-13.

similar to arguments made by Sprint against other late-filed renewal applications.¹⁶ Because we are dismissing the Renewal Application without prejudice to refile, we will not consider Sprint Nextel's arguments at this time. If Great Lakes refiles a renewal application, we will consider any waiver requests in connection with the application, and any petitions to deny filed against that application, in due course. Furthermore, any decision on whether Great Lakes will be allowed to "split-the-football" with neighboring co-channel licensees will be made in connection with action on the renewal application. If Great Lakes believes it should be allowed to "split-the-football," it should make a showing in its renewal application explaining why it believes it is entitled to "split-the-football."¹⁷

IV. CONCLUSION AND ORDERING CLAUSES

8. For the reasons discussed above, we grant Great Lakes's request for reconsideration of the Commission's decision terminating Great Lakes license to operate Station WLX253. We dismiss the Renewal Application attached to the Petition without prejudice, and direct Great Lakes to electronically file a renewal application, with associated waiver request, within 30 days of the release of the *Order on Further Reconsideration*.

9. 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, the Petition for Reconsideration filed on November 5, 2007 by Davenport Schools, Inc. d/b/a Great Lakes Junior College IS GRANTED.

10. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 0.331 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.106, that the licenses for Educational Broadband Service Stations WLX253, IS REINSTATED, subject to compliance with the requirement in Paragraph 12, *infra*.

11. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Renewal Application submitted by Davenport Schools, Inc. d/b/a Great Lakes Junior College on November 5, 2007 IS DISMISSED WITHOUT PREJUDICE.

12. 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 Sections 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, that within thirty days of the release of this *Order on Reconsideration*, Davenport Schools, Inc.

¹⁶ See, e.g., In the Matter of 116 Late-Filed Applications For Renewal of Educational Broadband Service Stations, *Memorandum Opinion and Order*, DA 09-1340 (WTB BD Jun. 16, 2009).

¹⁷ On March 18, 2008, the Commission adopted a declaratory ruling clarifying its policy concerning the division of overlapping geographic service areas (GSAs) between active EBS licensees and EBS licensees whose licenses expired prior to January 10, 2005 but are later reinstated. 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, *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, WT Docket No. 03-66, 23 FCC Rcd 5992, 6053-6060 ¶¶ 161-179 (2008). The Commission stated if a BRS or EBS license was expired on January 10, 2005, and such license is later reinstated *nunc pro tunc* pursuant to a waiver granted for a late-filed renewal application granted after the adoption date of this *Fourth Memorandum Opinion and Order*, that licensee's geographic service shall not include any portion of its former protected service area that overlapped with another licensee whose license was in active status on January 10, 2005 and on the date the expired licensee's late-filed renewal application was granted, unless a finding is made that splitting the football is appropriate because of manifest Commission error or other unique circumstances. *Id.* at 6060 ¶ 179.

SHALL FILE an application for renewal of license, along with an appropriate waiver request, within 30 days of the release of this *Order on Reconsideration*.

13. 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 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Blaise A. Scinto
Chief, Broadband Division
Wireless Telecommunications Bureau