



PUBLIC NOTICE

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GUIDANCE TO BROADBAND RADIO SERVICE AND EDUCATIONAL BROADBAND SERVICE LICENSEES ON COMPLYING WITH REQUIREMENT TO DEMONSTRATE SUBSTANTIAL SERVICE BY MAY 1, 2011

By this *Public Notice*, the Broadband Division of the Wireless Telecommunications Bureau (Bureau) provides guidance to Broadband Radio Service (BRS) and Educational Broadband Service (EBS) licensees on complying with the requirement to demonstrate substantial service by May 1, 2011.¹ This includes guidance on application filing, the information that must be contained in the filing, and the consequences of not making the required filing.

These filings take place near the end of a process for restructuring services in the 2500-2690 MHz band that involved eliminating the interleaved low- and high-powered services and transitioning licensees in the band to new channel assignments.²

Substantial Service Requirement and Safe Harbors

In 2006, the Commission established a requirement that all BRS and EBS licensees demonstrate substantial service by May 1, 2011.³ The purpose behind the requirement is to “ensure prompt delivery of service to rural areas, . . . prevent stockpiling or warehousing of spectrum by licensees or permittees, and . . . promote investment in and rapid deployment of new technologies and services.”⁴ The Commission established various safe harbors that licensees could rely on to demonstrate substantial service. The Commission established the following general safe harbors:

¹ See 47 C.F.R. § 27.14(o).

² See 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, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O* and *FNPRM* as appropriate).

³ See 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 No. 03-66, *et al.*, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21FCC Rcd 5606, 5733 ¶ 303 (2006) (*BRS/EBS 2nd R&O*). BRS Basic Trading Area (BTA) authorizations granted after November 6, 2009 have four years from the date of grant to demonstrate substantial service and need not make any showing at this time. See 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, WT Docket No. 03-66, *Third Report and Order*, 25 FCC Rcd 7743 (2010).

⁴ *BRS/EBS 2nd R&O*, 21 FCC Rcd at 5720 ¶ 278, *citing* 47 USC §309(j)(4)(B).

- Constructing six permanent links per one million people for licensees providing fixed point-to-point services;
- Providing coverage to at least 30 percent of the population of the licensed area for licensees providing mobile services or fixed point-to-multipoint services;
- Providing specialized or technologically sophisticated service that does not require a high level of coverage to benefit consumers; or
- Providing service to niche markets or areas outside the areas served by other licensees.⁵

The Commission also established a specific safe harbor for EBS licensees. Specifically, an EBS licensee shall be deemed to be providing substantial service with respect to all channels it holds if:

- it is using its spectrum (or spectrum to which its educational services are shifted) to provide educational services within its GSA;
- the services it provides are actually being used to serve the educational mission of one or more accredited public or private schools, colleges or universities providing formal educational and cultural development to enrolled students; and
- the level of service it provides meets or exceeds the minimum usage requirements specified in the Commission's rules.⁶

While the Commission declined to establish a specific safe harbor for EBS licensees that leased spectrum, the Commission indicated that EBS licensees “have the flexibility to meet the substantial service standard through leasing.”⁷

The Commission also adopted a specific safe harbor for licensees providing service to rural areas. Under that safe harbor, BRS or EBS licensees providing service to “rural areas” (defined as a county (or equivalent) with a population density of 100 persons per square mile or less, based upon the most recently available Census data) and areas with limited access to telecommunications services will be deemed to be providing substantial service if:

- For mobile service, the licensee provides coverage to at least 75% of the geographic area of at least 30% of the rural areas within its service area; or
- For fixed service, the licensee has constructed at least one end of a permanent link in at least 30% of the rural areas within its licensed area.

Finally, the Commission required licensees with multiple licenses to demonstrate substantial service for each license individually,⁸ although it later allowed licenses to combine certain highly

⁵ *BRS/EBS 2nd R&O*, 21 FCC Rcd at 5726 ¶ 288.

⁶ *Id.* at 5727-5728 ¶¶ 291-292.

⁷ *Id.* at 5727-2728 ¶ 292.

⁸ *Id.* at 5731 ¶ 297.

encumbered licenses.⁹

Application Filing Instructions

Types of Applications: Different types of licensees in the 2500-2690 MHz band are required to file different types of applications in connection with demonstrating substantial service. All EBS licensees and BRS Basic Trading Area (BTA) licensees subject to the May 1, 2011 substantial service deadline must file a notification of completion of construction. BRS incumbent licenses (defined as non-BTA based BRS licenses) must demonstrate substantial service as part of their applications for renewal of license. All applications should be filed electronically using the Universal Licensing System (ULS).¹⁰

Deadlines for Filing: The deadline for EBS licensees and BRS BTA licensees to file their notifications is Monday, May 16, 2011.¹¹ The deadline for BRS incumbent licensees that expire on May 1, 2011 to file their renewal applications is May 2, 2011.¹² Applications filed after the deadline will need to be accompanied by a request for waiver of the applicable deadline, along with a justification for a waiver.¹³ Request for extension of time to demonstrate substantial service must be filed before the deadline.¹⁴

Filing Construction Notifications (ULS application purpose NT): The following instructions apply to filing construction notifications (NTs)

- *Single Call Sign:* An applicant filing a Notification for a single call sign should login to ULS License Manager and click on the applicable call sign link displayed on the “My Licenses” page. On the “License at a Glance” screen, the applicant should select the “Notify the FCC”

⁹ See 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 No. 03-66, *et al.*, *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*, 23FCC Rcd 5992, 6047-6048 ¶¶ 144-145 (2006) (*BRS/EBS 4th MO&O*).

¹⁰ There are approximately ten BRS incumbent licenses that do not have expiration dates of May 1, 2011. For those licenses, the licensees should file notifications of completion of construction using the directions noted above. Those licensees need not file renewal applications at this time.

¹¹ See 47 C.F.R. § 1.946(d) (“The notification must be filed within 15 days of the expiration of the applicable construction or coverage period.”) Because May 15, 2011 is a Sunday, licensees have until the following Monday to file their notifications. See 47 C.F.R. § 1.4(j). On February 9, 2011, the National EBS Association (“NEBSA”) and the Catholic Television Network (“CTN”) filed a request for waiver of Section 27.14(o) of the Commission’s Rules to extend the deadline for Educational Broadband Service (“EBS”) licensees to demonstrate substantial service from May 1, 2011 to November 1, 2011. See Request for Waiver of Section 27.14(o) of the Commission’s Rules, The National EBS Association and the Catholic Television Network (filed Feb. 9, 2011). That request remains pending.

¹² See 47 C.F.R. 1.949(a) (“Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.”); 47 C.F.R. § 1.4(j).

¹³ The Commission may grant a request for waiver if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or 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. See 47 C.F.R. § 1.925(b)(3).

¹⁴ See 47 C.F.R. § 1.946(e).

link in the “Work on This License” box on the right side of the screen. The system will then launch an NT application for the call sign from which the application was initiated. Call signs cannot be added to an application that is initiated for a single call sign.

- *Multiple Call Signs:* To launch an application for multiple call signs, the applicant should log in to ULS License Manager and select the “Notify the FCC” link in the left-hand navigation menu in License Manager.
- *Purpose of Filing:* Once an NT application is launched, the applicant will be guided through a series of steps in which the system will prompt the applicant to respond to questions and provide required information. On the first screen, the applicant must select the purpose of the NT filing. The system will display a list of application purposes based on the call sign selected (for a single call sign application) or the licenses linked to the applicant’s FCC Registration Number (for a multiple call sign application). For an NT filing, applicants should select “1 - 1st Buildout/Coverage requirements” from list of purposes. If the applicant is filing an application for multiple call signs, the system will display a list of pertinent call signs based on the purpose selected; the applicant should select and review the call signs to be included in the application.
- *Waivers:* Following selection of the purpose of the application, the applicant will be asked to complete the questions on the “Fees and Waivers” page.¹⁵ Licensees should note that waivers filed on a multiple call sign application are applicable to every call sign on the application. In services where a waiver fee is required, a fee will be required for every feeable call sign on the application. If a waiver is required for only some of the call signs, it is recommended that licensees submit two filings; one for the call signs with a waiver and one for the call signs without a waiver.
- *Adding Attachments:* At this point in the process it will also be necessary to add an attachment which contains the substantial service showing demonstration (see also guidance that follows regarding information to include). To add the attachment, click on the “Attachments” link near the top right hand corner of the License Manager screen. From the “Add Attachment” menu select type “Other” from the drop down box, browse to select the appropriate attachment and enter “Substantial Service Demonstration” in the description. Click on the “Add Attachment” button to complete this process.
- *Summary Screen:* After the applicant has completed the preceding steps, the “Summary” screen is displayed allowing the applicant to review and, if necessary, edit the information on the application. After ensuring that the information on the application is correct, the applicant may continue to the “Certification” screen to sign and submit the application.

Filing Renewal Applications (ULS application purpose RO or RM): The following instructions apply to filing renewal applications:

- *Single Call Sign:* An applicant filing a renewal application for a single call sign should login to ULS License Manager and click on the applicable call sign link displayed on the “My Licenses” page. On the “License at a Glance” screen the applicant should select the “Renew License” link in the “Work on This License” box on the right side of the screen. The system

¹⁵ EBS licensees are not subject to application fees. See 47 C.F.R. § 1.1102.

will then launch a renewal application for the call sign from which the application was initiated. Call signs cannot be added to an application that is initiated for a single call sign.

- *Multiple Call Signs:* To launch an application for multiple call signs, the applicant should log in to ULS License Manager and select the “Renew Licenses” link in the left-hand navigation menu in License Manager. The system will display a list of pertinent call signs, and the applicant should select the call signs to be included in the application.
- *Review of Callsigns:* The applicant will be prompted to review the selected call signs and will be given an option to make updates to the licensee or contact information.¹⁶
- *Waivers:* Following the review of the callsigns, the applicant will be asked to complete the questions on the “Fees and Waivers” page.¹⁷ Licensees should note that waivers filed on a multiple call sign application are applicable to every call sign on the application. In services where a waiver fee is required, a fee will be required for every feeable call sign on the application. If a waiver is required for only some of the call signs, it is recommended that licensees submit two filings; one for the call signs with a waiver and one for the call signs without a waiver.
- *Adding Attachments:* At this point in the process it will also be necessary to add an attachment which contains the substantial service showing demonstration (see also guidance that follows regarding information to include). To add the attachment, click on the “Attachments” link near the top right hand corner of the License Manager screen. From the “Add Attachment” menu select type “Other” from the drop down box, browse to select the appropriate attachment and enter “Substantial Service Demonstration” in the description. Click on the “Add Attachment” button to complete this process.
- *Summary Screen:* After the applicant has completed the preceding steps, the “Summary” screen is displayed allowing the applicant to review and, if necessary, edit the information on the application. After ensuring that the information on the application is correct, the applicant may continue to the “Certification” screen to sign and submit the application.

Information to Demonstrate Substantial Service

The information required in connection with a substantial service showing will vary depending on the nature of the service being provided and the type of showing the licensee is attempting to make. What follows is some guidance on the information that should be provided, both generally and with respect to specific safe harbors that licensees may seek to demonstrate. If, after reviewing the showing, staff determines that additional information is necessary, the application will be returned, or the licensee will be informally contacted with a request for additional information. Accordingly, it is imperative that the contact information on the application be accurate and current.

General: All licensees shall provide a description of the type of service they are providing. The description shall be sufficient for staff to understand how and by whom the facilities are being used. In addition, all EBS licensees shall certify that they are in compliance with the programming requirements contained in Section 27.1203 of the Commission’s Rules, and, if they are leasing spectrum (except for

¹⁶ With a renewal application, only the licensee’s administrative information or contact information can be updated.

¹⁷ EBS licensees are not subject to application fees. See 47 C.F.R. § 1.1102.

leasing arrangements involving the transmission of educational programming), they are in compliance with Section 27.1214 of the Commission's Rules.¹⁸

We remind all licensees that in order to demonstrate substantial service, a licensee must show that it is actually providing service.¹⁹ Transmitting signals that are not being used to provide service in some way does not constitute substantial service.²⁰ Accordingly, all licensees must demonstrate that their facilities are being used in some fashion to provide service to customers, students, or others.²¹

“Constructing six permanent links per one million people for licensees providing fixed point-to-point services” safe harbor: Licensees relying on this safe harbor shall provide the coordinates for both ends of each link demonstrate that their proposed links are within the GSA of their proposed station. They shall also calculate the population within their GSA using the most recent census data readily available. It is not necessary to provide a map showing the location of the links. Licensees shall also indicate the uses to which the links are being put to use and the bandwidth of the links.

“Providing coverage of at least 30 percent of the population of the licensed area for licensees providing mobile services or fixed point-to-multipoint services” safe harbor: Licensees relying on this safe harbor shall provide a map showing their GSA and the areas within their GSA. They shall also calculate the populations within their GSA and their coverage area using the most recent census data readily available. In describing coverage, licensees shall indicate the signal level that they believe indicates coverage and the percentage of time such a signal level is available within the coverage area. Licensees are reminded that their coverage predictions shall reflect a level of service that the licensee would be willing to offer to customers or students.

Rural Safe Harbors: Licensees relying on one of the rural safe harbors shall provide the information applicable to the type of service they are providing, as noted above. In addition, for each county that they consider to be a rural area, they shall provide the area (in square miles) and population for that county, based upon the most recently available census data. Licensees shall indicate which rural counties are receiving their service.

EBS Safe Harbor: EBS licensees relying on the EBS-specific safe harbor shall provide a narrative exhibit explaining how they comply with each part of the EBS safe harbor. They shall describe with specificity the educational services which are being provided. If a licensee is providing services to other accredited educational institutions, it shall provide the names and addresses of those institutions. Licensees relying on the EBS safe harbor shall provide a detailed exhibit demonstrating that they provide a level of service equal to or greater than the minimum usage requirements contained in Section 27.1214 of the Commission's Rules.

Channel Shifting and Channel Loading: EBS licensees may shift their required educational use onto channels not authorized to it, but which are included in the wireless system of which it is a part

¹⁸ As will be detailed below, EBS licensees relying on the EBS-specific safe harbor will be required to provide additional information regarding their compliance with these provisions.

¹⁹ See *BRS/EBS 2d R&O*, 21 FCC Rcd at 5735-5736 ¶¶ 308-310.

²⁰ *Id.*

²¹ This requirement does not mean that the facilities must be **directly** used to provide service to customers or educators. For example, a network of point-to-point links used in connection with a network could comply with our rules. Furthermore, private internal use of BRS would be permissible under our rules.

(“channel shifting”).²² If an EBS licensee is using channel shifting, it shall identify the call sign(s) of the license(s) to which its educational use is being shifted.

EBS licensees also have the flexibility to use channel loading to shift their required educational programming onto a subset of their authorized number of channels.²³ If a licensee is relying on the EBS safe harbor and is using channel loading, the licensee shall indicate that fact in its showing. EBS licensees who are not relying on the EBS safe harbor need not provide information regarding channel loading.

Showings Based on Combinations of Licenses: Ordinarily, substantial service must be demonstrated on a license-by-license basis. There are two exceptions. First, if the GSA of a licensee is less than 1924 square miles in size, and there is an overlapping co-channel station licensed or leased by the licensee or its affiliate, substantial service may be demonstrated by meeting either the point-to-point safe harbor or the mobile services/point-to-multipoint safe harbor with respect to the combined GSAs of both stations.²⁴ Second, if the GSA of a BTA authorization holder, is less than one-half of the area within the BTA for every BRS channel, substantial service may be demonstrated for the licenses in question by meeting either the point-to-point safe harbor or the mobile services/point-to-multipoint safe harbor with respect to the combined GSAs of the BTA authorization holder, together with any incumbent authorizations licensed or leased by the licensee or its affiliates.²⁵

If a licensee wishes to make a showing under either of these exceptions, it must file a construction notification or renewal application for each of the licenses in question. The licensee shall provide a map showing the GSAs of all stations involved and shall provide sufficient information to demonstrate that the licenses are eligible to be considered together for substantial service purposes.

Important Reminder Regarding Filing of Post-Transition Modifications

For the past several years, BRS and EBS licensees have been transitioning from old channel locations to new channel locations consistent with the revised bandplan adopted in 2004, following the transition process the Commission established at that time.²⁶ In most BTAs, the Commission has been notified that the transition of BRS and EBS to the new band plan has been completed. There are many instances, however, where post-transition notifications have been filed but licensees have not filed the requisite applications to modify their licenses to reflect operation on the new band plan. We remind licensees of the importance of filing those post-transition modification applications. If a licensee which has been transitioned files a substantial service showing without filing its post-transition modification application, its application will be returned, and its substantial service showing will not be considered until the licensee files its post-transition modification application.²⁷

²² See 47 C.F.R. § 27.1214(b)(2).

²³ See Amendment of Part 74 of the Commission's Rules Governing Use of the Frequencies in the Instructional Television Fixed Service, MM Docket 93-106, *Report and Order*, 9 FCC Rcd 3360 ¶ 2 (1994).

²⁴ See 47 C.F.R. § 27.14(o)(4).

²⁵ See 47 C.F.R. § 27.14(o)(5).

²⁶ *BRS/EBS R&O and FNPRM*, 19 FCC Rcd at 14198 ¶ 74.

²⁷ Licensees who continue to operate under the old band plan may demonstrate substantial service in accordance with their operations under the old band plan. Furthermore, there may be markets where a transition is ongoing but certain licensees have transitioned to the new band plan. In those instances, licensees shall indicate that they are operating pursuant to the new band plan even though the transition is not yet complete in their market.

Processing of Applications

Substantial service showings will be reviewed by staff of the Broadband Division. If additional information is necessary to process the application, the licensee will be informed either through a return of the application or through informal contact. Depending on the circumstances, action on substantial service notifications may be taken in the Universal Licensing System, or through public notice, or by order.

Consequences of Failure to File

If a licensee fails to file a construction notification or renewal application, the license will automatically terminate without further Commission action.²⁸ EBS licenses and BRS BTA licenses will be subject to the “auto-term” process.²⁹

If a licensee cannot demonstrate substantial service by the May 1, 2011 deadline, it may request an extension of that deadline by filing an application on Form 601 requesting an extension of the buildout deadline (purpose EX). Such an application must be filed prior to May 2, 2011 and must meet the standards contained in Section 1.946(e) of the Commission’s Rules.³⁰

Contact Information

For assistance in filing, contact FCC Support at Phone: (877) 480-3201, TTY: (717) 338-2824 Hours: Monday-Friday: 8:00 a.m. - 6:00 p.m. ET (except Federal holidays) or by submitting an e-support request at <https://esupport.fcc.gov/online/request.htm>

For legal inquiries, please contact John Schauble at (202) 418-0797 or by e-mail: John.Schauble@fcc.gov, or Nancy Zaczek at (202) 418-0274 or by e-mail: Nancy.Zaczek@fcc.gov.

By the Chief, Broadband Division, Wireless Telecommunications Bureau

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²⁸ See 47 C.F.R. § 1.955(a)(1), (2).

²⁹ See Wireless Telecommunications Bureau Announces Deployment Of “Auto-Term,” the Automated Feature in its Universal Licensing System That Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, *Public Notice*, 21 FCC Rcd 163 (WTB 2006).

³⁰ See 47 C.F.R. § 1.946(e).