

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

In the Matter of)
)
KINGSVILLE INDEPENDENT SCHOOL)
DISTRICT)
)
Petition for Reconsideration for Educational)
Broadband Service Station WNC532)
)

ORDER ON RECONSIDERATION

Adopted: December 3, 2012

Released: December 4, 2012

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Order on Reconsideration*, we deny a petition filed by the Kingsville Independent School District (“Kingsville”) seeking reconsideration of the December 7, 2011 decision by the Broadband Division of the Wireless Telecommunications Bureau (“Division”) to place the license to operate Station WNC532 in “Termination Pending” status.

II. BACKGROUND

2. Kingsville is licensed to operate Educational Broadband Service (“EBS”) station, WNC532, on the C-group channels in Kingsville, Texas.¹ On December 2, 2004, Kingsville’s license to operate Station WNC532 was renewed.²

3. In 2004, the Commission undertook the radical transformation of the 2496-2690 MHz band to facilitate the development and deployment of advanced wireless services, including wireless broadband.³ The Commission changed the band plan and technical and licensing rules applicable to EBS licenses and required EBS licensees to transition from their old channel locations to their new channel locations.⁴ As a consequence of these changes, EBS is now a radio communications service that consists of 112.5 megahertz of spectrum in the 2496-2690 MHz band and is licensed under Part 27 of the Commission’s rules; the remaining 73.5 megahertz of spectrum in the band is allocated to the Broadband

¹ Kingsville Independent School District, Petition for Reconsideration (filed Jan. 5, 2012) (“Petition”).

² File No. 0001960138.

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, *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).

⁴ *Id.*

Radio Service (“BRS”) and to two four-megahertz guard bands.⁵ Also in 2004, the Commission sought comment on construction requirements for the newly created BRS and EBS services.⁶

4. Two years later, on April 27, 2006, the Commission adopted new construction requirements applicable to all BRS and EBS licensees, which were codified at Section 27.14(o) of the Commission’s Rules.⁷ Under Section 27.14(o), all BRS and EBS licensees were required to demonstrate substantial service on or before May 1, 2011.⁸ The Commission defines substantial service as a level of service, which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.⁹ A BRS or EBS licensee may make a showing based on meeting the definition of substantial service or based on meeting one of the general safe harbors provided by the Commission in Section 27.14(o)(1) of the Commission’s Rules.¹⁰ In addition, an EBS licensee may make a showing under the educational “safe harbor” the Commission specifically adopted for EBS licensees in Section 27.14(o)(2) of the Commission’s Rules.¹¹ Many EBS licensees have demonstrated substantial service by meeting this safe harbor.

5. On November 3, 2006, Fixed Wireless Holdings, a wholly-owned subsidiary of Clearwire Corporation (“Clearwire”) filed an Initiation Plan to transition the Corpus Christi, Texas Basic Trading Area (BTA99), where Station WNC532 is located, from the old band plan to the new band plan.¹² Station WNC532 was included in the list of stations to be transitioned in BTA99.¹³ Then on May 30, 2008, Clearwire filed a Post-Transition Notification, in which Clearwire informed the Commission that it had completed the transition for BTA99.¹⁴ Although Station WNC532 was included in the list of stations that

⁵ See 47 C.F.R. § 27.5(i)(2).

⁶ *BRS/EBS FNPRM*, 19 FCC Rcd 14165, 14265-14301 ¶¶ 320-332.

⁷ 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, *Second Report and Order*, WT Docket No. 03-66, 21 FCC Rcd 5606, 5718-5736 274-310 (2006) (*BRS/EBS Second R&O*).

⁸ 47 C.F.R. § 27.14(o). 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, *Second Report and Order*, WT Docket No. 03-66, 21 FCC Rcd 5606, 5718-5736 ¶¶ 274-310 (2006) (*BRS/EBS Second R&O*).

⁹ 47 C.F.R. § 27.14(o).

¹⁰ An EBS or a BRS licensee could meet the substantial service requirement by showing that it meets one or more of the following five general safe harbors: that it constructed six permanent links per one million people for licensees providing fixed point-to-point services; that it provided coverage of at least 30 percent of the population of the licensed area for licensees providing mobile services or fixed point-to-multipoint services; that it provided service to “rural areas” or areas with limited access to telecommunications services; that it provided specialized or technologically sophisticated service; or that it provided service to niche markets. 47 C.F.R. § 27.14(o)(1).

¹¹ Under the educational “safe harbor,” an EBS licensee is 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. 47 C.F.R. § 27.14(o)(2).

¹² Letter from Terri B. Natoli, Clearwire Corporation to Office of the Secretary, Federal Communications Commission, WT Docket No. 06-136 (filed Nov. 3, 2006).

¹³ *Id.* at Exhibit 1.

¹⁴ Letter from Terri B. Natoli, Clearwire Corporation to Office of the Secretary, Federal Communications Commission, WT Docket No. 06-136 (filed May 30, 2008).

were transitioned, the Commission's Universal Licensing System shows that Kingsville has not modified its license to show that it is authorized to operate on the new C-group channels.¹⁵

6. On February 1, 2011, the Bureau sent a Reminder Notice to Kingsville reminding it of the upcoming deadline for demonstrating substantial service.¹⁶ The Reminder Notice notified Kingsville that it had 15 days from the construction deadline to file the construction notification; that, if needed, it could seek an extension of time to construct but that the request must be filed on or before the construction deadline; and that if it failed to meet its construction requirement by its deadline, and it did not file a request for an extension of time on or before the construction coverage deadline, the license to operate Station WNC532 would be terminated automatically.¹⁷

7. On March 22, 2011, the Wireless Telecommunications Bureau ("Bureau") extended the deadline for EBS licensees to demonstrate substantial service from May 1, 2011 to November 1, 2011.¹⁸ Kingsville, however, did not file a construction notification or request an extension of the deadline.

8. On December 7, 2011, the Bureau sent Kingsville an auto-termination letter¹⁹ and Station WNC532 entered auto-termination status.²⁰ The Auto-Termination Letter stated that "if the licensee met its construction or coverage requirement, it has 30 days from the date of the Public Notice to file a Petition for Reconsideration . . . showing that it met the construction or coverage deadline."²¹ The Termination Pending Notice continued that in "filing its petition for reconsideration, the licensee must include the actual date when construction was completed or the coverage requirement was met."²²

¹⁵ Under the old band plan, the C-group consisted of four six-megahertz wide non-contiguous channels located at 2548-2554 MHz (C1), 2560-2566 MHz (C2), 2572-2578 MHz (C3), and 2584-2590 MHz (C4). Under the new channel plan, C1, C2, and C3 are each 5.5-megahertz wide contiguous channels located in the Lower Band Segment at 2535-2540.5 MHz, 2540.5-2546 MHz, and 2546-2551.5 MHz respectively. Channel C4 is six-megahertz and is located in the Middle Band Segment at 2584-2590 MHz.

¹⁶ Construct/Coverage Reminders, Ref. Nos. 5101737, 5101738 (Feb. 1, 2011). The Bureau sent two letters, one to the licensee and one to the licensee's contact. See Construction/Coverage Deadline Reminder Notice to Kingsville Independent School District (dated Feb. 1, 2011); Construction/Coverage Deadline Reminder Notice to Rudy Lopez (dated Feb. 1, 2011) (Collectively "Reminder Notice").

¹⁷ *Id.* at 1.

¹⁸ See National EBS Association and Catholic Television Network, *Memorandum Opinion and Order*, 26 FCC Rcd 4021 ¶ 1 (WTB/2011).

¹⁹ When a licensee fails to file a notification that it has completed construction by an applicable buildout deadline, the license, location, or frequency is placed in "termination pending" status. For a license, location, or frequency in that status, the Bureau presumes that the licensee did not meet buildout requirement. If the licensee does not file a petition for reconsideration within 30 days after public notice of the termination pending status demonstrating that it met that buildout requirement, the status of the license, location, or frequency is changed to "terminated" as of the buildout deadline. 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).

²⁰ The Bureau sent two letters, one to the licensee and one to the licensee's contact. Construction/Coverage Deadline Notice of Termination Pending Status to Dr. Rudy Lopez, Kingsville Independent School District, Ref. No. 5269055 (dated Dec. 7, 2011). Construction/Coverage Deadline Notice of Termination Pending Status to Dr. Rudy Lopez, Kingsville Independent School District Ref. No. 5269055 (dated Dec. 7, 2011) (Collectively "Auto-Termination Letter"). See also Wireless Telecommunications Bureau Market Based Licenses Termination Pending Public Notice, Report No. 7360 (WTB Dec. 7, 2011) at 3.

²¹ Auto-Termination Letter at 1.

²² *Id.*

9. Kingsville filed the instant Petition on January 5, 2012.²³ Kingsville asks us to reconsider our decision to place the license for Station WNC532 on the “Termination Pending” list because it has been operating since November 1, 2009 and thought that it was in compliance with the Commission’s rules.²⁴

III. DISCUSSION

10. We conclude that it is not in the public interest to grant Kingsville’s petition for reconsideration of the Bureau’s December 7, 2011 decision placing the license for Station WNC532 in pending termination status. Although Kingsville indicated, as required in the December 7, 2011 auto-termination letter, that it has been operating Station WNC532 since November 1, 2009, Kingsville has not otherwise complied with the requirements of Section 27.14(o) of the Commission’s Rules or with the guidance issued by the Bureau to assist licensees in complying with the substantial service deadline. Section 27.14(o) requires an EBS licensee to demonstrate substantial service by showing that it has provided a level of service which is “sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal”²⁵ or by showing that it meets one or more of the following five safe harbors: that it constructed six permanent links per one million people for licensees providing fixed point-to-point services; that it provided coverage of at least 30 percent of the population of the licensed area for licensees providing mobile services or fixed point-to-multipoint services; that it provided service to “rural areas” or areas with limited access to telecommunications services; that it provided specialized or technologically sophisticated service; or that it provided service to niche markets.²⁶ An EBS licensee must also demonstrate that it is using each channel for 20 hours per week for educational purposes.²⁷

11. In addition, an EBS licensee may demonstrate substantial service under the educational safe harbor. Under the educational “safe harbor,” an EBS licensee is 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.²⁸

12. Kingsville’s Petition does not contain enough information for us to assess whether it has indeed met the substantial service obligation as of November 1, 2011. While Division staff has made multiple attempts to contact Kingsville and obtain additional information, Kingsville has not responded to those contacts. Under these circumstances, we must deny its petition for reconsideration.

13. An authorization for an EBS license automatically terminates if the licensee fails to meet construction or coverage requirements.²⁹ In light of our conclusion that grant of Kingsville’s petition for reconsideration is not in the public interest, we find that Kingsville’s license to operate Station WNC532

²³ Petition.

²⁴ Petition.

²⁵ 47 C.F.R. § 27.14(o).

²⁶ 47 C.F.R. § 27.14(o)(1).

²⁷ See 47 C.F.R. §§ 27.1203 and 27.1214.

²⁸ 47 C.F.R. § 27.14(o)(2).

²⁹ See 47 C.F.R. § 1.955(a)(2). See also 47 C.F.R. § 27.14(o).

automatically terminated on November 1, 2011, the date that EBS licensees were required to demonstrate substantial service.

IV. CONCLUSION AND ORDERING CLAUSES

14. Kingsville has failed to demonstrate that it has complied with the substantial service and educational use requirements associated with its license to operate Station WNC532. We therefore deny the Petition for Reconsideration and declare that Kingsville's license to operate Station WNC532 automatically terminated as of November 1, 2011.

15. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 309 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106 that the Petition for Reconsideration filed by the Kingsville Independent School District on January 5, 2012 IS DENIED.

16. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.955(a)(2) of the Commission's Rules, 47 C.F.R. § 1.955(a)(2), that the Universal Licensing System SHALL BE UPDATED to reflect that the license issued to the Kingsville Independent School District for Station WNC532 TERMINATED as of November 1, 2011.

17. 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
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Wireless Telecommunications Bureau