



Federal Communications Commission
Washington, D.C. 20554

April 2, 2012

DA 12-517

Mr. Tim Johnston
Plant Services Director
Northeast Texas Community College
P.O. Box 1037
Mt. Pleasant, Texas 75456

Dear Mr. Johnston:

By this letter, we dismiss a petition filed by Northeast Texas Community College (“NTCC”) seeking reconsideration of the December 7, 2011 decision by the Broadband Division of the Wireless Telecommunications Bureau (“Division”) to place the license to operate Educational Broadband Service (“EBS”) Station WNC599 in “Termination Pending” status.

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.¹ The Commission radically 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.²

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.³ Under Section 27.14(o), all BRS and EBS licensees were required to demonstrate substantial service on or before May 1, 2011.⁴ 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.⁵ 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

¹ 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).

² *Id.*

³ 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*).

⁴ 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*).

⁵ 47 C.F.R. § 27.14(o).

Mr. Tim Johnston

Commission's Rules.⁶ 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.⁷ Many EBS licensees have demonstrated substantial service by meeting this safe harbor.⁸

On February 1, 2011, the Bureau sent a Reminder Notice to NTCC reminding it of the upcoming deadline for demonstrating substantial service.⁹ The Reminder Notice notified NTCC 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 WNC599 would be terminated automatically.¹⁰

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, 2011.¹¹ NTCC did not file a substantial service notification or seek an extension of the November 1, 2011 deadline.

On December 7, 2011, the Bureau sent NTCC an auto-termination letter¹² and Station WNC599 entered auto-termination status.¹³ The Auto-Termination Letter stated that "if the licensee met its

⁶ 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).

⁷ 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).

⁸ The Wireless Telecommunications Bureau has accepted over 2,100 substantial service notifications from EBS licensees who complied with the November 1, 2011 deadline.

⁹ Construct/Coverage Reminders, Ref. Nos. 5101727, 5101728 (Feb. 1, 2011). The Bureau sent two letters, one to the licensee and one to the licensee's contact.

¹⁰ *Id.* at 1.

¹¹ See National EBS Association and Catholic Television Network, *Memorandum Opinion and Order*, 26 FCC Rcd 4021 ¶ 1 (WTB/2011) ("*EBS Extension Order*").

¹² 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).

Mr. Tim Johnston

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.¹⁴ 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.”¹⁵

NTCC filed a petition for reconsideration on December 13, 2011.¹⁶ In response to the petition, the Broadband Division (“Division”) sent an e-mail explaining additional information that NTCC would need to provide in order to demonstrate substantial service.¹⁷ In response, you indicated your intent to withdraw the Petition.¹⁸

In light of your stated intent to no longer prosecute the Petition, we will dismiss the Petition with prejudice. An authorization for an EBS license automatically terminates if the licensee fails to meet construction or coverage requirements.¹⁹ In light of the dismissal of your Petition, we find that NTCC’s license to operate Station WNC599 automatically terminated on November 1, 2011, the date that EBS licensees were required to demonstrate substantial service.

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, that the Petition for Reconsideration filed by Northeast Texas Community College on December 13, 2011 IS DISMISSED WITH PREJUDICE.

¹³ The Bureau sent two letters, one to the licensee and one to the licensee’s contact. Construction/Coverage Deadline Notice of Termination Pending Status, Ref. No. 5269071 (dated Dec. 7, 2011) (“Termination Pending Letter”). *See also* Wireless Telecommunications Bureau Market Based Licenses Termination Pending Public Notice, Report No. 7360 (WTB Dec. 7, 2011) at 3.

¹⁴ Termination Pending Letter at 1.

¹⁵ *Id.*

¹⁶ Petition for Reconsideration, Northeast Texas Community College (filed Dec. 13, 2011) (“Petition”).

¹⁷ E-mail from John J. Schauble, Deputy Chief, Broadband Division to Tim Johnston, Northeast Texas Community College (Jan. 3, 2012).

¹⁸ E-mail from Tim Johnston, Director of Plant Services, Northeast Texas Community College to John J. Schauble, (Jan. 5, 2012).

¹⁹ *See* 47 C.F.R. § 1.955(a)(2). *See also* 47 C.F.R. § 27.14(o).

Mr. Tim Johnston

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 license issued to Northeast Texas Community College for Station WNC599 IS DECLARED TERMINATED as of November 1, 2011.

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