

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

In the Matter of Application of )
SOMERVILLE INDEPENDENT SCHOOL ) File No. 0004964016
DISTRICT )
For Renewal of License for Educational )
Broadband Service Station WLX438 )

ORDER ON RECONSIDERATION

Adopted: June 4, 2012

Released: June 5, 2012

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

I. INTRODUCTION

1. In this Order on Reconsideration, we grant a petition for reconsideration and reinstate a renewal application that had been dismissed for failure to respond to a notice of return. While the original dismissal was correct, we find that the public interest would best be served by reinstating the renewal application and allowing the licensee to provide educational broadband services.

II. BACKGROUND

2. Somerville Independent School District, Somerville, Texas ("Somerville") operates Educational Broadband Service ("EBS") Station WLX438 on the C-group channels. Somerville has constructed a WiMax system that operates 24/7 and that is used to provide wireless internet service to the SHS Library, the Technology Lab, and the SES Library for faculty and students. The license for Station WLX438 expired on February 19, 2012. Somerville was required to file a renewal application in the 90 day period prior to February 19, 2012. In addition, all EBS licensees were required to demonstrate that they were offering substantial service by November 1, 2011. Somerville met both requirements: it filed a construction notification on November 1, 2011 and an application to renew the license for Station WLX438 on November 22, 2011.

3. The Wireless Telecommunications Bureau ("Bureau") returned the Renewal Application on February 7, 2012 because Somerville was required to file FCC Form 602, which requires applicants to

1 File No. 0004935604 (filed Nov. 1, 2011) ("Construction Notification").

2 See File No. BRIF-20011004AAL (granted Feb. 19, 2002).

3 See 47 C.F.R. § 1.949(a).

4 See National EBS Association and Catholic Television Network, Memorandum Opinion and Order, 26 FCC Rcd 4021 (WTB 2011).

5 Construction Notification, Amendment (filed May 7, 2012).

6 File No. 0004964016 (filed Nov. 22, 2011) ("Renewal Application").

7 Notice of Return, Ref. No. 5309196 (Feb. 7, 2012) ("Renewal Application Notice of Return") at 1-2.

disclose the owners of wireless stations.<sup>8</sup> The Bureau returned the Construction Notification on March 17, 2012 because it did not contain sufficient information for Commission staff to evaluate whether Somerville had met the requirements for demonstrating substantial service applicable to EBS licensees.<sup>9</sup> Both Notices of Return informed Somerville that it must respond within 60 days of the date of the Notice of Return.<sup>10</sup> Thus, Somerville was required to respond to the renewal application Notice of Return on or before April 9, 2012. Somerville did not do so, and the Bureau therefore dismissed its Renewal Application.<sup>11</sup> Somerville was also required to respond to the construction notification Notice of Return on or before May 17, 2012. On May 7, 2012, Somerville amended its Construction Notification to include additional information to enable Commission staff to evaluate whether it met the substantial service requirements for EBS licensees under the Commission's rules.<sup>12</sup> Also on May 7, 2012, Somerville filed the instant petition seeking reconsideration of the Commission's decision to dismiss Somerville's application to renew Station WLX438.<sup>13</sup> Somerville explains that there was a changeover in staff and that it mistakenly thought the Renewal Application Notice of Return concerned the same issue as the Construction Notification Notice of Return.<sup>14</sup> Finally, on the same date, Somerville filed FCC Form 602.<sup>15</sup>

### III. DISCUSSION

4. In this case, Somerville failed to respond to the Renewal Application Notice of Return letter on or before April 9, 2012, 60 days after the Notice of Return was sent. Under Section 1.934(c) of the Commission's Rules, an application may be dismissed for failure to prosecute "for failure of the applicant to respond substantially within a specified time period to official correspondence or requests for additional information."<sup>16</sup> The Bureau sends a Notice of Return to applicants when additional information is necessary for the Bureau to process the application. The Notice of Return plainly states that "[i]f you do not file an amendment to your application within 60 days of the date on the top of this letter, your application will be dismissed." Somerville was placed on notice that its Renewal Application would be dismissed if it failed to respond to the return letter. Somerville failed to respond and does not offer any legitimate explanation for its failure. Accordingly, we conclude that the dismissal of Somerville's renewal application was proper.

5. The pertinent question before us, however, is whether to reinstate Somerville's Renewal Application on reconsideration. While there is precedent for refusing to reinstate renewal applications when an applicant fails to offer a justification for failing to respond to a return letter,<sup>17</sup> based upon the totality of the circumstances involved in this case, we believe the public interest would best be served by

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<sup>8</sup> See 47 C.F.R. § 1.913(a)(2).

<sup>9</sup> Notice of Return, Ref. No. 5333763 (Mar. 17, 2012) ("Construction Notification Notice of Return") at 1-2. See also 47 C.F.R. 27.14(o).

<sup>10</sup> Renewal Application Notice of Return at 1; Construction Notification Notice of Return at 1.

<sup>11</sup> Notice of Dismissal, Ref. No. 5364425 (May 1, 2012). The Bureau gave public notice of the dismissal of the Renewal Application on May 2, 2012. See Wireless Telecommunications Bureau Market-Based Applications Action, Report No. 7726, *Public Notice* (May 2, 2012) at 2.

<sup>12</sup> Construction Notification, Amendment (filed May 7, 2012).

<sup>13</sup> Somerville Independent School District Somerville, Texas, Petition for Reconsideration (filed May 7, 2012) ("Petition").

<sup>14</sup> *Id.*

<sup>15</sup> File No. 0005196597 (filed May 7, 2012).

<sup>16</sup> 47 C.F.R. § 1.934(c).

<sup>17</sup> See RAM Technologies, Inc., *Order on Reconsideration*, 16 FCC Rcd 10919 (WTB PS&PWD 2001).

granting the Petition and reinstating the Renewal Application. Although Somerville did not timely respond to the Renewal Application Notice of Return, it has otherwise been diligent in complying with the Commission's rules. It timely filed its Renewal Application and Construction Notification, and timely responded to the Construction Notification Notice of Return. We also note that the two deadlines for responses were close together and that Somerville has alleged that it was unaware that there were two Notices of Return concerning separate subjects. Under those specific circumstances, while we expect Somerville to exercise greater care in the future, we do not believe that Somerville should lose its license for this isolated failure.

6. Another circumstance supporting reinstatement of Somerville's renewal application is that it is providing educational broadband service to students and faculty. Specifically, Somerville has constructed a WiMax system that operates 24/7 and that is used to provide wireless internet service to the SHS Library, the Technology Lab, and the SES Library for faculty and students.<sup>18</sup> Based upon the totality of the circumstances, we conclude that it is in the public interest to grant Somerville's Petition. If the Renewal Application is granted, we will then evaluate the Construction Notification to see if Somerville has demonstrated substantial service.

#### IV. CONCLUSION AND ORDERING CLAUSES

7. The decision to dismiss Somerville's Renewal Application was correct. However, based upon the information provided in the Petition, we have decided to reinstate Somerville's Renewal Application. Accordingly, we grant the Somerville's petition for reconsideration.

8. 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 Sections 1.106 of the Commission's Rules, 47 C.F.R. §§ 1.106 the Petition for Reconsideration filed by Somerville Independent School District, Somerville, Texas on May 7, 2012 IS GRANTED.

9. 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 Broadband Division SHALL REINSTATE AND PROCESS the application filed by Somerville Independent School District, Somerville, Texas (File No. 0004964016) in accordance with this *Order on Reconsideration* and the Commission's rules and policies.

10. These actions are taken under designated 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

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<sup>18</sup> See Construction Notification.