

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

In the Matter of Application of
UNIFIED SCHOOL DISTRICT #392
For Renewal of License for Educational
Broadband Service Station WLX692
File No. 0005740077

MEMORANDUM OPINION AND ORDER

Adopted: May 9, 2013

Released: May 9, 2013

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

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant Unified School District #392 ("USD #392") a waiver of the Commission's rule requiring that a licensee file its renewal application before its license expires. While USD #392 had filed a timely application to renew Station WLX692, the application had been dismissed because USD #392 failed to respond to a notice of return. While the original dismissal was correct, we find that it is in the public interest to grant a waiver to allow processing of a second, late-filed application to renew Station WLX692 and thus allow USD #392 to continue providing educational broadband services.

II. BACKGROUND

2. USD #392 operates Educational Broadband Service ("EBS") Station WLX692 on the C-group channels in Osborne County, Kansas. The license is currently being used to provide internet access to a vocational facility away from the school system's main campus. At least one-third of the system's high school students use the vocational facility every day, and Station WLX692 is the facility's only means of internet access.

3. On September 25, 2012, USD #392 timely filed an application to renew Station WLX692, which was scheduled to expire on October 13, 2012. Under the Commission rules, licensees may file a renewal application 90 days before the license expires.

4. On January 16, 2013, the Wireless Telecommunications Bureau ("Bureau") returned USD #392's First Renewal Application because (1) USD #392 did not answer Questions 54 and 55 on

1 File No. 0005740077 (filed Apr. 16, 2013) (Renewal Application), Letter from Keith Hall, Superintendent, Osborne County Unified Schools to Federal Communications Commission (filed May 3, 2013) (Amendment).

2 Id.

3 File No. 0005414854 (filed Sep. 25, 2012) ("First Renewal Application").

4 47 C.F.R. § 1.949(a).

5 Notice of Return, Ref. No. 5525071 (Jan. 16, 2013) ("First Renewal Application Notice of Return").

Form 601, and (2) USD #392 was required to disclose the owners of Station WLX692 by filing FCC Form 602 and did not do so.⁶ The First Renewal Notice of Return indicated that USD #392 must file Form 602 within 60 days (on or before March 18, 2013) or its First Renewal Application would be dismissed.⁷ On April 9, 2013, the Bureau dismissed USD #392's First Renewal Application because USD #392 did not respond to the First Renewal Notice of Return.⁸

5. USD #392 filed a second renewal application on April 16, 2013.⁹ In that application, it requested that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of USD #392's late-filed application.¹⁰ The licensee's superintendent admits to not following up to make sure USD #392 made the necessary filings.¹¹ USD #392 asks that its students not be punished for its error.¹² It explains that it is one of several schools in the area that have EBS spectrum, and it is concerned that if it loses its license, its students would be excluded from efforts to collectively use that spectrum.¹³ USD #392 has also appointed a second contact to ensure that all Commission correspondence is reviewed and acted on.¹⁴

III. DISCUSSION

6. Although USD #392 timely filed its First Renewal Application, we conclude that the dismissal of USD #392's First Renewal Application was proper. Under Section 1.934(c) of the Commission's Rules, we properly dismissed USD #392's First Renewal Application because USD #392 failed to respond to our First Renewal Application Notice of Return on or before March 18, 2013, the date indicated in the First Renewal Application Notice of Return.¹⁵ Generally, the Bureau sends a Notice of Return to applicants when additional information is necessary for the Bureau to process the application. Moreover, Notices of Return plainly state 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."¹⁶ In this case, the First Renewal Application Notice of Return requested that USD #392 disclose the owners of Station WLX692 by filing Form 602 on or before March 18, 2013. USD #392 did not do so and thus its First Renewal Application was properly dismissed.

7. The pertinent question before us, however, is whether to grant USD #392's request to waive Section 1.949(a) of the Commission's rules to allow consideration of its subsequent Renewal Application. The Commission may grant a waiver request if it is shown that: (i) the underlying purpose

⁶ See 47 C.F.R. § 1.913(a)(2).

⁷ First Renewal Application Notice of Return.

⁸ Notice of Dismissal, Ref. No. 5572600 (Apr. 9, 2013). The Bureau gave public notice of the dismissal of the Renewal Application on April 17, 2013. See Wireless Telecommunications Bureau Market-Based Applications Action, Report No. 8610, *Public Notice* (Apr. 17, 2013) at 1.

⁹ Renewal Application.

¹⁰ *Id.*, Letter from Keith Hall, Superintendent, Osborne County Unified Schools to Federal Communications Commission (filed Apr. 16, 2013) (Waiver Request).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Amendment.

¹⁵ 47 C.F.R. § 1.934(c). Under Section 1.934(c) of the Commission's Rules, an application may be dismissed when the applicant fails "to respond substantially within a specified time period to official correspondence or requests for additional information."

¹⁶ See First Renewal Application Notice of Return.

of the rules(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 (ii) in view of the 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.¹⁷ 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,¹⁸ based upon the totality of the circumstances of this case, we find that USD #392 has shown that in view of the its unique factual circumstances, it is in the public interest to grant its Waiver Request and allow processing of its Second Renewal Application.¹⁹ Although USD #392 did not timely respond to the First Renewal Application Notice of Return, it has otherwise been diligent in complying with the Commission's rules. It timely filed its First Renewal Application and demonstrated substantial service. We also note that USD #392 has attempted to implement a system to make sure all Commission correspondence is answered in the future. Under these specific circumstances, while we expect USD #392 to exercise greater care in the future, we find that it is not in the public interest for USD #392 to lose its license for this isolated failure.

8. Another circumstance supporting a grant of a waiver for USD #392's Renewal Application is that it is providing educational broadband service to students and faculty. Station WLX692 provides the only available internet access to a vocational facility that is used daily by its high school students. Based upon the totality of the circumstances, we conclude that it is in the public interest to grant USD #362's Waiver Request.

9. USD #392 is the fourth EBS licensee who has recently sought relief after having renewal applications dismissed for failing to respond to a notice of return.²⁰ We remind EBS licensees of the importance of responding to notices of return and all Commission correspondence in a timely fashion. If we find a continuing pattern of EBS applicants failing to respond to Commission correspondence, we reserve the right to conclude that the Commission's interest in ensuring timely responses to Commission correspondence would justify denying relief to EBS licensees who fail to respond to Commission correspondence in the future.

IV. CONCLUSION AND ORDERING CLAUSES

10. The decision to dismiss USD #392's First Renewal Application was correct. However, based upon the information provided in the Waiver Request, we have decided to grant a waiver to allow processing of USD #392's subsequent Renewal Application. Accordingly, we grant USD #392's Waiver Request.

11. 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 1.925 and 1.949 of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.949, the Waiver Request filed by Unified School District #392 on April 16, 2013 IS GRANTED.

¹⁷ 47 C.F.R. § 1.925(b).

¹⁸ See RAM Technologies, Inc., *Order on Reconsideration*, 16 FCC Rcd 10919 (WTB PS&PWD 2001).

¹⁹ See Somerville Independent School District, *Order on Reconsideration*, 27 FCC Rcd 6063 (WTB BD 2012) (renewal application reinstated despite failure to respond to notice of return where two notices of return had been sent around the same time and licensee had otherwise been diligent in complying with the Commission's rules).

²⁰ See Burlington College, *Memorandum Opinion and Order*, 27 FCC Rcd 15267 (WTB BD 2012); Garnett Unified School District #365, *Memorandum Opinion and Order*, 27 FCC Rcd 13086 (WTB BD 2012); Somerville Independent School District, *Order on Reconsideration*, 27 FCC Rcd 6063 (WTB BD 2012).

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 Section 1.949 of the Commission’s Rules, 47 C.F.R. § 1.949, that the Broadband Division SHALL PROCESS the application filed by Unified School District #392 for renewal of license of Educational Broadband Service Station WLX692 (File No. 0005740077) in accordance with this *Memorandum Opinion and Order* and the Commission’s rules and policies.

13. 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
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