



Federal Communications Commission
Washington, D.C. 20554

January 8, 2013

DA 13-17

Mr. David McFee
Mount Carmel Area School District
600 West Fifth Street
Mount Carmel, PA 17851

Dear Mr. McFee:

On March 25, 2009, Mount Carmel Area School District (Mount Carmel) filed an application for four C Group Educational Broadband Service (EBS) channels,¹ accompanied by a request for waiver of: (a) the filing freeze on new Educational Broadband Service (EBS) applications;² and (b) the electronic filing requirement of Section 1.913(b) of the Commission's rules.³ For the reasons stated below, we dismiss Mount Carmel's Waiver Request as moot, and direct dismissal of its Application without prejudice.

In its Application, Mount Carmel claimed that granting the C Group channels would provide it with additional bandwidth to transmit television programming and additional monetary resources to support technology upgrades, which would permit it to expand its educational reach and to better issue emergency alerts.⁴ Mount Carmel has a license to operate EBS Station WLX267 on the D Group channels.⁵ At the time it submitted the instant application, it leased this station to Utopian Wireless Corporation ("Utopian") through a long term *de facto* transfer lease agreement.⁶ Under their lease arrangement, Utopian agreed to provide the funding needed to upgrade Mount Carmel's television

¹ File No. 0003789021 (filed Mar. 25, 2009) (Application). Mount Carmel filed the application as a request for modification of EBS license WLX267. Because that license already holds four channels, and Mount Carmel is requesting a different channel group than it is currently licensed for, the application is properly treated as an application for a new EBS authorization.

² See Application, Mount Carmel Area School District, Request for Waiver of FCC Rules and Filing Freeze ("Waiver Request") at 1. See also *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 03-66, 18 FCC Rcd 6722, 6811 ¶ 226, 6825 ¶ 260 (2003) (stating in relevant part that "[i]t is . . . ordered that applications for new MDS or ITFS licenses, major modifications of MDS stations, or major changes to ITFS stations other than applications for license assignments or transfers of control WILL NOT BE ACCEPTED until further notice").

³ See Waiver Request at 1. See also 47 C.F.R. § 1.913(b) (stating in relevant part that "all applications and other filings using FCC Forms 601 through 608 or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS").

⁴ Waiver Request at 5-6.

⁵ *Id.* at 2. See also File No. BPIF-19900710DA (granted Jan. 17, 1991) (granting Mount Carmel authorization to operate on Channel D1), File No. 0003587262 (filed Sep. 19, 2008, granted Dec. 18, 2008) ("D Group Major Modification Application") (modifying the authorization for Station WLX267 to add Channels D2-D4).

⁶ File No. 0003314206 (filed Feb. 5, 2008, granted Feb. 6, 2008).

programming and would also build a wireless broadband system to serve the Mount Carmel area.⁷ In its Waiver Request, Mount Carmel stated its intent to lease the C1-C3 channels, in addition to the D1-D3 channels, to Utopian, which Mount Carmel claimed would provide Utopian with enough spectrum to build and operate a wireless Internet system in the area.⁸

On June 25, 2012, Mount Carmel cancelled its lease with Utopian.⁹ Although Mount Carmel subsequently informed the Commission that it was negotiating with other private entities to develop the spectrum,¹⁰ it has not amended its Application to reflect any new plans to lease or develop the spectrum. Because Mount Carmel has abandoned its lease with Utopian, and its Waiver Request was premised on the lease with Utopian, we dismiss its Waiver Request as moot. We also direct dismissal of the Application.¹¹ Our dismissal of Mount Carmel's Application is without prejudice to Mount Carmel's ability to refile should it develop a new plan for those channels.

Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.913(b) and 1.925(b)(3) of the Commission's Rules, 47 C.F.R. §§ 1.913(b), 1.925(b)(3), that the waiver request filed by Mount Carmel Area School District on March 27, 2009 in connection with File No. 0003789021 IS DISMISSED AS MOOT.

IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.934(d)(2) of the Commission's Rules, 47 C.F.R. § 1.934(d)(2), that the licensing staff of the Broadband Division application SHALL DISMISS the application filed by Mount Carmel Area School District for a new Educational Broadband Service Station on March 27, 2009 (File No. 0003789021) without prejudice.

This action is 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

⁷ See D Group Major Modification Application, Public Interest Statement at 5.

⁸ Waiver Request at 5-6.

⁹ See File No. 0005276043 (filed June 25, 2012; granted June 26, 2012).

¹⁰ See Email from David McFee, Instructional Technology Specialist, Mount Carmel Area School District, to John J. Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau (Oct. 4, 2012).

¹¹ See 47 C.F.R. § 1.934(d)(2) (application can be dismissed if it contains a waiver request that is not granted and application does not contain alternative request that fully complies with rules).