

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

In the Matter of ) ) OKLAHOMA WESTERN TELEPHONE ) COMPANY, INC. ) ) Applications For Renewal of Broadband Radio ) Service Stations WLK382, WNTC500, WNTC664 ) and WNTD797, Clayton, Oklahoma ) )	File Nos. 20021231AAB, 20021231AAC, 20021231AAD and 20021231AAE
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**MEMORANDUM OPINION AND ORDER**

**Adopted: March 17, 2008**

**Released: March 20, 2008**

By the Commission: Commissioner Adelstein issuing a statement.

**I. INTRODUCTION**

1. On December 20, 2004, Oklahoma Western Telephone Company, Inc. (OWTC) filed an application for review<sup>1</sup> of the November 19, 2004 decision<sup>2</sup> of the Broadband Division, Wireless Telecommunications Bureau (Division). The Division's decision denied OWTC's request for acceptance of a blanket request for reinstatement<sup>3</sup> of four licenses of a Broadband Radio Service (BRS) system<sup>4</sup> in Clayton, Oklahoma.<sup>5</sup> The Division also denied OWTC's related request for waiver of various filing deadlines, including deadlines for filing renewal applications.<sup>6</sup> We also have before us a Supplement to

<sup>1</sup> Application for Review (filed Dec. 20, 2004) (AFR).

<sup>2</sup> Oklahoma Western Telephone Company, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 22780 (WTB BD 2004) (*MO&O*).

<sup>3</sup> See Letter from David A. Irwin, Esq., counsel to OWTC, to Federal Communications Commission, Wireless Bureau Applications (filed Dec. 31, 2002) (Reinstatement and Waiver Requests). OWTC styles its filing as a "blanket renewal application," but we treat it as a request for reinstatement because OWTC's licenses expired before it filed.

<sup>4</sup> On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* that transforms the rules governing the Multipoint Distribution Service (MDS) and the Instructional Television Fixed Service (ITFS) in order to encourage the deployment of broadband services by commercial and educational entities. 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, et al.; WT Docket Nos. 03-66, et al., *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O*). To better reflect the forward-looking vision for these services, the Commission renamed MDS the Broadband Radio Service (BRS) and ITFS the Educational Broadband Service. Because the new rules have taken effect, we will refer to the services by their new names. See also 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, et al.; WT Docket Nos. 03-66, et al., *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21 FCC Rcd 5606 (2006) (*3rd MO&O*).

<sup>5</sup> The stations' call signs are WLK382, WNTC500, WNTC664 and WNTD797 ("the Stations").

<sup>6</sup> *MO&O*, 19 FCC Rcd. 22780 at ¶ 1.

its Application for Review filed by OWTC<sup>7</sup> and responsive pleadings.<sup>8</sup> Because we find that OWTC's waiver request satisfies the applicable waiver standard, as discussed below, we grant OWTC's application for review and reinstate the above-captioned renewal applications. We also have before us a request for waiver of the transition rules in Sections 27.1230-27.1239 of our Rules.<sup>9</sup> For the reasons discussed below, we dismiss the waiver request without prejudice.

## II. BACKGROUND

2. On the dates shown in Table 1 below, OWTC was granted authorizations to operate the Stations. The Stations are used to provide television programming to a rural mountainous area whose reception of commercial broadcast stations is impaired by distance and terrain blockage.<sup>10</sup> In 1997, the Stations were serving 396 subscribers;<sup>11</sup> by 2003, the number of subscribers had declined to 264.<sup>12</sup> The licenses carried an expiration date of May 1, 2001.

**Table 1**

Station Call Sign	Channels	Location	File No.	Date License Issued	Expiration Date
WLK382	E Channel Group	Clayton, OK	20021231AAB	Sept. 29, 1995 (renewal)	May 1, 2001
WNTC500	Channel H2	Clayton, OK	20021231AAC	Aug. 30, 1999 (assignment)	May 1, 2001
WNTC664	Channel H1	Clayton, OK	20021231AAD	Mar. 30, 1995 (renewal)	May 1, 2001
WNTD797	Channel H3	Clayton, OK	20021231AAE	Aug. 30, 1999 (assignment)	May 1, 2001

3. Under the Commission's Rules pertaining to BRS, licensees must file their petitions for renewal applications between thirty and sixty days prior to the license expiration date.<sup>13</sup> OWTC did not file a renewal application prior to the expiration of its licenses. OWTC states that it was under the

<sup>7</sup> Supplement to Application for Review (filed Feb. 28, 2007) (Supplement).

<sup>8</sup> Reply of Sprint Nextel Corporation to "Supplement to Application for Review" (filed Mar. 29, 2007) (Sprint Nextel Reply); Motion for Leave to File Responsive Pleading (filed May 4, 2007) (OWTC Motion); and Response to Reply of Sprint Nextel Corporation to Supplement to Application for Review (filed May 4, 2007) (OWTC Response).

<sup>9</sup> Request for Waiver (filed Apr. 13, 2007) (Opt-out Waiver Request).

<sup>10</sup> Letter from Gary G. Beikmann, Manager, Monte R. Lee and Company Consulting Engineers, to Lynne J. Milne, FCC Common Carrier Bureau, Mar. 27, 1992 (WLK382 Station File).

<sup>11</sup> Station WLK382 and WNTC664 1997 Annual Report.

<sup>12</sup> Station WLK382 2003 Annual Report.

<sup>13</sup> See 47 C.F.R. § 21.11(c) (2002). As a result of the restructuring of the 2500-2690 MHz band in 2004, the Commission consolidated the BRS/EBS procedural rules under Subpart F of Part 1 of the Commission's rules and the BRS/EBS service specific rules in Part 27 of the Commission's Rules. See *BRS/EBS R&O* at ¶¶ 183 and 186. See 47 C.F.R. § 1.949.

erroneous impression that one of its consultants had prepared and filed renewal applications for all four of the Stations.<sup>14</sup>

4. On December 30, 2002, OWTC filed the captioned blanket renewal application for the Stations' licenses. On December 31, 2002, OWTC filed a request for waiver of Sections 21.3, 21.11 and 21.44 of the Commission's Rules.<sup>15</sup> The Division interpreted the waiver request as a request for reinstatement because the licenses expired before OWTC filed its application. OWTC argued that its request should be granted because OWTC provides local news and entertainment channels; public, educational and government access channels; and retransmitted local over-the-air television stations that provide urgent weather alerts, serving a sparsely populated area with no other means to receive such alerts.<sup>16</sup> OWTC stated that its subscribers value its system highly because they are situated in an area where natural disasters such as tornadoes are prevalent. OWTC further stated that there is no traditional cable television franchise in its service area, so that its customers have little alternative in obtaining reliable video services, especially services providing critical local programming.<sup>17</sup> Finally, OWTC stated that it has implemented internal controls to ensure that future renewal applications for these licenses will be filed on time.<sup>18</sup>

5. On February 14, 2003, Nucentrix Spectrum Resources, Inc. (Nucentrix) filed a petition to deny OWTC's request for reinstatement.<sup>19</sup> Nucentrix stated that, as the holder of geographic area licenses for BRS Basic Trading Areas ("BTAs") served in part by OWTC's Stations,<sup>20</sup> it had the exclusive right to file long-form applications to operate wireless cable television systems in any portions of those BTAs where the service areas of forfeited incumbent stations have been merged with the BTAs.<sup>21</sup> OWTC urged the Division to reject the Petition to Deny because Nucentrix had filed a voluntary Chapter 11 bankruptcy petition and that it would not be wise policy to allow a collapsing company to take over OWTC's BRS stations.<sup>22</sup> On April 7, 2004, the Commission authorized assignment of the Nucentrix BTA authorizations in question to Nextel Communications, Inc.<sup>23</sup>

6. On November 19, 2004, the Division denied OWTC's request for reinstatement of its renewal applications for the Stations and for waiver of Sections 21.3, 21.11, and 21.44 of the Commission's Rules.<sup>24</sup> Section 21.11(c) of the Commission's rules required OWTC to file its renewal applications

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<sup>14</sup> See Reinstatement and Waiver Requests at 2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 4.

<sup>19</sup> Petition to Deny (filed Feb. 14, 2003).

<sup>20</sup> The authorizations are for the Paris, Texas (BTA341), Fort Smith, Arkansas (BTA153), and McAlester, Oklahoma (BTA267) BTAs. Petition at 2.

<sup>21</sup> Petition to Deny at 2.

<sup>22</sup> Second Supplemental Pleading at 4.

<sup>23</sup> See Wireless Telecommunications Bureau Grants Consent to Assign Multipoint Distribution Service Station Licenses, *Public Notice*, 19 FCC Rcd 6329 (WTB 2004).

<sup>24</sup> Former Section 21.3(a) of the Commission's Rules stated, "No person shall use or operate apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, an appropriate authorization granted by the Federal Communications Commission." 47 C.F.R. § 21.3(a) (2002). Former Section 21.11(c) of the Commission's Rules provided, in pertinent part, "Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed." 47

(continued....)

between March 1, 2001 and April 1, 2001, while OWTC filed its renewal applications on December 30, 2002.<sup>25</sup> The Division further found that OWTC's petition for reinstatement also was untimely because OWTC had until June 1, 2001, thirty days after the license expiration date, to file a petition to reinstate its licenses, but did not do so until December 31, 2002.<sup>26</sup> The Division then found that OWTC did not make the requisite showing that grant of a waiver was warranted under the circumstances presented because OWTC provided no compelling public policy or other reason to waive the Commission's rules with respect to license renewals or petitions for reinstatement.<sup>27</sup> In light of the Stations role in disseminating emergency information and the likelihood that alternative services would not be in operation in the immediate future, however, the Division granted OWTC a Special Temporary Authority (STA) to operate its facilities while it makes alternative arrangements for delivering programming or other communication services in the future.<sup>28</sup>

7. In the AFR, Oklahoma Western argues that the Bureau applied a "harsh standard"<sup>29</sup> that is contrary to the public interest. OWTC emphasizes that it "provides essential local video programming to viewers in a sparsely populated, rural area in Southeastern Oklahoma, where there is no cable television service and at best, spotty over-the-air television."<sup>30</sup> OWTC's system provides urgent weather alerts for an area where it claims natural disasters (such as tornados) are prevalent.<sup>31</sup> OWTC also argues that the denial of its reinstatement request is inconsistent with a case granting a waiver of the requirement to file construction notifications<sup>32</sup> and with a case where late-filed renewals filed prior to the expiration of the licenses were processed.<sup>33</sup>

8. On February 16, 2007, Fixed Wireless Holdings, LLC, a wholly owned subsidiary of Clearwire Corporation, filed an Initiation Plan for the Paris, Texas BTA, B341, which includes the geographic center point of OWTC's Geographic Service Area (GSA).<sup>34</sup> Although Clearwire included OWTC's licenses for the Stations in its Initiation Plan for B341, it noted that OWTC's authorizations for the Stations expired on May 1, 2001.<sup>35</sup>

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C.F.R. § 21.11(c) (2002). Former Section 21.44(a)(2) of the Commission's Rules provided, "A license shall be automatically forfeited in whole or in part without further notice to the licensee upon: . . . The expiration of the license period specified therein, unless prior thereto an application for renewal of such license has been filed with the Commission . . ." 47 C.F.R. § 21.44(a)(2) (2002).

<sup>25</sup> *MO&O*, 19 FCC Rcd at 22782-22783 ¶ 7.

<sup>26</sup> *Id.* at 22783 ¶ 8 (*citing* 47 C.F.R. § 21.44(b)(1) (2002)).

<sup>27</sup> *Id.* at 22784 ¶ 13.

<sup>28</sup> *MO&O*, 19 FCC Rcd at 22784 ¶ 14.

<sup>29</sup> AFR at 12.

<sup>30</sup> *Id.* at 3.

<sup>31</sup> *Id.* at 4.

<sup>32</sup> *Id.* at 7-8, *citing* Northwest Communications Cooperative, *Memorandum Opinion and Order*, 19 FCC Rcd 23812 (WTB BD 2004).

<sup>33</sup> *Id.* at 6-7, *citing* Jonsson Communications Corp. d/b/a Quadra Vision Digital Television, *Memorandum Opinion and Order*, 17 FCC Rcd 22697 (WTB PSPWD 2002).

<sup>34</sup> Letter from Terri B. Natoli, V.P. Regulatory Affairs & Public Policy to Marlene Dortch, Federal Communications Commission (dated Feb. 16, 2007).

<sup>35</sup> *Id.* at Exhibit 1.

9. On February 28, 2007, OWTC filed a Supplement to its Application for Review to bring to the Commission's attention the *Forty-One Late-Filed MO&O* released by the Division.<sup>36</sup> In that decision the Division reinstated the late-filed renewal application of 41 EBS licensees to promote the transition of the 2500-2690 MHz band by providing certainty on which licensees should be transitioned to the new band plan.<sup>37</sup> OWTC argues that its BRS licenses to operate the Stations should also be reinstated under *Melody Music*, which holds that licensees that are similarly situated should be similarly treated.<sup>38</sup>

10. On March 29, 2007, Sprint Nextel filed a Reply to OWTC's Supplement.<sup>39</sup> Sprint Nextel is the BTA holder for B341 (Paris, Texas), B153 (Ft. Smith, Arkansas), B267 (McAlester, Oklahoma), and B004 (Ada, Oklahoma), which are encumbered by OWTC's GSA.<sup>40</sup> Sprint Nextel argues that the Division correctly dismissed OWTC's renewal application.<sup>41</sup> Sprint Nextel further argues that the Division's decision in the *Forty-One Late-Filed MO&O* reverses Commission policy in violation of the Administrative Procedure Act.<sup>42</sup> Moreover, Sprint Nextel argues that because OWTC's GSA dissolved when it did not timely-file a renewal application and its license automatically cancelled, reinstating OWTC's renewal application would be an involuntary modification of Sprint Nextel's BTA licenses for B341, B153, B267, and B004 in violation of Section 316 of the Communications Act.<sup>43</sup>

11. On April 13, 2007, OWTC filed a request for a waiver of Sections 27.1230-27.1239 to permit it to "opt-out" of the transition of the 2500-2690 MHz band and continue to operate under the old technical rules.<sup>44</sup> OWTC notes that it is seeking a waiver because the Commission has not yet acted on its request to reinstate its renewal applications, thus causing it to be unable to determine whether it should undertake the costs of transitioning to the new band plan.<sup>45</sup>

12. On May 4, 2007, OWTC filed a Motion for Leave to file a responsive pleading<sup>46</sup> and a Response to Sprint Nextel's Reply.<sup>47</sup> OWTC maintains that because Sprint Nextel's Reply is in the nature of an Opposition to OWTC's Application for Review, it is entitled to respond.<sup>48</sup>

13. As of March 2008, OWTC provides service to 127 customers for \$13.95/month.<sup>49</sup> OWTC believes that the decline in subscribership is "directly related to the uncertainty associated with OWTC's

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<sup>36</sup> Supplement at 1.

<sup>37</sup> *Id.* at 2.

<sup>38</sup> *Id.* at 3 (citing *Melody Music, Inc. v. Federal Communications Commission*, 345 F.2d 730 (1965)).

<sup>39</sup> Sprint Nextel Reply.

<sup>40</sup> *Id.* at 3.

<sup>41</sup> *Id.* at 2.

<sup>42</sup> *Id.* at 6.

<sup>43</sup> *Id.* at 5 and 8.

<sup>44</sup> Opt-out Waiver Request.

<sup>45</sup> *Id.* at 5.

<sup>46</sup> OWTC Motion.

<sup>47</sup> OWTC Response.

<sup>48</sup> OWTC Motion at 1.

<sup>49</sup> See Letter from Scott Woodworth, Esq., counsel for Oklahoma Western Telephone Company to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Mar. 13, 2008) (*OWTC March 2008 Ex Parte*) at 1.

BRS licenses.”<sup>50</sup> OWTC also provides service to schools in Clayton, Oklahoma at no cost.<sup>51</sup> Virtually all of OWTC’s customers are not served by any franchised cable systems.<sup>52</sup> OWTC’s programming includes locally originated programming and network affiliated channels originating in Ada, Oklahoma, Sherman, Texas, and Fort Smith, Arkansas.<sup>53</sup>

### III. DISCUSSION

14. We first address OWTC’s Supplement and Sprint Nextel’s Reply. Under Section 1.115(d) of the Commission’s Rules, an application for review, and any supplements thereto, must be filed within 30 days of the public notice of such action.<sup>54</sup> In this case, the public notice of the action is the date the Division’s decision was released.<sup>55</sup> The Division’s decision was released on November 19, 2004.<sup>56</sup> Thus, OWTC’s application for review and any supplements were to be filed on or before December 20, 2004. Oklahoma Western filed its supplement on February 28, 2007, more than two years after it was due under Section 1.115(d) of the Commission’s Rules. Furthermore, since, as explained further below, we are granting Oklahoma Western relief for reasons independent of the reasoning discussed in OWTC’s supplement, the supplement is also moot. We therefore dismiss OWTC’s supplement. Also, under Section 1.115(d) of the Rules, oppositions are to be filed within 15 days after the application for review is filed.<sup>57</sup> Oppositions were therefore due on or before January 4, 2005. Sprint Nextel did not file a timely opposition to the AFR. Sprint Nextel filed its Reply on March 29, 2007, more than two years after oppositions were due, and more than 15 days after OWTC filed its supplement. We therefore dismiss Sprint Nextel’s Reply as untimely and moot. We further dismiss OWTC’s Motion for Leave to file a responsive pleading and a Response to Sprint Nextel’s Reply as moot.

15. As noted above, under the Commission’s Rules pertaining to BRS, licensees must file their petitions for renewal applications between thirty and sixty days prior to the license expiration date.<sup>58</sup> If a licensee fails to file a timely renewal application, the licensee automatically forfeits the BRS station license as of the expiration date.<sup>59</sup> A licensee may file a petition for reinstatement of a forfeited license within thirty days of the license expiration date.<sup>60</sup> A timely filed petition for reinstatement must adequately explain the failure to timely file the renewal application, and specify the procedures the licensee has established to ensure timely filings in the future.<sup>61</sup> Section 21.44(b) of the Commission’s

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<sup>50</sup> *Id.* at 1-2 n.3. Subsequent to the *MO&O*, OWTC provided notice to its subscribers that it might be required to terminate its service. *See id.* at Attachment 1.

<sup>51</sup> *Id.* at 1.

<sup>52</sup> *Id.* at 2.

<sup>53</sup> *Id.* at 2.

<sup>54</sup> 47 C.F.R. § 1.115(d).

<sup>55</sup> 47 C.F.R. § 1.4(b)(2).

<sup>56</sup> *MO&O*.

<sup>57</sup> 47 C.F.R. § 1.115(d).

<sup>58</sup> *See* 47 C.F.R. § 21.11(c) (2002).

<sup>59</sup> Burlington Cablevision, Inc., *Order on Reconsideration*, 13 FCC Rcd 772 ¶ 7 (VSD MMB 1998) (*Burlington*); Superior Broadcasting Corporation, *Memorandum Opinion and Order*, 7 FCC Rcd 7543 (DRB CCB 1992) (*Superior*); *see also* 47 C.F.R. § 21.44 (2002).

<sup>60</sup> *Burlington*, 13 FCC Rcd 772 ¶ 7 *citing* 47 C.F.R. § 21.44(b)(1) – (3) (2002).

<sup>61</sup> *Id.*

Rules limits consideration of reinstatement petitions to petitions that are filed within thirty days of the expiration date of the license.<sup>62</sup>

16. We agree with the Division that, absent a waiver, OWTC would not comply with the Commission's rules concerning applications for renewal and reinstatement of its license. Specifically, OWTC's licenses expired on May 1, 2001, and it did not file a renewal application until December 30, 2002, more than eighteen months late, and beyond the timeframe established by the Commission's rules for filing a petition for reinstatement.

17. Contrary to the Division's finding, though, we conclude that OWTC made the requisite showing that a grant of a waiver was warranted under Section 21.19 of our rules, which applied to OWTC at the time that it filed its waiver request.<sup>63</sup> Under Section 21.19, a waiver will not be granted except upon an affirmative showing that:

- (a) The underlying purpose of the rule would not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or
- (b) The unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applications must also show the lack of a reasonable alternative.

In addition, a request for waiver must contain a statement of reasons sufficient to justify a waiver.<sup>64</sup>

18. While the Division discussed the first prong of the waiver standard,<sup>65</sup> there is little evidence in the Division's *MO&O* to show that the Division analyzed OWTC's argument under the second prong of the waiver standard. The Division did not enunciate the second prong of the waiver standard, nor did it affirmatively decide whether the unique facts and circumstances of OWTC's situation would render the application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. The Division merely stated that "[w]e find no merit in OWTC's argument that it would be contrary to public policy to allow its call signs to fall into the hands of a company that has filed a voluntary petition for bankruptcy,"<sup>66</sup> a reference to an argument made by OWTC concerning Nucentrix, the then BTA holder who had the exclusive right to apply for OWTC's channels if the licenses for the Stations were cancelled. The Division did not analyze the remainder of OWTC's argument under the second prong of the waiver standard. This oversight was in error.

19. In reviewing OWTC's request under the second prong of the waiver standard, we conclude that OWTC has justified a waiver. We also find that the Division erred in concluding that there was no compelling public policy rationale for a waiver.<sup>67</sup> In particular, we conclude that requiring OWTC to terminate its operations would be inequitable and unduly burdensome to OWTC's customers. OWTC has

<sup>62</sup> See 47 C.F.R. § 21.44(b)(1) (2002).

<sup>63</sup> 47 C.F.R. § 21.19 (2002). Since January 10, 2005, the effective date of the rules adopted in the *BRS/EBS R&O*, BRS licensees must meet the waiver standard set forth in 47 C.F.R. § 1.925(b)(3).

<sup>64</sup> *Id.* The waiver standard under Section 21.19 is the same as the standard set forth under Section 1.925(b)(3), which applies to BRS licensees as of January 10, 2005. 47 C.F.R. §§ 1.925(b)(3), 21.19.

<sup>65</sup> *MO&O*, 19 FCC Rcd at 22783 ¶ 9.

<sup>66</sup> *MO&O*, 19 FCC Rcd at 22784 ¶ 12.

<sup>67</sup> See *MO&O*, 19 FCC Rcd at 22784 ¶ 13.

demonstrated that its customers in rural Southeastern Oklahoma have no viable alternative to OWTC's service. Virtually all of OWTC's customers cannot receive service from franchised cable systems.<sup>68</sup> OWTC also provides a valuable service to the community through weather alerts and provides programming that would otherwise not be available to its customers. We conclude that it would be inequitable and overly harsh to subject OWTC's customers to the disruption that would result from terminating OWTC's services. We find that it is in the public interest to permit OWTC to renew its licenses to permit it to continue to provide regional programming and emergency alerts to the citizens of Southeastern Oklahoma. We also note that OWTC has taken corrective measures to assure that in the future it will timely renew its licenses for the Stations.<sup>69</sup> Under these circumstances, we will waive the rules and excuse the late filing of OWTC's renewal applications.

20. Because OWTC requests a waiver of the transition rules solely because it is uncertain whether its licenses will be renewed,<sup>70</sup> we dismiss, without prejudice, OWTC's request to opt-out of the transition of the 2500-2690 MHz band. We further grant OWTC forty-five days from the release date of this *Memorandum Opinion and Order* to request a waiver to opt-out of the transition. We also grant Fixed Wireless Holdings, LLC, the proponent of BTA B341, an additional ninety days from the release date of this *Memorandum Opinion and Order* to complete the transition planning period for BTA B341 because adjustments to the transition plan may be needed to reflect OWTC's reinstated licenses.<sup>71</sup>

#### IV. CONCLUSION AND ORDERING CLAUSES

21. OWTC has justified a waiver under the second prong of the waiver standard. Accordingly, we will grant the AFR, reinstate its renewal applications, and direct processing of those renewal applications. We dismiss OWTC's request to opt-out of the transition and grant OWTC 45 days from the release date of this *Memorandum Opinion and Order* to request a new waiver to opt-out of the transition.

22. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review filed by Oklahoma Western Telephone Company, Inc. on December 20, 2004 IS GRANTED to the extent indicated herein.

23. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, that Oklahoma Western Telephone Company, Inc.'s applications to renew Stations WLK382, WNTC500, WNTC664, and WNTD797, File Nos., 20021231AAB, 20021231AAC, 20021231AAD and 20021231AAE ARE REINSTATED AND ARE REFERRED to the Wireless Telecommunications Bureau, Broadband Division for further processing consistent with this *Memorandum Opinion and Order*.

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<sup>68</sup> *OWTC March 2008 Ex Parte* at 2.

<sup>69</sup> AFR at 14.

<sup>70</sup> Opt-Out Waiver Request at 4-6.

<sup>71</sup> The 90-day transition planning period normally begins once an initiation plan is filed with the Commission. See 47 C.F.R. § 27.1232(a). The proponent must provide each licensee with a transition plan within thirty days prior to the conclusion of the transition planning period. 47 C.F.R. § 27.1232(b). In this case, we are granting Fixed Wireless Holdings, LLC a new 90-day transition planning period, starting from the release date of this *Memorandum Opinion and Order*, to allow it to adjust its transition plan to account for OWTC's reinstated licenses. Fixed Wireless Holdings, LLC may provide a modified transition plan to each licensee, including OWTC, no later than thirty days prior to the end of the new transition planning period. Other licensees may provide counterproposals to that revised transition plan no later than 10 days before the end of the transition planning period. See 47 C.F.R. § 27.1232(c).



24. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.925 and 27.1231(g) of the Commission's Rules, 47 C.F.R. §§ 1.925, 27.1231(g), that the Request for Waiver filed by Oklahoma Western Telephone Company, Inc. on April 13, 2007 IS DISMISSED WITHOUT PREJUDICE.

25. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.925 and 27.1231(g) of the Commission's Rules, 47 C.F.R. §§ 1.925, 27.1231(g), that Oklahoma Western Telephone Company, Inc. has until forty-five days from the release date of this *Memorandum Opinion and Order* to file a new opt-out waiver request.

26. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.115(d) of the Commission's Rules, 47 C.F.R. § 1.115(d), that the Supplement to Application for Review filed by Oklahoma Western Telephone Company, Inc. on February 28, 2007 and the Reply of Sprint Nextel Corporation to Supplement to Application for Review filed on March 29, 2007 ARE DISMISSED.

27. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), that the Motion for Leave to File Responsive Pleading filed by Oklahoma Western Telephone Company, Inc. on May 4, 2007 IS DENIED and the Response to Reply of Sprint Nextel Corporation to Supplement to Application for Review filed by Oklahoma Western Telephone Company, Inc. on May 4, 2007 IS DISMISSED.

28. IT IS FURTHER ORDERED that the transition planning period for Fixed Wireless Holdings, LLC with respect to the transition for Basic Trading Area B341 is extended until ninety days from the release of this *Memorandum Opinion and Order*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Application of Oklahoma Western Telephone Company, Inc. for Renewal of Broadband Radio Service Stations WLK382, WNTC500, WNTC664, and WNTD797, Clayton, Oklahoma.*

I issue this statement to place emphasis on the narrow scope of our decision today. We should allow waivers of our license renewal applications requirements only under rare circumstances. Here, Oklahoma Western Telephone Company provides a substantial public service by providing urgent weather alerts in an area where natural disasters are prevalent, and by providing local news and entertainment channels and public education and government access channels to a sparsely populated area. I also take assurances from Oklahoma Western Telephone Company's commitment to take corrective measures to ensure that it will timely renew its licenses for these stations in the future. Under these circumstances, I approve this waiver of our rules.