

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

In the Matter of)
)
FIRST STUDENT, INC.) File No. 0004598090
)
For Renewal of Public Safety Pool)
Conventional License, Station WNVK311,)
Worcester, Massachusetts)

ORDER ON RECONSIDERATION

Adopted: February 6, 2012

Released: February 6, 2012

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On July 22, 2011, First Student, Inc. (First Student) filed a petition for reconsideration¹ of a decision by the Licensing Branch of the Public Safety and Homeland Security Bureau’s Policy and Licensing Division (Division) to dismiss its application for renewal of Public Safety Pool Conventional Station WNVK311, Worcester, Massachusetts.² For the reasons discussed below, we grant the Petition, reinstate First Student’s renewal application, and require First Student to amend its application to correct the licensee name within sixty days from the date of this Order.

II. BACKGROUND

2. In October 2007, the Commission approved the assignment of license for station WNVK311 from Laidlaw Transit, Inc., to First Student.³ The expiration date of the WNVK311 license was February 6, 2011. On February 1, 2011, FirstGroup America, Inc., (FirstGroup) filed an application to renew the WNVK311 license.⁴ On April 15, 2011, the Division sent a Notice of Return letter to FirstGroup, requesting it to explain the change in name from First Student to FirstGroup.⁵ The Division noted that “this appears to be a change in ownership” and requested that FirstGroup explain the discrepancy.⁶ The Division warned that failure to respond within 60 days (*i.e.* by July 2, 2011) would result in dismissal of the renewal application.⁷ FirstGroup did not respond and the Division dismissed the

¹ Letter from Michael Petrucci, Vice President and Deputy General Counsel, First Student, Inc., to FCC, PSHSB (dated July 21, 2011) (Petition).

² Reference No. 5182777 (July 6, 2011).

³ File No. 0002981665 (May 25, 2007).

⁴ File No. 0004598090 (filed Feb. 1, 2011).

⁵ Reference No. 5138932 (dated Apr. 15, 2011).

⁶ *Id.*

⁷ *Id.*

renewal application, pursuant to Section 1.934 of the Commission's rules,⁸ for failing to timely respond to the Notice of Return letter.⁹

3. In its Petition, First Student submits that it "has no record of receiving a Notice of Return letter."¹⁰ First Student acknowledges that the renewal application "was placed in return status because of an appearance of a change in ownership due to a change in name from [First Student] to [FirstGroup],¹¹ but advises "that there is no change in ownership."¹² First Student adds that (1) FirstGroup "remains the parent company of First Student"; (2) "[i]t appears that [First Group] was mistakenly placed on the renewal application"; (3) and that First Student "should have been listed on the application as the licensee."¹³

III. DISCUSSION

4. Section 1.5(a) of the Commission's rules provides that the Commission will use the mailing address furnished by a licensee on its most recent application for the delivery of official correspondence unless the licensee notifies the Commission to the contrary.¹⁴ Section 1.5(b) further specifies that "[t]he licensee is responsible for making any arrangements which may be necessary in his particular circumstances to assure that Commission documents or correspondence delivered to this address will promptly reach him or some person authorized by him to act in his behalf."¹⁵ Our records indicate that Commission staff sent the Notice of Return letter to the address provided on the renewal application. As a Commission licensee, First Student is responsible for responding to application returns. Its failure to do so merits dismissal of the application.¹⁶ Based on the facts, we find First Student's claim that it did not receive the Notice of Return letter unpersuasive.¹⁷ Our records indicate that staff mailed the Notice of Return letter to the same address used for sending the dismissal letter, which is the same address First Student provided on its Petition.

5. Although the authorization for station WNVK311 expired on February 6, 2011, we note that First Student expressed an interest in retaining its license as demonstrated by its filing a renewal application before the end of the license term, albeit using the wrong applicant name. Other than the incorrect licensee name, the renewal application was complete. Further, after First Student learned that its

⁸ 47 C.F.R. § 1.934.

⁹ Reference No. 5182777 (July 6, 2011).

¹⁰ Petition.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ 47 C.F.R. § 1.5(a).

¹⁵ 47 C.F.R. § 1.5(b).

¹⁶ When an application is returned, the applicant must respond by amending its application to provide the requested information within sixty days. If at the end of the sixty-day period the Division is still unable to process the application (whether or not it has been amended), the Division may dismiss the application pursuant to Section 1.934(c) of the Commission's Rules, 47 C.F.R. § 1.934(c), for failure to prosecute. *See* Wireless Telecommunications Bureau Revises and Begins Phased Implementation of Its Unified Policy for Reviewing License Applications and Pleadings, *Public Notice*, 14 FCC Rcd 11182, 11186 (WTB 1999).

¹⁷ *See* Greenfield Area Life Squad, Inc., *Order on Reconsideration*, 21 FCC Rcd 9127 (PSCID WTB 2006) (claim that a frequency coordinator, acting on behalf of the applicant, did not receive notice of a return letter from the Commission does not excuse the applicant's failure to amend the application).

renewal application had been dismissed for failure to respond to the Notice of Return letter, First Student acknowledged its error and provided the information requested by the Division. Based on the specific facts of this case, and notwithstanding First Student's failure to respond to the Notice of Return letter, we find that the public interest would be served by reinstating First Student's renewal application and requiring it to amend its application within sixty (60) days to specify the correct applicant name.¹⁸ If First Student fails to amend its application within that time, we will dismiss its application.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that pursuant to Sections 4(i), 309, 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 405(a), and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by First Student, Inc., on July 22, 2011, IS GRANTED to the extent discussed herein.

7. 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 renewal application, File No. 0004598090, SHALL BE REINSTATED AND PROCESSED in accordance with this *Order on Reconsideration* and the Commission's rules and policies.

8. IT IS FURTHER ORDERED that First Student, Inc., is hereby directed to file an amendment to its renewal application, File No. 0004598090, within sixty (60) days of the release date of this *Order on Reconsideration*. If First Student fails to amend its application within that time period, we will dismiss its application for license renewal.

9. We take this action under delegated authority pursuant to Section 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

¹⁸ *Cf.*, e.g., City of Dardanelle Fire Department Application to Renew License for Station WNHQ335, Dardanelle, Arkansas, *Order*, 17 FCC Rcd 10901 (PSPWD 2002) (granting a request for waiver of the filing deadline for renewal applications, in part because the licensee promptly filed the a revised application upon notification that the prior application was rejected); Florida Power and Light Company, *Order*, FCC Rcd 13607 (WTB PSPWD 2000) (permitting waiver and reinstatement where licensee timely filed a renewal application that was dismissed for reasons unrelated to the licensee's actual operation of the station).