

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

In the Matter of )
UNIVERSITY OF LOUISIANA at LAFAYETTE ) File No. 0003505817
Petition for Reconsideration of Pending )
Termination of Educational Broadband Service )
License for Station WND431 )

ORDER ON RECONSIDERATION

Adopted: March 29, 2012

Released: March 30, 2012

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

I. INTRODUCTION

1. In this Order on Reconsideration, we dismiss as untimely a petition for reconsideration of our placement into termination pending status of an Educational Broadband Service ("EBS") license in Louisiana.

II. BACKGROUND

2. In 2004, the Commission undertook the radical transformation of the 2496-2690 MHz band to facilitate the development and deployment of advanced wireless services, including wireless broadband. The Commission radically changed the band plan and technical and licensing rules applicable to EBS licenses and required EBS licensees to transition from their old channel locations to their new channel locations.

3. On April 27, 2006, the Commission adopted new construction requirements applicable to all BRS and EBS licensees, which were codified at Section 27.14(o) of the Commission's Rules. Under Section 27.14(o), all BRS and EBS licensees were required to demonstrate substantial service on or before May 1, 2011. The Commission defines substantial service as a level of service, which is sound,

1 See 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, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 03-66, 19 FCC Rcd 14165 (2004) (BRS/EBS R&O and FNPRM, as appropriate).

2 Id.

3 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, Second Report and Order, WT Docket No. 03-66, 21 FCC Rcd 5606, 5718-5736 274-310 (2006) (BRS/EBS Second R&O).

4 47 C.F.R. § 27.14(o). See 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, Second Report and Order, WT Docket No. 03-66, 21 FCC Rcd 5606, 5718-5736 ¶¶ 274-310 (2006) (BRS/EBS Second R&O).

favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.<sup>5</sup> A BRS or EBS licensee may make a showing based on meeting the definition of substantial service or based on meeting one of the general safe harbors provided by the Commission in Section 27.14(o)(1) of the Commission's Rules.<sup>6</sup> In addition, an EBS licensee may make a showing under the educational "safe harbor" the Commission specifically adopted for EBS licensees in Section 27.14(o)(2) of the Commission's Rules.<sup>7</sup> Many EBS licensees have demonstrated substantial service by meeting this safe harbor.<sup>8</sup>

4. On February 1, 2011, the Wireless Telecommunications Bureau ("Bureau") sent a construction/coverage reminder letter to University of Louisiana at Lafayette ("Lafayette") for EBS Station WND431.<sup>9</sup> On March 22, 2011, the Bureau extended the deadline for EBS licensees to demonstrate substantial service from May 1, 2011 to November 1, 2011.<sup>10</sup> Lafayette did not provide a notification of substantial service or seek an extension if the November 1, 2011 deadline.

5. On December 7, 2011, a license auto-termination letter was sent<sup>11</sup> and Station WND431 entered termination pending status.<sup>12</sup> Accordingly, on the same day, the Bureau provided public notice of the pending license termination.<sup>13</sup> On January 12, 2012, Lafayette filed a petition for reconsideration of the license termination.<sup>14</sup>

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<sup>5</sup> 47 C.F.R. § 27.14(o).

<sup>6</sup> An EBS or a BRS licensee could meet the substantial service requirement by showing that it meets one or more of the following five general safe harbors: that it constructed six permanent links per one million people for licensees providing fixed point-to-point services; that it provided coverage of at least 30 percent of the population of the licensed area for licensees providing mobile services or fixed point-to-multipoint services; that it provided service to "rural areas" or areas with limited access to telecommunications services; that it provided specialized or technologically sophisticated service; or that it provided service to niche markets. 47 C.F.R. § 27.14(o)(1).

<sup>7</sup> Under the educational "safe harbor," an EBS licensee is deemed to be providing substantial service with respect to all channels it holds if: it is using its spectrum (or spectrum to which its educational services are shifted) to provide educational services within its GSA; the services it provides are actually being used to serve the educational mission of one or more accredited public or private schools, colleges or universities providing formal educational and cultural development to enrolled students; and the level of service it provides meets or exceeds the minimum usage requirements specified in the Commission's rules. 47 C.F.R. § 27.14(o)(2).

<sup>8</sup> The Wireless Telecommunications Bureau has accepted over 2,100 substantial service notifications from EBS licensees who complied with the November 1, 2011 deadline.

<sup>9</sup> Construct/Coverage Reminder, Ref. No. 5101794 (Feb. 1, 2011).

<sup>10</sup> See National EBS Association and Catholic Television Network, *Memorandum Opinion and Order*, 26 FCC Rcd 4021 ¶ 1 (WTB/2011) ("*EBS Extension Order*").

<sup>11</sup> Auto Termination letter, Ref. No. 5269113 (Dec. 7, 2011).

<sup>12</sup> When a licensee fails to file a notification that it has completed construction by an applicable buildout deadline, the license, location, or frequency is placed in "termination pending" status. For a license, location, or frequency in that status, the Bureau presumes that the licensee did not meet buildout requirement. If the licensee does not file a petition for reconsideration within 30 days after public notice of the termination pending status demonstrating that it met that buildout requirement, the status of the license, location, or frequency is changed to "terminated" as of the buildout deadline. See Wireless Telecommunications Bureau Announces Deployment Of "Auto-Term," the Automated Feature in its Universal Licensing System That Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, *Public Notice*, 21 FCC Rcd 163 (WTB 2006).

<sup>13</sup> Wireless Telecommunications Bureau Market Based Licenses Termination Pending, Report No. 7360, *Public Notice* (Dec. 7, 2011) at 4.

<sup>14</sup> Request to Suspend Termination of UL Lafayette License # WND431, The University of Louisiana at Lafayette (filed Jan. 12, 2012) ("*Petition*").

### III. DISCUSSION

6. Section 405(a) of the Communications Act, as implemented by Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days from the date of public notice of Commission action.<sup>15</sup> Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.<sup>16</sup> Since public notice of the impending license terminations were given on December 7, 2011, pursuant to Section 1.4(b)(4) of the Commission's Rules, the first day to be counted in computing the thirty-day period was December 8, 2011. The last day for filing a petition for reconsideration was January 6, 2012.

7. We received Lafayette's Petition on January 12, 2012. Therefore, we find that the Petition was filed late. The United States Court of Appeals for the District of Columbia Circuit has consistently held that the Commission is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act,<sup>17</sup> except where "extraordinary circumstances indicate that justice would thus be served."<sup>18</sup> We note the filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.<sup>19</sup> We do not believe that Lafayette has shown such extraordinary circumstances to be present here. Indeed, Lafayette has failed to acknowledge that it did not file in a timely manner. Accordingly, we dismiss the Petition as late-filed.

### IV. ORDERING CLAUSES

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 Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by the University of Louisiana at Lafayette on January 12, 2012, respectively IS DISMISSED.

9. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.955(a)(2) of the Commission's Rules, 47 C.F.R. § 1.955(a)(2), that the license for Station WND431 IS DECLARED TERMINATED as of November 1, 2011.

10. These actions are 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

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<sup>15</sup> 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

<sup>16</sup> 47 C.F.R. § 1.4.

<sup>17</sup> See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976).

<sup>18</sup> *Gardner v. FCC*, 530 F.2d at 1091.

<sup>19</sup> See, e.g., *Panola Broadcasting Co., Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); *Metromedia, Inc., Memorandum Opinion and Order*, 56 FCC 2d 909 (1975).