

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

In the Matter of Application of
GARNETT UNIFIED SCHOOL DISTRICT #365
For Renewal of License for Educational
Broadband Service Station WLX335
File No. 0005177897

MEMORANDUM OPINION AND ORDER

Adopted: October 16, 2012

Released: October 17, 2012

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

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant Garnett Unified School District #335 ("Garnett") a waiver of the Commission's rule requiring that a licensee file its renewal application before its license expires. While Garnett had filed a timely application to renew Station WLX335, the application had been dismissed because Garnett 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 WLX335 and thus allow Garnett to continue providing educational broadband services.

II. BACKGROUND

2. Garnett operates Educational Broadband Service ("EBS") Station WLX335 on the D-group channels in Garnett, Kansas. Garnett has constructed a wireless network that provides coverage to Garnett's campus, its administration facility, and its adjacent athletic and recreational facilities.

3. On October 20, 2011, Garnett timely notified the Commission that it had constructed Station WLX335 as required under Section 27.14(o) of the Commission's Rules and that it was using the station for educational purposes. Thus, Garnett met the deadline applicable to all EBS licensees to demonstrate substantial service on or before November 1, 2011. Unfortunately, although Garnett timely filed its Construction Notification, it did so confidentially, and the public was unable to review it to determine whether Garnett had met the substantial service and educational use requirements applicable to EBS licenses.

1 File No. 0004921621 (filed Oct. 20, 2011) ("Construction Notification").

2 Id.

3 47 C.F.R. § 27.14(o).

4 See 47 C.F.R. §§ 27.1203, 27.1214.

5 See National EBS Association and Catholic Television Network, Memorandum Opinion and Order, 26 FCC Rcd 4021 (WTB 2011).

4. On November 14, 2011, Garnett timely filed an application to renew Station WLX335, which was scheduled to expire on February 6, 2012.<sup>6</sup> Under the Commission rules, licensees may file a renewal application 90 days before the license expires.<sup>7</sup>

5. On January 26, 2012,<sup>8</sup> the Wireless Telecommunications Bureau (“Bureau”) returned Garnett’s First Renewal Application because Garnett was required to disclose the owners of Station WLX335 by filing FCC Form 602 and did not do so.<sup>9</sup> The First Renewal Notice of Return indicated that Garnett must file Form 602 within 60 days (on or before March 26, 2012) or its First Renewal Application would be dismissed.<sup>10</sup>

6. Two months later, on March 17, 2012, the Bureau returned the Garnett’s Construction Notification because Garnett had filed it originally as a confidential document that could not be viewed by the public.<sup>11</sup> The construction notification Notice of Return requested that Garnett re-file the substantial service notification so that it could be viewed by the public and to redact only confidential information, if any.<sup>12</sup> The Construction Notification Notice of Return stated that Garnett must file a construction notification that is viewable by the public within 60 days (on or before May 17, 2012) or its construction notification would be dismissed.<sup>13</sup>

7. On April 17, 2012, the Bureau dismissed Garnett’s First Renewal Application because Garnett did not respond to the First Renewal Notice of Return.<sup>14</sup>

8. On April 24, 2012, Garnett timely responded to the Construction Notification Notice of Return by re-filing its Construction Notification in a publicly viewable format.<sup>15</sup> Also on April 24, 2012, Garnett filed the Second Renewal Application seeking to renew its application to operate Station WLX335<sup>16</sup> and an associated request<sup>17</sup> to waive Section 1.949(a) of the Commission’s rules, which requires licensees to file their renewal applications before their license expiration date.<sup>18</sup>

9. On July 3, 2012, the Bureau returned Garnett’s Second Renewal Application because Garnett had again failed to file Form 602.<sup>19</sup> The Second Renewal Application Notice of Return directed Garnett to file Form 602 within 60 days (on or before September 4, 2012) or its Second Renewal

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<sup>6</sup> File No. 0004952711 (filed Nov. 14, 2011) (“First Renewal Application”).

<sup>7</sup> 47 C.F.R. § 1.949(a).

<sup>8</sup> Notice of Return, Ref. No. 5301908 (Jan. 26, 2012) (“First Renewal Application Notice of Return”).

<sup>9</sup> See 47 C.F.R. § 1.913(a)(2).

<sup>10</sup> First Renewal Application Notice of Return.

<sup>11</sup> Notice of Return, Ref. No. 5333759 (Mar. 17, 2012) (“Construction Notification Notice of Return”).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Notice of Dismissal, Ref. No. 5355969 (Apr. 17, 2012). The Bureau gave public notice of the dismissal of the Renewal Application on April 18, 2012. See Wireless Telecommunications Bureau Market-Based Applications Action, Report No. 7695, *Public Notice* (Apr. 18, 2012) at 1.

<sup>15</sup> Construction Notification, Amendment (filed Apr. 24, 2012).

<sup>16</sup> File No. 0005177897 (filed Apr. 24, 2012) (“Second Renewal Application”).

<sup>17</sup> Second Renewal Application, Waiver Request.

<sup>18</sup> 47 C.F.R. § 1.949(a).

<sup>19</sup> Notice of Return, Ref. No. 5403921 (Jul. 3, 2012) (“Second Renewal Application Notice of Return”) at 1-2.

application would be dismissed.<sup>20</sup> On August 23, 2012, Garnett timely responded to the Second Renewal Application Notice of Return by filing Form 602.<sup>21</sup>

### III. DISCUSSION

10. Although Garnett timely filed its application to renew Station WLX335, we conclude that the dismissal of Garnett's First Renewal Application was proper. Under Section 1.934(c) of the Commission's Rules, we properly dismissed Garnett's First Renewal Application because Garnett failed to respond to our First Renewal Application Notice of Return on or before March 26, 2012, the date indicated in the First Renewal Application Notice of Return.<sup>22</sup> 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."<sup>23</sup> In this case, the First Renewal Application Notice of Return requested that Garnett disclose the owners of Station WLX335 by filing Form 602 on or before March 26, 2012. Garnett did not do so and thus its First Renewal Application was properly dismissed.

11. The pertinent question before us, however, is whether to grant Garnett's request to waive Section 1.949(a) of the Commission's rules to allow consideration of its Second Renewal Application. The Commission may grant a waiver request if it is shown that: (i) the underlying purpose of the rule(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.<sup>24</sup> We conclude that it is in the public interest to grant Garnett's Waiver Request because Garnett has shown that in view of its unique factual circumstances applying Section 1.949(a) to its case is contrary to the public interest. 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,<sup>25</sup> based upon the totality of the circumstances of this case, we find that Garnett has shown that in view of its unique factual circumstances, it is in the public interest to grant its Waiver Request and allow processing of its Second Renewal Application.<sup>26</sup> Although Garnett 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 Construction Notification, timely responded to the Construction Notification Notice of Return, constructed Station WLX335, and is providing wireless educational service to its students, faculty, and staff. We also note that although the Notices of Return concerned two separate matters, both concerned the license to operate Station WLX335, were sent to Garnett close-in-time, and could easily be confused by Garnett, which timely responded to one Notice of Return and not the other. Under these specific circumstances, while

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<sup>20</sup> Second Renewal Application Notice of Return at 1.

<sup>21</sup> Second Renewal Application, Amendment (filed Aug. 23, 2012). *See* Form 602, Garnett Unified School District #365, File No. 0005363358 (filed Aug. 22, 2012, amended Aug. 24, 2012).

<sup>22</sup> 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."

<sup>23</sup> *See* First Renewal Application Notice of Return.

<sup>24</sup> 47 C.F.R. § 1.925(b).

<sup>25</sup> *See* RAM Technologies, Inc., *Order on Reconsideration*, 16 FCC Rcd 10919 (WTB PS&PWD 2001).

<sup>26</sup> *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).

we expect Garnett to exercise greater care in the future, we find that it is not in the public interest for Garnett to lose its license for this isolated failure.

#### IV. CONCLUSION AND ORDERING CLAUSES

12. The decision to dismiss Garnett'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 Garnett's Second Renewal Application. Accordingly, we grant Garnett's Waiver Request.

13. 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 Garnett Unified School District #365 on April 24, 2012 IS GRANTED.

14. 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 Garnett Unified School District #365 for renewal of license of Educational Broadband Service Station WLX335 (File No. 0005177897) in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

15. 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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