

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

In the Matter of Application of
VAN BUREN PUBLIC SCHOOL
For Renewal and Modification of License for
Educational Broadband Service Station WNC445
File No. 0006408130

ORDER ON RECONSIDERATION

Adopted: December 18, 2014

Released: December 19, 2014

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

I. INTRODUCTION

1. In this Order on Reconsideration, we grant a petition for reconsideration and reinstate a renewal application that had been dismissed for failure to respond to a notice of return. While the original dismissal was correct, we find that the public interest would best be served by reinstating the renewal application and allowing the licensee to provide educational broadband services.

II. BACKGROUND

2. Van Buren Public School ("Van Buren") operates Educational Broadband Service ("EBS") Station WNC445 on the A-group channels in Van Buren, Arkansas. Van Buren had timely demonstrated substantial service for Station WNC445 in 2011. Van Buren operates a wireless network that covers its senior high school campus, administrative facilities, and adjacent athletic and recreational facilities. Van Buren was required to file a renewal application in the 90-day period prior to September 30, 2014. On August 4, 2014, Van Buren timely filed a Renewal/Modification Application to renew and modify Station WNC445.

3. The Wireless Telecommunications Bureau ("Bureau") returned the Renewal/Modification Application on August 9, 2014 because Van Buren answered "yes" to Item 12, which asks whether "the frequencies or parameters requested in the filing are covered by grandfathered privileges, previously approved by waiver, or functionally integrated with an existing station." The Notice of Return then stated that Van Buren should "review its present authorization or the specific rules governing operation on the frequency (ies) requested to determine if entering 'yes' to Item 12 was

1 File No. 0006408130 (filed Aug. 4, 2014) ("Renewal/Modification Application").

2 See File No. 0004868468 (filed Sep. 8, 2011, amended Sep. 28, 2011, accepted Oct. 12, 2011).

3 Petition for Reconsideration, Van Buren Public School (filed Nov. 21, 2014) ("Petition") at 2.

4 See 47 C.F.R. § 1.949(a).

5 Renewal/Modification Application.

6 Notice of Return, Ref. No. 5846613 (Aug. 9, 2014) ("Notice of Return").

7 Id.

appropriate.”⁸ If Van Buren’s response to Item 12 was correct, the Notice of Return indicated that Van Buren should “update and amend its application by attaching an exhibit that explained the circumstances.”⁹ If, however, Van Buren’s response to Item 12 was in error, the Notice of Return indicated that Van Buren was to update and amend its application to correct this response.¹⁰ The Notice of Return informed Van Buren that it must respond within 60 days of the date of the Notice of Return.¹¹ Thus, Van Buren was required to respond to the Renewal/Modification application Notice of Return on or before October 8, 2014.

4. On August 15, 2014, Van Buren attempted to respond to the Notice of Return by filing a separate modification application to, among other things, change its response to Item 12 from “yes” to “no.”¹² The Bureau granted that application on August 18, 2014.¹³ Van Buren did not amend the Renewal/Modification Application as directed by the Notice of Return. On October 28, 2014, the Bureau dismissed the Renewal/Modification Application because Van Buren had not *amended* the Renewal/Modification Application within 60 days of the date of the Notice of Return.¹⁴

III. DISCUSSION

5. In this case, Van Buren responded to the Notice of Return letter on August 15, 2014, thus complying with the Notice of Return’s deadline, but it incorrectly filed a separate modification application rather than an amendment to the Renewal/Modification Application. Thus, under the Commission’s Universal Licensing Service processes, Van Buren did not properly respond to the Notice of Return because it used an incorrect process, and thus did not timely respond to the Notice of Return. 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.”¹⁵ The Bureau sends a Notice of Return to applicants when additional information is necessary for the Bureau to process the application. The Notice of Return plainly states 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.”¹⁶ Although Van Buren attempted to respond to the Notice of Return it incorrectly did so. Accordingly, we conclude that the dismissal of Van Buren’s Renewal/Modification Application was proper.

6. The pertinent question before us, however, is whether to reinstate Van Buren’s Renewal/Modification Application on reconsideration. Based upon the totality of the circumstances involved in this case, we believe the public interest would best be served by granting the Petition and reinstating the Renewal/Modification Application. Although Van Buren did not correctly respond to the Notice of Return, it did in fact try to respond on August 15, 2014, well within the 60-day deadline specified in the Notice of Return. According to Van Buren, this whole situation occurred because it

⁸ Notice of Return at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See File No. 0006425362 (filed Aug. 15, 2014).

¹³ See File No. 0006425362 (granted Aug. 18, 2014).

¹⁴ Notice of Dismissal, Ref. No. 5888937 (Oct. 28, 2014). See also Wireless Telecommunications Bureau Market-Based Applications Action, Report No. 10011 (Oct. 29, 2014) at 1.

¹⁵ 47 C.F.R. § 1.934(c).

¹⁶ Notice of Return.

should have originally filed a renewal only application rather than a renewal/modification application.¹⁷ If Van Buren had filed a renewal only application, Van Buren would not have had to respond to Item 12, and since there was no other defect in the Renewal/Modification Application, the application would not have been returned. Van Buren states that this situation should not occur in the future because it plans to work with Aristotle Inc., a wireless Internet service provider based in Little Rock, Arkansas, to expand the educational and commercial deployment of its licensed spectrum, and, as part of this arrangement, Aristotle and its counsel will track deadlines pertinent to Van Buren's license so that clerical errors and confusion can be avoided in the future.¹⁸ Thus under these specific circumstances, while we expect Van Buren to exercise greater care in the future, we do not believe that Van Buren should lose its license for this isolated failure.

7. Another circumstance supporting reinstatement of Van Buren's renewal applications is that it is providing educational broadband service to students and faculty. Van Buren indicates that it "wirelessly distributes access to its own internal network(s) and the public internet over the licensed spectrum to portable Wi-Fi access points (hot spots) that can be moved as needed across the Coverage Area."¹⁹ According to Van Buren, "through the use of hot spots, students, faculty, and other authorized end users are able to access the wireless network throughout the Coverage Area, including areas not presently equipped with wireless coverage."²⁰ Based upon the totality of the circumstances, we conclude that it is in the public interest to grant Van Buren's Petition. Our action is consistent with other cases where we have reinstated renewal applications when licensees failed to properly respond to return notices but acted in good faith.²¹

8. We will therefore reinstate the Renewal/Modification Application to pending status. In order to ensure that we have an accurate record, we direct Van Buren to amend the Renewal/Modification application within 60 days from the release of this *Memorandum Opinion and Order* to correct its response to Question 12 and to provide such additional information and explanation as it deems appropriate. If Van Buren fails to amend the Renewal/Modification Application within that 60-day period, the Renewal/Modification Application will be dismissed.²²

IV. CONCLUSION AND ORDERING CLAUSES

9. The decision to dismiss Van Buren's Renewal Application was correct. However, based upon the information provided in the Petition, we have decided to reinstate Van Buren's Renewal Application. Accordingly, we grant Van Buren's petition for reconsideration.

10. 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 Van Buren Public School on November 21, 2014 IS GRANTED.

¹⁷ Petition at 3.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ 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); Burlington College, *Order on Reconsideration*, 27 FCC Rcd 15267 (WTB BD 2012).

²² See 47 C.F.R. § 1.934(c).

11. 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 REINSTATE AND PROCESS the application filed by Van Buren Public School to renew and modify EBS Station WNC445 (File No. 0006408130) in accordance with this *Order on Reconsideration* and the Commission's rules and policies.

12. 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 1.923(a) of the Commission's Rules, 47 C.F.R. § 1.923(a), that within 60 days of the release of this *Order on Reconsideration*, Van Buren Public School SHALL AMEND File No. 0006408130 to change the answer to Question 12 to "No" and to make such other changes as it deems appropriate.

13. 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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Wireless Telecommunications Bureau