



Federal Communications Commission
Washington, D.C. 20554

March 31, 2009

DA 09-731

Colby M. May, Esq., P.C.
205 Third Street SE
Washington DC 20003

In re: Community Educational Television, Inc.
TV Studio Transmitter Link WLF427, Harlingen, Texas
File No. 0002811722

Dear Mr. May:

On October 1, 2008, you filed, on behalf of your client, Community Educational Television, Inc. (CET) a petition for reconsideration¹ of the change of status of TV Studio Transmitter Link Station WLF427, Path 2, into termination pending status. On October 17, 2008, CET supplemented its petition² to seek a waiver of the automatic termination of the authorization specified in Section 1.946(c) of the Commission's Rules.³ For the reasons stated below, we grant CET's Petition and reinstate the license for Station WLF427, Path 2 to active status.

CET, a non-profit organization, is the licensee of non-commercial television station KLUJ-TV/DT, Harlingen, Texas, for which Station WLF427 is a studio-to-transmitter link.⁴ On February 20, 2007, the Wireless Television Bureau (Bureau) granted an application to modify Station WLF427 to add Path 2 to operate on 2043.5 MHz.⁵ The application was filed as part of the process to relocate BAS incumbents from the 1990-2025 MHz band.⁶ Under the terms of the authorization, CET was required to complete construction of its modification by August 20, 2008.⁷ CET failed to do so.⁸ Accordingly, on September 24, 2008, the Commission notified CET that its license had been placed in termination pending status.⁹ In response, CET filed the Petition on October 1, 2008.

¹ Petition for Reconsideration (filed Oct. 1, 2008) (Petition).

² Supplement to Petition for Reconsideration and Request for Waiver of Commission Rule 1.946(c) (filed Oct. 17, 2008) (Supplement).

³ 47 C.F.R. § 1.946(c).

⁴ Petition at 1.

⁵ See File No. 0002811722 (granted Feb. 20, 2007). See also Wireless Telecommunications Bureau Site-By-Site Action, Report No. 2962, *Public Notice* (Feb. 28, 2007) at 18.

⁶ Petition at 1. See also *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, ET Docket No. 00-258, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004) (*800 MHz Order*).

⁷ See File No. 0002811722 (granted Feb. 20, 2007).

⁸ Petition at 1-2.

⁹ See *Construction/Coverage Deadline Notice of License Termination Pending Status*, Reference Number 4784124 (dated Sep. 24, 2008). See also *Public Notice*, Wireless Telecommunications Bureau Site Based Licenses Termination Pending Public Notice, Report No. 4393 (Sep. 24, 2008).

CET states that the dismissal of its authorization was based solely on CET's failure to complete construction of its auxiliary modification construction permit for Station WLF427 by the construction/coverage deadline for the permit.¹⁰ CET notes that the modification of Station WLF427 was a conversion of KLUJ-TV's studio-to-transmitter link to the new BAS band plan,¹¹ which had to be implemented and coordinated simultaneously by and among all stations in the Harlingen-Weslaco-Brownsville-McAllen, Texas market and also with Sprint Nextel Corporation.¹² CET states that, because not all of the other stations in the area were ready to change to that band plan until the last weekend of September 2008, CET was unable to complete a timely construction of Station WLF427, Path 2.¹³ CET further states that it has had its equipment ready for months, and that the area change-over finally occurred over the weekend of September 27-28, 2008, at which time CET completed construction of Station WLF427, Path 2.¹⁴ Because the facility is built and ready for service, CET seeks reinstatement of its captioned authorization,¹⁵ as well as waiver of Section 1.946(c) of the Commission's Rules.¹⁶ CET argues that, in view of the need to coordinate the build-out and transition of WLF427 among so many parties, and because the transition manifestly serves the public interest, waiver of Section 1.946(c) of the Commission's Rules is warranted under such special circumstances.¹⁷

Section 1.946(c) of the Commission's Rules states:

If a licensee fails to commence service or operations by the expiration of its construction permit or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires.¹⁸

The Commission's Rules state that waivers may be granted if it is shown that: (i) the underlying purpose of the rules(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.¹⁹

While we do not condone CET's failure to seek an extension of time in advance of the expiration of CET's construction/coverage deadline, we believe that, based on the totality of the circumstances

¹⁰ Petition at 1.

¹¹ See *800 MHz Order, supra*.

¹² Petition at 1; Supplement at 2.

¹³ Petition at 1.

¹⁴ *Id.* at 1-2.

¹⁵ *Id.* at 2.

¹⁶ 47 C.F.R. § 1.946(c).

¹⁷ Supplement at 2.

¹⁸ 47 C.F.R. § 1.946(c).

¹⁹ 47 C.F.R. § 1.925(b)(3).

involved in this case, the public interest would be served by granting the extension requested by CET.²⁰ CET has clearly shown that it has been diligent in constructing its system.²¹ The obstacle CET faced to timely completion of construction was primarily due to the need of numerous parties within CET's market to coordinate among themselves, a matter of timing which was beyond CET's control.²² Section 1.946(e)(1) of the Commission's Rules permits grants of extension of time for causes beyond the control of a licensee.²³ We note that CET completed construction of Station WLF427 as soon as coordination permitted, just one month beyond the expiration of CET's construction/coverage deadline.²⁴ Waiving Section 1.946(c) of the Commission's Rules and reinstating CET's authorization will further the Commission's goal of abating unacceptable interference to 800 MHz public safety systems in a way that imposes minimal disruption on licensees.²⁵

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.925, that the waiver request and the petition for reconsideration filed October 1, 2008 and supplemented October 17, 2008 by Community Educational Television, Inc. IS GRANTED, and the license for Station WLF427 IS RETURNED to active status.

IT IS FURTHER ORDERED, pursuant to pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.946 of the Commission's Rules, 47 C.F.R. § 1.946, that the time for Community Educational Television, Inc. to construct the facilities authorized under the license Station WLF427 IS EXTENDED TO September 13, 2008.

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.

Sincerely,

Blaise A. Scinto
Chief, Broadband Division
Wireless Telecommunications Bureau

²⁰ Normally, a request for extension of time to complete construction must be filed electronically using Form 601 and the Universal Licensing System (ULS). *See* 47 C.F.R. § 1.913(a)(1). In this case, however, CET cannot file an extension request electronically because the license in question is in termination pending status. We therefore grant CET such waivers as may be necessary to allow consideration of CET's request to extend the construction deadline.

²¹ *See, e.g.,* Regional Transit Service, Inc., *Letter Granting Extension of Time*, 23 FCC Rcd 5210, 5211 (WTB MD 2008).

²² *See, e.g.,* Leap Wireless International, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 19573, 19580 (WTB CWD 2001). *Cf.* Regional Transit Service, Inc., 23 FCC Rcd at 5211 (timing of Canadian government approval not within petitioner's control); NextBus Information Systems, Inc., *Letter Granting Extension of Time*, 23 FCC Rcd 2660, 2661 (WTB MD 2008) (timing of disbursement of federal funds not within petitioner's control).

²³ 47 C.F.R. § 1.946(e)(1). *See, e.g.,* Requests of Progeny LMS, LLC and PCS Partners, L.P. for Waiver of Multilateration Location and Monitoring Service Construction Rules, WT Docket No. 08-60, *Order*, DA 08-2614 (WTB Nov. 26, 2008) at n.13.

²⁴ Petition at 1-2.

²⁵ *800 MHz Order*, 19 FCC Rcd at 14972-73 ¶ 2.