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## **Late-Filed EBS/BRS Renewal Applications Get Reprieve**

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After sitting on a host of late-filed Educational Broadband Service (EBS) and Broadband Radio Service (BRS) renewal applications for more than two years, the FCC finally decided last month to accept the filings and process the applications. There were more than 116 EBS licensees who for various reasons had neglected to file their last renewal application by the prescribed deadline. In many cases, there had been some confusion about whether a renewal application was fileable when the underlying station had not yet been constructed. This occurred because, in the transition from oversight of such applications by the Mass Media Bureau to oversight by the Wireless Bureau, there was a change of policy on this issue which was never publicly announced. The Commission decided that it was unfair to administer the administrative death penalty to licensees who had failed to apprehend the new, but unannounced, policy and act accordingly.

On the other hand, there were also quite a few applicants who had simply neglected to file the renewal on time due to carelessness, oversight, changes in personnel, or because their lessee had failed to take care of it. The Commission declared, in effect, that these educators were grown-ups and “the dog ate my report” type excuses were unacceptable. Nevertheless, since it was permitting mere permittees to file late-filed renewals, it decided it would be inequitable not to extend similar relief to licensees who had actually built their systems. The FCC therefore magnanimously waived the filing deadline for everybody. A huge sigh of relief was audible over much of the country, particularly from the administrators who had failed to file the renewals on time. At the same time, the FCC dismissed Sprint-Nextel’s objections to this action on the grounds that Sprint would not be harmed by acceptance of the late filings and therefore had no legal standing to complain.

The dilatory filers did not get off unscathed, however. The Commission decided that they would not be allowed to “split the football” with nearby incumbents who had timely filed their renewal applications. Splitting the football occurs when the protected service areas of two co-channel licensees overlap. The FCC ruled several years ago that in those overlapping situations, the licensees would divide equally the overlap area, which appears as a football shaped figure in diagrams. Under the Commission’s latest ruling,

though, the late filers would not be entitled to their half of the football. Half a football is normally better than none, but here none of a football is better than none, because at least the licensees get the service areas that do not overlap with anyone else.

The FCC also permitted those applicants who had neither constructed their stations nor timely filed for extensions of time to construct to file late-filed requests for extension time, which it agreed to grant when filed.

Finally, the FCC also tied up loose ends for a handful of BRS licensees whose late-filed renewals had been petitioned against by Sprint-Nextel. Here too, the FCC dismissed the Sprint petitions on procedural grounds, freeing the licensees to proceed with build-outs and transitions of their markets. The FCC obviously decided that, legal niceties aside, it was better for the development of the BRS/EBS service to have these renewals finalized and a build-out accomplished by 2011 rather than putting the spectrum up for auction and waiting indefinitely for service to be provided.