



Federal Communications Commission
Washington, D.C. 20554

DA 06-334

February 13, 2006

Christopher D. Imlay, Esquire
General Counsel, Society of Broadcast Engineers, Inc.
Booth, Freret, Imlay & Tepper, P.C.
14356 Cape May Road
Silver Spring, MD 20904

Re: WT Docket No. 05-23; Society of Broadcast Engineers, Inc.,
Request for Clarification; Withdrawal of Request

Dear Mr. Imlay:

On February 21, 2005, the Society of Broadcast Engineers, Inc. (SBE) filed a Request for Clarification (Request)¹ in reference to the Wireless Bureau's Declaratory Ruling (2005 Declaratory Ruling)² regarding automatic terminations of wireless radio service authorizations in the Universal Licensing System (ULS). The Request specifically concerned how ULS' automatic termination feature would affect certain Part 74 Broadcast Auxiliary Services (BAS).³ On July 12, 2005, SBE filed a letter (Letter)⁴ withdrawing the Request. The Letter recites SBE's understanding of certain matters informally discussed with staff of the Wireless Telecommunications Bureau (Bureau), seeks confirmation of these points, and states that SBE's withdrawal is made "[i]n view of, and because of the foregoing."⁵ We disagree with, and thus cannot confirm, all of the statements in the Letter. Instead, this correspondence clarifies the matters raised in the Letter. We believe these clarifications address the matters that SBE raised in the Request and the Letter and are consistent with our prior informal discussions with SBE. Accordingly, we deem the Request withdrawn.⁶

¹ Request for Clarification filed by the Society of Broadcast Engineers, Inc., on February 21, 2005 (Request).

² Clarification of Reconsideration Period and Effective Date for Termination of Wireless Radio Service Authorizations, WT Docket No. 05-23, Declaratory Ruling, 20 FCC Rcd 1494 (WTB 2005). *See also* Wireless Telecommunications Bureau to Enhance its Universal Licensing System to More Accurately Reflect Termination of Unconstructed Licenses, *Public Notice*, 20 FCC Rcd 1455 (WTB 2005) (2005 Declaratory Ruling *Public Notice*).

³ See Request at 1. Applicants for and licensees of remote pickup broadcast stations, aural broadcast auxiliary stations, television broadcast auxiliary stations, and low power auxiliary stations authorized under subparts D, E, F, and H of Part 74 are subject to the application and procedural rules for wireless telecommunications services contained in Part 1, subpart F of the Commission's Rules. *See* 47 C.F.R. § 74.6 (Licensing of broadcast auxiliary and low power auxiliary stations). Herein, we refer to the services listed in Section 74.6 as "BAS" or "Part 74 BAS."

⁴ Letter to Joel D. Taubenblatt, Esq., Chief, Broadband Division, Wireless Telecommunications Bureau, FCC, from Christopher D. Imlay, General Counsel, SBE, dated July 12, 2005 (Letter).

⁵ *Id.* at 3.

⁶ Because it is withdrawn, we need not address the Request's threshold procedural infirmities.

1. Part 74 BAS is included in the Automatic termination provisions discussed in the 2005 Declaratory Ruling

The Letter claims that it is unclear whether Part 74 BAS facilities are within the scope of the rules that were clarified in the 2005 Declaratory Ruling because Part 74 was not among the rule parts listed in two footnotes of the 2005 Declaratory Ruling. Similarly, SBE has stated informally that an affirmative statement on this issue would assist SBE in educating its members concerning the 2005 Declaratory Ruling. While we disagree that clarification to the 2005 Declaratory Ruling is necessary,⁷ we are pleased to assist SBE by again confirming that Part 74 BAS facilities are included in the automatic termination provisions discussed in the 2005 Declaratory Ruling.⁸

2. Explanation of “reversion” to pre-modification status after automatic termination

SBE’s Letter notes that the Bureau’s staff has previously suggested that the only modifications “that are subject to the Notification of Completion of Construction obligation are those in which frequencies are added or modified.”⁹ This is partially correct. If an application seeks a new license or to add frequencies to an existing license, then an NT is required within 15-days of the buildout deadline. However, if a modification application seeks to “overwrite” (change) any previously authorized parameters on an existing license but does not add frequencies, then there is no notification of completion of construction filing requirement. Additionally, the Letter goes on to state, without qualification, that if a notification of completion of construction is not timely filed after a license modification, the license will revert to the prior licensed status.¹⁰ SBE’s Letter is incorrect. License reversion occurs only in limited circumstances and, as clarified below, whether reversion occurs is a fact specific inquiry.

When a license “reverts”

There is only one auto-termination scenario where the license “reverts” to its prior status. In a situation where (a) previously authorized frequencies were not deleted or changed by the modification application; (b) the modification application adds frequencies; and (c) the party fails to file the required notification of completion of construction, the license will “revert” to its status prior to grant of the modification— because only the frequencies added by modification will be auto-terminated.

⁷ In the 2005 Declaratory Ruling, the Bureau clarified the reconsideration period and the effective termination date associated with an automatic license termination for all wireless radio service licensees that have construction or coverage performance requirements. BAS has construction requirements, *see* 47 C.F.R. § 74.34, and Section 74.6 makes clear that BAS is governed by the wireless rules. Moreover, the footnotes in the 2005 Declaratory Ruling that SBE finds unclear are citations to the Commission’s 1998 “ULS Proceeding,” wherein the Commission adopted the automatic termination provisions along with other “ULS rules” contained at Part 1 subpart F. Part 74 was not listed in the caption of the ULS proceeding and, as such, was not listed in the 2005 Declaratory Ruling’s citation to the ULS proceeding. The Commission brought Part 74 BAS under the ULS rules in 2002. *See* Request at 1, n.1 citing [Revisions to Broadcast Auxiliary Rules in Part 74, ET Docket No. 01-75, *Report and Order*, 17 FCC Rcd 22,979 (2002)] (*Part 74 BAS R&O*).

⁸ After SBE’s informal request for assistance in disseminating information about the 2005 Declaratory Ruling to its members, we specifically noted that Part 74 BAS is among the wireless services governed by the automated process in three public notices related to automatic termination. *See* notes 18, 19, and 21, *infra*.

⁹ *See* Letter at 2.

¹⁰ *Id.*

When a license does not “revert”

In the ULS proceeding, the Commission rejected a proposal to have ULS automatically reinstate the relevant license to its “pre-modification grant” status, if the licensee fails to construct the facilities authorized by its modified license or file a required notification of completion of construction.¹¹ In essence, ULS is not programmed to automatically reinstate any parameters that were “overwritten” (changed) or deleted by the licensee in the modification application or otherwise. Thus, if a modification application seeks to delete earlier-authorized frequencies of the license, the earlier-authorized frequencies will not be reinstated automatically if the frequencies added by the modification are later automatically terminated.

However, if the licensee does not timely complete the modification and it wishes to resume operation under the “old,” previously-authorized parameters, the licensee must coordinate the frequency use and re-apply, following all relevant rules, to add those parameters to its license.

3. Protection of “old” parameters during construction period for modified parameters.

The Letter states that ULS must ensure that an existing but not yet changed path is properly protected (and not deleted from ULS) following any modifications because Part 74 BAS has an 18-month construction period.¹² According to SBE, current ULS protocols do not accomplish this goal because “as soon as a modification application for an existing fixed BAS facility is granted, the old record disappears from the ULS, and only the proposed new facilities show up.”¹³ SBE’s Letter states its understanding that future ULS upgrades will modify this protocol. SBE notes that, until then, it has endorsed the following practice: (1) licensee files an application for a new facility instead of a modified facility; and (2) upon constructing the new facility, licensee timely files a notification of completion of construction and a cancellation of the old license simultaneously.¹⁴

The Bureau supports the two step process of filing an application for a new facility instead of a modified facility and, upon completion of construction of the new facility, filing simultaneously a notice of completion of construction and a cancellation of the old license. In fact, such a practice is acceptable and expressly contemplated by the Commission. We note that the two step approach to such modifications should be done for the foreseeable future as we are not planning ULS upgrades related to

¹¹ See Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21,027, 21,077 ¶ 108 (1998) (*ULS R&O*) (Commission reviewed “reversion” option and “determined that programming this logic into ULS would be so complex as to be unworkable. In addition, [not having ULS automatically return the relevant license to its pre-modification grant status] does not put pre-existing licenses in jeopardy . . . [so long as the modification added rather than replaced frequencies]; it merely provides a mechanism in ULS for the licensee to meet its obligation to provide accurate information regarding what it has constructed and what it has not.” *Id.* at ¶ 108.

¹² We understand that SBE’s concerns herein are related to fixed point-to-point aural and television broadcast auxiliary stations, such as studio transmitter links, that have an 18-month period, whereas remote pickup broadcast auxiliary stations have a 12-month construction period. See 47 C.F.R. § 74.34.

¹³ Letter at 2.

¹⁴ *Id.* at 2-3.

this issue.¹⁵ Specifically, in the *ULS R&O*, the Commission reviewed whether to implement ULS modifications to allow for a one step solution to protecting existing but not yet changed paths and determined that programming this logic into ULS would be so complex as to be unworkable.¹⁶ Moreover, as the Commission explained to commenters in the ULS proceeding that raised concerns similar to SBE's, a two step approach of filing an application for new facilities followed by the simultaneous filing of a notification of completion of construction and a cancellation of the old license does not put pre-existing licenses in jeopardy so long as the modification adds rather than replaces frequencies. Thus, to the extent a licensee fails to construct the facilities authorized under the new license, the new license will automatically terminate for failure to construct. However, the licensee can continue to operate under the authority of its original license, which remained active on ULS during the construction period and thus continued to be entitled to the interference protection provided by the Commission's rules.

4. Public Information and Outreach

The Letter suggests that SBE's proposed clarifications have been disseminated to SBE members through SBE's journal, the *Signal*, and through its web site, and other member communications. SBE also states that the Commission should disseminate this same information to broadcast licensees using public notices related to ongoing Commission matters.¹⁷

Such additional dissemination of this information is not necessary. The Commission has adequately publicized the information set forth herein in the following items:

- FCC Rule sections cited herein (e.g., Part 1 subpart F, §§ 74.6, 74.34)
- *ULS R&O*
- *Part 74 BAS R&O*
- 2005 Declaratory Ruling and 2005 Declaratory Ruling *Public Notice*
- *Public Notice*, May 2005¹⁸
- *Public Notice*, December 2005¹⁹
- Informal discussions between the Bureau's staff and SBE
- BAS webpage²⁰

¹⁵ To the extent that coordinators or licensees find historical licensing data relevant, prior license records are searchable under "Archive License Search" on the ULS.

¹⁶ The Commission also clarified that "ULS will not cancel the pre-existing license of a licensee that fails to construct a new site or frequency so long as the modification was a request to add the site or frequency, rather than to replace the original site or frequency. This enables a licensee to test the viability of a new site or operations on a new frequency without losing pre-existing rights if it fails to commence permanent operations on the new site or frequency." *ULS R&O* at ¶ 108.

¹⁷ Letter at 3.

¹⁸ [WTB] Postpones Until Fall 2005 Implementation of the Automated Feature in its [ULS] that Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses and Announces a New License Search on Build-out Deadlines, *Public Notice*, 20 FCC Rcd 9542 (WTB 2005) (lists Part 74 on the first page).

¹⁹ [WTB] Announces February 1, 2006, as the Implementation Date of the Automated Feature in its Universal Licensing System that Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, *Public Notice*, DA 05-3143 (rel. Dec. 20, 2005) (lists Part 74 on the first page).

²⁰ We will post a copy of the instant letter on the Wireless Telecommunications Bureau's Broadcast Auxiliary Service Information page at <http://wireless.fcc.gov/microwave/brdcstaux.html>.

- WTB's public demonstration, on January 24, 2006, of ULS changes to implement the automated termination process.²¹ The presentation about the auto-termination process given during the seminar is available at:

<http://wireless.fcc.gov/presentations/autoterm-pleadings-demo-presentation.pdf>.

A webcast of the workshop is also available at:

<http://wireless.fcc.gov/presentations/autoterm-pleadings-demo.html#>

Nonetheless, we are pleased to provide the instant letter to collect this information into one document to assist Part 74 BAS licensees in meeting the Commission's Rules. We reiterate that we are unable to confirm as accurate all of the statements made in SBE's Letter, we believe the information provided herein addresses SBE's concerns and clarifies erroneous information contained in SBE's Letter. In view of the foregoing, we deem the Request for Clarification filed by the Society of Broadcast Engineers, Inc. on February 21, 2005, to be WITHDRAWN.

This action is 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,



Cathleen A. Massey

Deputy Chief, Wireless Telecommunications Bureau

²¹ See, e.g., Public Notice, DA 06-36 (rel. Jan. 6, 2006).