

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

In the Matter of )
)
GRAND TRUNK WESTERN RAILROAD )
COMMUNICATIONS DEPARTMENT )
)
Licensee of Multiple Address System Station )
WPQX327, Toledo, Ohio )

MEMORANDUM OPINION AND ORDER

Adopted: April 29, 2002

Released: May 1, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On November 2, 2000, Grand Trunk Western Railroad Communications Department (Grand Trunk) was granted authorization to operate Multiple Address System (MAS) Station WPQX327, in the area of Toledo, Ohio. For the reasons set forth below, on our own motion, we initiate a proceeding to modify Grand Trunk’s license to bring the license into compliance with an international agreement.

II. BACKGROUND

2. On August 13, 1991, the Commission announced that the United States/Canada Radio Technical Liaison Committee (RTLCL) had finalized an arrangement concerning the use of the 928-929 MHz and 952-953 MHz bands, spectrum principally designated for MAS, in the vicinity of the United States and Canadian border. Pursuant to the terms of the Arrangement, the spectrum is divided into three pools: one pool for primary use by the United States, one pool for primary use by Canada, and one pool to be shared between the two countries on a first-in-time basis. Specifically, the Arrangement provides, inter alia, that Canada has full use of the frequencies within the 928.5-928.75 MHz and 952.5-952.75 MHz bands. The Arrangement further provides that the United States may also use these frequencies in the vicinity of the United States and Canadian border (the “coordination zone”) on an unprotected basis,

1 The RTLCL is a joint FCC/DOC (Canada’s Department of Communications) committee responsible for examining technical issues concerning the use of radio by the United States and Canada.

2 See United States and Canada Sign Arrangement Concerning the Use of the 928-929 and 952-953 MHz Bands in the Vicinity of the United States and Canadian border, Public Notice, DA 91-999 (rel. Aug. 13, 1991) (Arrangement PN).

3 Arrangement Between the Department of Communications of Canada and the Federal Communications Commission of the United States of America Concerning the Use of the Bands 928 to 929 and 952 to 953 MHz Along the United States-Canada border at 1 (1991) (Arrangement).

4 Id.

provided its stations are limited to a power flux density (pfd) of  $-100$  dBW/m<sup>2</sup> at or beyond the Canadian border.<sup>5</sup>

3. On August 7, 2000, Grand Trunk filed an application for authorization to operate an MAS station on frequencies 928.58125/952.58125 MHz in Toledo, Ohio.<sup>6</sup> Comsearch provided frequency coordination for Grand Trunk's application.<sup>7</sup> Comsearch determined that Grand Trunk's proposed system met the geographic separation requirements between existing MAS facilities set forth in Section 101.103 of the Commission's Rules and that it would not interfere with any existing, applied-for or proposed point-to-point systems in the 932-941 MHz and/or 952-959 MHz band.<sup>8</sup> The record does not show that there was any consideration of the Arrangement even though Grand Trunk proposed to operate the station in the coordination zone. The Public Safety and Private Wireless Division's Licensing and Technical Analysis Branch granted Grand Trunk's application on November 11, 2000.

### III. DISCUSSION

4. Upon further review, we conclude that Grand Trunk's application to operate a MAS station on frequencies 928.58125/952.58125 MHz in Toledo, Ohio was improperly granted.<sup>9</sup> We believe that the authorized parameters for Station WPQX327 are inconsistent with the provisions of the Arrangement. Specifically, Station WPQX327 is authorized to operate on Canadian exclusive frequencies in the vicinity of the United States and Canadian border on a primary basis without a pfd limitation. As stated earlier, United States entities may only operate on the Canadian exclusive frequencies in the coordination zone if the operation is secondary to any Canadian operation and the pfd is limited to  $-100$  dBW/m<sup>2</sup>.<sup>10</sup> Therefore, the authorization must be set aside or modified.

5. We note that the period to set aside Grand Trunk's authorization has passed.<sup>11</sup> We therefore believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.<sup>12</sup> Section 316(a) provides, *inter alia*, that the Commission may modify a station license if "such action will promote the public interest, convenience and necessity."<sup>13</sup> We propose to modify the authorization for Grand Trunk's Station WPQX327 by adding the following special conditions: (1) operation is secondary to any existing or future Canadian co-channel station and (2) the maximum pfd value produced by the station may not exceed  $-100$  dBW/m<sup>2</sup> at or beyond the Canadian border. In this connection, we note that the proposed modification would promote the public interest,

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<sup>5</sup> *Id.* at 2.

<sup>6</sup> See FCC File No. 0000206766 (filed Aug. 7, 2000).

<sup>7</sup> *Id.*, Attachment at 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Arrangement at 2.

<sup>11</sup> See 47 C.F.R. §§ 1.113(a), 1.117.

<sup>12</sup> 47 U.S.C. § 316(a)(1).

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

convenience and necessity by permitting Grand Trunk to continue operating Station WPQX327 in full compliance with the provisions of the Arrangement.<sup>14</sup>

6. As discussed above, Grand Trunk's Station WPQX237 was improperly authorized. Thus, we believe that the proposed modification of the station's license so that it is in full compliance with the Arrangement is appropriate. In accordance with Section 1.87(a) of the Commission's Rules,<sup>15</sup> we will not issue a modification order until Grand Trunk has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the modification, Grand Trunk must, within thirty days of the release date of this *Memorandum Opinion and Order*, submit a written statement with sufficient evidence to show that modification of its license would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554.<sup>16</sup> If no protest is timely filed, Grand Trunk will have waived its right to protest the modification and will be deemed to have consented to the modification.

#### IV. CONCLUSION

7. For the reasons stated above, we conclude that Grand Trunk's application was improperly authorized. Accordingly, we propose to modify Grand Trunk's license to (1) specify that operation is secondary to any existing or future Canadian co-channel interference and (2) prohibit any operation which would produce a pfd exceeding  $-100$  dBW/m<sup>2</sup> at or beyond the U.S./Canadian border.

#### V. ORDERING CLAUSES

8. ACCORDINGLY, IT IS PROPOSED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316(a), and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, the license for Multiple Access System Station WPQX327, held Grand Trunk Western Railroad Communications Department, BE MODIFIED by adding the following special conditions to the license: (1) operation is secondary to any existing or future Canadian co-channel station and (2) the maximum power flux density value produced by the station may not exceed  $-100$  dBW/m<sup>2</sup> at or beyond the United States/Canadian border.

9. IT IS FURTHER ORDERED pursuant to Section 4(i) Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.87(i) of the Commission's Rules, 47 C.F.R. § 1.87(i) that this *Memorandum Opinion and Order* shall be served by certified mail, return receipt requested upon Grand Trunk Western Railroad Communications Department, Attention: Mark Ryon, 700 Pershing Street, Pontiac, Michigan 48340-2699.

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<sup>14</sup> Absent such modification, we believe that we would have to pursue revocation procedures in order to effect compliance with the Arrangement's provisions. See 47 U.S.C. § 312(a); 47 C.F.R. § 1.91.

<sup>15</sup> 47 C.F.R. § 1.87(a).

<sup>16</sup> The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

10. 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.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau