

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

In the Matter of Application of)
HEARTLAND WIRELESS COMMERCIAL) File No. BMDP-19961018ED
CHANNELS, INC.)
For Authority to Construct and Operate a)
Multipoint Distribution Service Station on)
Channel 2 at Dayton, Ohio.)

MEMORANDUM OPINION AND ORDER

Adopted: March 4, 2003

Released: March 14, 2003

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

1. In this Memorandum Opinion and Order, we address Heartland Wireless Commercial Channels, Inc. (Heartland) above-captioned long-form application (FCC Form 304) to operate a new Multipoint Distribution Service (MDS) station in the Dayton - Springfield, Ohio Basic Trading Area (BTA) (B106) on Channel 2 in Dayton, Ohio. Additionally, we address W.A.T.C.H. TV Company's (WTC) informal objection against Heartland's application. For the reasons stated below, we grant WTC's informal objection and dismiss Heartland's application.

2. Background. Heartland filed the above-captioned application on October 18, 1996. The application appeared on public notice as accepted for filing on December 4, 1996. On February 5, 1997, WTC, the licensee of MDS Station WMI390, Cridersville, Ohio, filed an informal objection against Heartland's application. Heartland did not respond to the informal objection.

3. Discussion. Based on our review of the record in this proceeding, we conclude that Heartland's application is defective and cannot be granted at this time. Heartland concedes that its proposed operation will cause some interference to the protected service area (PSA) boundary of MDS Station WMI390. Although Heartland seeks to negotiate an interference agreement with WTC, WTC states that it does not intend to issue an interference acceptance statement in support of Heartland's

1 Effective March 25, 2002, the Commission transferred regulatory functions for the Instructional Television Fixed Service and the Multipoint Distribution Service/Multichannel Multipoint Distribution Service from the Mass Media Bureau (MMB) to the Wireless Telecommunications Bureau (Bureau). Radio Services Are Transferred From Mass Media Bureau to Wireless Telecommunications Bureau, Public Notice, 17 FCC Rcd 5077 (2002). Accordingly, the Bureau's Public Safety and Private Wireless Division assumed all regulatory duties associated with these services effective March 25, 2002. Id.

2 Letter from Paul J. Sindebrand, Esq. to William F. Caton, Acting Secretary, Federal Communications Commission (filed Feb. 5, 1997) (Informal Objection).

3 See MMB MDS Public Notice Report No. D-896.

4 Application, Exhibit E, p. 4.

5 Id.

application.⁶ An independent engineering study performed by our staff shows that Heartland's proposed station fails to provide at least 45 dB of co-channel interference protection within the PSA of previously authorized Station WMI390.

4. Section 21.902(b)(3) of the Commission's Rules requires the applicant to engineer its system to provide at least 45 dB of co-channel interference protection within the PSA of all other authorized or previously proposed stations. The record of this proceeding indicates that Heartland's proposed operations fail to provide at least 45 dB of co-channel interference protection to previously authorized Station WMI390 in Dayton, Ohio, as required by the Commission's Rules. Accordingly, we will direct the Licensing and Technical Analysis Branch to dismiss the application as defective pursuant to Section 21.20(b)(4) of the Commission's Rules.

5. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, the Informal Objection filed by the W.A.T.C.H TV Company on February 5, 1997 IS GRANTED.

6. 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 Sections 21.20 and 21.902 of the Commission's rules, 47 C.F.R. §§ 21.30, 21.902, that the Licensing and Technical Analysis Branch SHALL DISMISS the application filed on October 18, 1996 by Heartland Wireless Commercial Channels, Inc. (File No. BMDP-19961018ED).

7. 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

⁶ See Informal Objection.