

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

In re Application of)	
)	
PIERRE RADIO PAGING)	
& TELEPHONE COMPANY)	File No.: 2000C3-LML
)	
For Modification of CMRS Station)	
KNKK446 at Lyman, South Dakota)	
)	
)	

ORDER

Adopted: March 30, 2001

Released: April 2, 2001

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. This order addresses a Petition for Reconsideration (Petition) filed by Pierre Paging & Telephone Corporation (Pierre) on December 3, 1999. Pierre seeks further reconsideration of the Commercial Wireless Division, Licensing and Technical Analysis Branch's (Branch) dismissal of Pierre's Petition For Reconsideration of the denial of Pierre's above-captioned application for modification of call sign KNKK446.¹ In the alternative, Pierre seeks a waiver of the current paging application freeze to modify call sign KNKK446. For the reasons discussed below, we deny the Petition, but grant Pierre a waiver of the current paging freeze in order to file an application for a license to operate on a secondary basis.

2. On March 6, 1996, Pierre filed the above-captioned application for modification of station KNKK446 at Lyman, South Dakota. On March 22, 1996, the Branch dismissed the application, stating that the Commission had suspended the acceptance of all new applications for paging channels as of February 8, 1996.² On April 22, 1996, Pierre filed a petition for reconsideration of the dismissal of its application and argued that its application was for two-way service, not paging service, and was not subject to the freeze on acceptance of paging applications.³ The Branch denied Pierre's petition, as the Commission had clarified in the *Paging First Report and Order* that two-way mobile telephone service on the two-way channels listed in section 22.561 of the Commission's rules was not exempt from the paging

¹ In re Application of Pierre Radio Paging & Telephone Corporation, *Order*, DA 99-2472, 1999 WL 1005117 (Comm. Wir. Div. rel. Nov. 5, 1999).

² See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Notice of Proposed Rulemaking*, 11 FCC Rcd 3108 (1996) (*Paging Freeze NPRM*).

³ See Petition for Reconsideration of Pierre Radio Paging & Telephone Corporation filed April 22, 1996.

application freeze.⁴ On December 3, 1999, Pierre filed a petition for reconsideration and requested a waiver of the paging application freeze.⁵

3. In the *Paging Freeze NPRM*, the Commission indicated that it would process applications filed before February 8, 1996. Pursuant to interim licensing rules, the Commission also accepted and processed non-mutually exclusive paging applications filed by incumbents within 40 miles of an existing site after April 22, 1996 and before July 31, 1996.⁶ Pierre's application was filed on March 6, 1996, after the imposition of the paging freeze and prior to the opening of the filing period for 40-mile expansion applications. We find that Pierre has presented no new arguments that would persuade us to grant reconsideration of the Branch's denial of its earlier filed request for reconsideration. Pierre did not submit its application during the period established for the filing of 40-mile expansion applications, and the Branch properly determined that two-way mobile telephone service on the two-way channels listed in section 22.561 of the Commission's rules were not exempt from the paging application freeze.

4. Nevertheless, we find that Pierre is providing paging service in a rural area and that, consistent with the decisions in *Acadian Ambulance*⁷ and *JSM Telepage*,⁸ a waiver of the paging application freeze is appropriate to permit Pierre to file an application for a license to extend its service area on a secondary basis, subject to the following conditions: 1) any license granted to Pierre pursuant to this waiver will have secondary status to the ultimate geographic area licensee for all Economic Areas (EAs) into which Pierre's interference contour extends; and 2) upon receiving notice from a geographic area licensee that the geographic area licensee intends within 90 days to initiate operation of a facility, the interference contour of which will overlap with the interference contour of any transmitter licensed pursuant to this waiver, Pierre shall within 90 days either cease operation of the transmitter in question or change its technical parameters to eliminate the overlapping interference contour.

5. Within 30 days of the effective date of this order, if the conditions set forth herein are acceptable to Pierre, Pierre shall refile the application that was previously dismissed by the Branch, together with an indication in writing that it will accept these conditions. Upon receipt of this submission, we will promptly place Pierre's application on public notice as accepted for filing and will process the application in accordance with the Commission's rules and its customary procedures, notwithstanding the paging application freeze.

⁴ Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *First Report and Order*, 11 FCC Rcd 16570, 16588 (1996) (*Paging First Report and Order*). The Commission stated that "with respect to the contention that the two-way mobile telephone service on the two-way channels listed in Section 22.561 should be exempt from the freeze, we decline to exempt those lower band CCP channels but note that we are partially lifting the freeze by allowing incumbents to add transmission sites within 65 kilometers (40 miles) of an authorized and operating transmission site."

⁵ See Petition for Reconsideration of Pierre Radio Paging & Telephone Corporation filed December 3, 1999.

⁶ See "Wireless Telecommunications Bureau Establishes Interim Procedures on Filing of Common Carrier and Private Carrier Paging Applications," *Public Notice*, 12 FCC Rcd 8740 (WTB May 10, 1996).

⁷ See *Acadian Ambulance Services, Inc., Order*, 14 FCC Rcd 19310 (1999).

⁸ See *JSM Tele-page, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 19516 (WTB 1999).

6. Accordingly, IT IS ORDERED that, pursuant to sections 4 (i) and 405 of the Commissions Act of 1934, as amended, 47 U.S.C. §§ 154 (i), 405 and sections 0.331 and 1.106 of the Commissions Rules, 47 C.F.R. §§ 0.331, 1.106, the petition for reconsideration filed by Pierre Radio Paging & Telephone Corporation on December 3, 1999, IS DENIED.

7. IT IS FURTHER ORDERED that, pursuant to the authority of Section 4 (i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154 (i), and Sections 0.331 and 1.925 (b)(3) of the Commission's rules, 47 C.F.R. §§ 0.331 and 1.925 (b)(3), the request for waiver of the paging application freeze filed by Pierre Radio Paging & Telephone Corporation is GRANTED to the extent stated herein.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau