

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

In the Matter of)	
)	
National Rural Telecommunications Cooperative, LLC)	File No. 0000131693
)	
SMR Advisory Group, LC)	
)	
Request for Waiver and Consolidation of 220 MHz Construction Requirements)	
)	

ORDER ON RECONSIDERATION

Adopted: March 6, 2002

Released: March 7, 2002

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

I. Introduction

1. By this order, we dismiss the Petition for Reconsideration filed on September 5, 2000 by the National Rural Telecommunications Cooperative, LLC (“NRTC”) in the above-referenced matter. On January 4, 2002, NRTC submitted a letter withdrawing its Petition for Reconsideration and clarifying an administrative matter (“Withdrawal Letter”).¹ This order also addresses the Petition for Reconsideration filed on September 5, 2000 by the SMR Advisory Group, LC (“SAG”). SAG seeks review of the August 4, 2000 decision of the Wireless Telecommunications Bureau, Commercial Wireless Division, which granted, in part, a waiver request filed by NRTC.² For the reasons set forth below, we deny SAG’s Petition for Reconsideration.

II. Background

2. NRTC is a non-profit cooperative association composed of rural electric cooperatives, rural telephone systems, and small independent telephone companies. NRTC holds three different types of licenses in the 220 MHz band that were the subject of a prior waiver request: (1) a five-channel Phase I Nationwide license; (2) a 10-channel Phase II Nationwide license; and (3) seven 7-channel Phase II Regional Area Economic Grouping (“Regional”) licenses covering the continental United States.³ Each of the three types of 220 MHz licenses held by NRTC is subject to different construction requirements.

¹ See Letter from Jack Richards of Keller and Heckman LLP, Counsel to NRTC, to Roger Noel, Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau (dated Jan. 4, 2002).

² In the Matter of National Rural Telecommunications Cooperative, LLC, *Memorandum Opinion and Order*, DA 00-1762 (rel. Aug. 4, 2000) (“*MO&O*”).

³ The stations involved in the prior waiver were WPCU 518-545 (Phase I Nationwide); WPOL 329-334 (Phase II Regional); and WPOI 700 (Phase II Nationwide). NRTC also holds two Phase II Economic Area authorizations that were not a part of its prior waiver request (*i.e.*, stations WPOI791 and WPOL328).

The rules for Phase I Nationwide licenses require phased construction of a set number of individual base stations and focus on a designated list of urban areas.⁴ The Phase II Nationwide rules give licensees the option of meeting coverage benchmarks based either on population or on geographic area.⁵ The Phase II Regional license construction rules require coverage of a specified percentage of the population in each of the seven regions.⁶ In its original Waiver Request, NRTC sought a waiver of the construction requirements applicable to its Phase I Nationwide and Phase II Regional licenses, and requested instead that the Commission apply the Phase II Nationwide construction requirements and deadlines to all of NRTC's licensed facilities.⁷ The *MO&O* granted NRTC partial relief from the Phase I Nationwide and Phase II Regional construction requirements for its licensed 220 MHz facilities.

III. Discussion

A. NRTC Dismissal and Clarification

3. In its Petition for Reconsideration, NRTC requested a limited modification of the *MO&O*. Specifically, NRTC sought to eliminate the Phase II Regional construction requirements for individual regions.⁸ NRTC asked that we apply the Phase II Nationwide construction requirements to all of its Phase I and Phase II 220 MHz licenses, including the regional licenses.⁹

4. In its Withdrawal Letter, NRTC states that the withdrawal of the Petition for Reconsideration is based on its understanding that "a 220 MHz licensee providing fixed services with established base stations may meet the geographic and/or population coverage requirements so long as the licensee has the ability to add subscriber units anywhere in the area and provide fixed service without making changes to the base stations."¹⁰ We have reviewed the Withdrawal letter and hereby approve NRTC's request to withdraw its Petition for Reconsideration. With respect to NRTC's statement of understanding, we agree that a 220 MHz licensee providing fixed service to subscribers may meet geographic and/or population coverage requirements by including areas where it has the ability to serve additional subscribers from existing base stations without modification to those base stations.

5. NRTC also states in its Withdrawal Letter that the *MO&O* incorrectly identified NRTC's five and ten-year construction benchmarks as November 6, 2003 and November 6, 2008, respectively.¹¹ NRTC's five and ten-year construction benchmarks for these licenses are actually March 22, 2004 and

⁴ 47 C.F.R. § 90.725.

⁵ 47 C.F.R. § 90.769.

⁶ 47 C.F.R. § 90.767.

⁷ See Request of NRTC, LLC for Waiver and Consolidation of 220 MHz Construction Requirements filed February 29, 2000 ("Waiver Request") at 8.

⁸ NRTC Petition at 1.

⁹ *Id.*

¹⁰ Withdrawal Letter at 1.

¹¹ *MO&O* at ¶¶4, 5.

March 22, 2009, respectively. We note that these deadlines are accurately reflected in the Bureau's licensing records.

B. SAG Petition for Reconsideration

6. In its Petition for Reconsideration, SAG asks the Commission to reconsider the *MO&O* by either (i) extending the relief provided to NRTC to all Phase II Regional or other similarly-situated licensees, or (ii) vacating the relief provided to NRTC and commencing a rulemaking proceeding to determine whether to amend the 220 MHz construction requirements.¹² SAG contends that, because the *MO&O* covered issues with broad industry applicability and was issued without public notice or comment, it was an inappropriate exercise of the Commission's waiver authority.¹³ SAG also contends that NRTC's situation was not unique, and that all Phase II Regional licensees should have the option of serving geography instead of population.¹⁴

7. Our decision not to place NRTC's Waiver Request on public notice was within the permissible scope of the Commission's waiver authority. Seeking comment on waiver requests is a discretionary procedure under Section 1.925(c) of the Commission's rules.¹⁵ Further, we note that the *MO&O* itself provided notice of the waiver request to the industry. SAG's argument that the *MO&O* was an inappropriate exercise of the Commission's waiver authority is therefore without merit.

8. In addition, SAG has failed to demonstrate that the relief granted to NRTC should be extended to all Phase II Regional licensees.¹⁶ The *MO&O* granted NRTC relief based on several circumstances unique to its request, including: the different types of licenses in question, NRTC's intent to construct a nationwide 22-channel integrated system, and NRTC's intent to service rural areas. SAG provides no evidence that would justify the grant of a blanket waiver from the 220 MHz construction requirements, nor does it provide evidence that would support the initiation of a rulemaking proceeding. Individual licensees seeking relief from the construction requirements may submit a waiver request in accordance with Section 1.925 of the Commission's rules.¹⁷

IV. Ordering Clauses

9. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the

¹² SAG Petition at 3.

¹³ *Id.* at 1-2.

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 1.925(c). *See also* In the Matter of 21st Century Telesis, Inc. for Facilities in the Broadband Personal Communications Services, *Memorandum Opinion and Order*, FCC 00-434, ¶ 26 (rel Dec. 21, 2000) (*citing* In the Matter of Tektron Micro Electronics, Inc., Request for Waiver of Sections 90.20(f)(5) and 90.259 of the Commission's Rules to Permit Wireless Microphone Operation in the 1427-1436 MHz Band, *Order on Reconsideration*, 15 FCC Rcd 4438, ¶ 2 (2000), stating that "[i]t is a matter of Commission discretion whether to give public notice of the filing of a waiver request and seek comment from the public.").

¹⁶ SAG Petition at 3.

¹⁷ 47 C.F.R. § 1.925.

Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed on September 5, 2000 by the National Rural Telecommunications Cooperative IS DISMISSED.

10. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed on September 5, 2000 by the SMR Advisory Group IS DENIED.

11. These actions are taken pursuant to authority delegated in Section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau