

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

In the Matter of)	
)	
Application of CN WAN Corporation)	Call Sign WPOT488
for a new Multiple Address System (MAS) Station)	File No. 750164
in Fort Atkinson, Wisconsin)	

MEMORANDUM OPINION AND ORDER

Adopted: July 28, 2000

Released: August 2, 2000

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

I. INTRODUCTION

1. The Division has before it a petition for reconsideration (CN WAN petition or petition) filed on September 21, 1999 by CN WAN Corporation (CN WAN).¹ CN WAN requests reconsideration of the August 23, 1999, decision of the Licensing and Technical Analysis Branch (LTAB), Public Safety and Private Wireless Division, which dismissed in part the above-referenced application of CN WAN for a new Multiple Address System (MAS) station on the frequencies 952/928.20625 MHz and 952/928.34375 MHz in Fort Atkinson, Wisconsin (LTAB decision).² For the reasons set forth below, the LTAB decision is affirmed.

II. BACKGROUND

2. On June 28, 1999, CN WAN filed an FCC Form 415 application for authorization to operate a new MAS station on the frequencies 952/928.20625 MHz and 952/928.34375 MHz in Fort Atkinson, Wisconsin.³ The application was accompanied by demonstration of frequency coordination. LTAB concluded that the proposed use of the frequency pair 952/928.34375 MHz would be processed in

¹ Petition for Reconsideration, In the Matter of CN WAN Corporation, Application for New MAS Station in Fort Atkinson, Wisconsin, Call Sign WPOT488, File No. 750164 (filed Sep. 21, 1999).

² Letter from Steven Linn, Deputy Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to CN WAN Corporation, Attention Mr. Ben H. Lyon, PS&PWD-LTAB-652 (dated Aug. 23, 1999).

³ FCC File No. 750164. *See Public Notice*, Report No. 2049 (July 13, 1999).

accordance with the receipt date of CN WAN's application.⁴ That frequency pair, and LTAB's processing of CN WAN's application for it, is not at issue in CN WAN's petition for reconsideration. The LTAB decision, however, determined that, notwithstanding evidence of frequency coordination, grant to CN WAN of the other frequency pair that it sought, 952/928.20625 MHz, did not provide the interference protection required under the rules for an existing station, and dismissed that portion of the application requesting frequency pair 952/928.20625 MHz.⁵

3. Specifically, the LTAB decision determined that CN WAN's frequency engineering analysis failed to demonstrate interference protection to station KNKK276, licensed to Paging Network of Illinois, Inc. (PageNet), on frequency pair 952/928.2125 MHz. The LTAB decision also determined that CN WAN's requested frequency pair of 952/928.20625 MHz was short-spaced to station KNKK276 without the required short-spacing agreement. For these reasons, the LTAB decision dismissed CN WAN's request for frequency pair 952/928.20625 MHz as defective.⁶

4. CN WAN seeks reconsideration of the LTAB decision on the basis that there was no need for interference protection for station KNKK276, or for a short-spacing agreement, because PageNet had notified the Commission, before CN WAN's application was filed, that it was no longer operating Station KNKK276 at locations with which CN WAN would otherwise have interfered. In fact, PageNet had requested the Commission to modify its license for the station to delete these operations at each of the short-spaced sites.⁷ CN WAN further notes that the PageNet notifications to delete the relevant frequencies appeared on the Commission's Universal Licensing System (ULS) as "granted" effective September 7, 1999.⁸

III. DISCUSSION

5. At the time that CN WAN filed its application for the frequency pair 952/928.20625 MHz, PageNet was licensed for sites on the frequency pair 952/928.2125 MHz for Station KNKK276. The frequency pair sought by CN WAN, 952/928.20625 MHz, is a 12.5-kilohertz-offset channel that shares the same spectrum space as PageNet's frequency pair, 952/928.2125 MHz, which is a 25-kilohertz channel. Notwithstanding that PageNet had notified the Commission that it sought to delete the sites that conflicted with CN WAN's application, Station KNKK276 was authorized for operation at these sites when the subject CN WAN application was filed.

⁴ LTAB decision at para. 4.

⁵ LTAB decision at paras. 1-4. In its petition at note 4, CN WAN notes that the LTAB decision incorrectly refers to the frequency 952.58125 MHz, and CN WAN clarifies this frequency was not part of its application. We agree, and, like CN WAN, treat any reference in the LTAB decision to the "952.58125/928.20625 MHz" frequency pair to instead be a reference to the "952/928.20625 MHz" frequency pair.

⁶ Although the LTAB decision characterized this dismissal as pursuant to the provisions of former 47 C.F.R. § 1.958, it was instead pursuant to 47 C.F.R. § 1.934, which includes the provisions of former Section 1.958.

⁷ File Nos. 0000013414, 0000013423, 0000013429 and 0000013435, deleting sites operating on the frequency pair 952/928.21250 MHz under the call sign KNKK276 (notifications filed May 13, 1999).

⁸ CN Wan reconsideration at 3.

6. The engineering analysis upon which the coordination for CN WAN's application was based should have considered the operation of Station KNKK276, and should have shown interference protection to that station and all of its sites of record as of the time of CN WAN's application filing.⁹ The pendency of PageNet's requests to modify its license does not alter the protection to its existing operations afforded by the Commission's rules. Unless and until the Commission granted PageNet's modifications to its license, the relevant sites and frequencies specified under the authorization for Station KNKK276 required interference protection. The rules do not provide CN WAN, or the frequency coordinator, with an option to consider only "actual" operation or "probable" operation. The rules are explicit, and afford "existing stations" interference protection.¹⁰ So long as the relevant operations of Station KNKK276 were specified in the Commission's database, even if PageNet sought modification to delete these operations, they were, until Commission action deleting them, required to be protected by the provisions of the rules regarding co-channel interference.¹¹ The engineering analysis, and the frequency coordination CN WAN received that was based upon it, therefore, are both deficient in this regard.

7. We are concerned that to decide otherwise would undermine the methodology and integrity of spectrum assignment in these MAS bands. So long as PageNet was authorized for the sites in question, it had authority to operate at those sites on the specified frequencies. It could do so notwithstanding the pendency of its notifications to delete those sites. Moreover, until grant of modifications to its license based upon those notifications, it had the right to voluntarily withdraw its request to modify its license based upon those notifications, and, instead, to continue to operate on the frequencies at the sites at issue. To grant CN WAN's application under such circumstances would create a licensing conflict that our rules and policies are designed to avoid.

8. Further, MAS frequencies on the spectrum at issue in this matter are assigned on a first-come, first-served basis,¹² and are coordinated. Our rules and policies concerning assignment of spectrum on a first-come, first-served basis are crafted to ensure that as spectrum becomes available, all entities and members of the public have an equal opportunity afforded to them to obtain the spectrum after the availability of that spectrum is reflected in Commission databases.¹³ Allowing a prematurely-filed application, such as CN WAN's, to be considered acceptable for filing, and/or to process it, would be unfair to all other similarly-situated prospective applicants for MAS spectrum, and undermine their opportunity to file first-in-time or competing applications.

⁹ Public Notice, *Application Requirements for Stations in the Private Operational Fixed Microwave Service* (Mimeo 0125, Oct. 7, 1985).

¹⁰ See generally 47 C.F.R. § 101.105.

¹¹ *Id.*

¹² Essentially, each day is a new filing "window" for Part 94 Private Operational Fixed Microwave Service stations. See 47 C.F.R. § 1.227(b)(4).

¹³ See, e.g., Order, *In the Matter of Applications of Samuel Ferguson To Operate a Two-Way Mobile System In the San Diego, California AREA On the Frequencies 861.3500/816.3500 MHz, and A to Z Enterprises, Inc. To Operate a Two-Way Mobile System In the San Diego, California AREA On the Frequencies 861.3500/816.3500 MHz*, 15 FCC Rcd 4363 (Chief, Public Safety and Private Wireless Div., WTB, Feb. 25, 2000).

IV. CONCLUSION AND ORDERING CLAUSE

9. For the reasons stated above, the action of LTAB dismissing CN WAN's application for the frequency pair 952/928.20625 MHz is affirmed.

10. IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and pursuant to Sections 0.331 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.106, that the petition for reconsideration filed by CN WAN Corporation on September 21, 1999, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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