

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

In the Matter of the Applications of)	
)	
Northwest Missouri Cellular)	FCC File Nos. 0000024117, 0000024118,
)	0000024119
to Modify the Licenses for Microwave Stations)	
WLS569, Rockport, Missouri; WLS566, Mound)	
City, Missouri; and WLS565, St. Joseph, Missouri)	

ORDER

Adopted: August 4, 2000

Released: August 7, 2000

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

I. INTRODUCTION

1. Northwest Missouri Cellular (NMC) inadvertently allowed the licenses for three of its 2 GHz point-to-point microwave stations to lapse. NMC has filed applications to re-license these facilities,¹ and requests a waiver of Section 101.81 of the Commission's Rules² that would otherwise result in the stations being authorized on a secondary basis.³ For the reasons set forth herein, we deny the waiver request.

II. BACKGROUND

2. The Commission has reallocated portions of the 2 GHz band from fixed microwave service (FMS) to emerging technology (ET) services, including the personal communications services (PCS).⁴ To this end, the Commission has adopted certain transition rules.⁵ First, rather than immediately clearing the 2 GHz band of incumbent FMS users, the Commission permits the incumbents to continue to occupy the band on a co-primary basis with ET licensees for a length of time, by the end of which the incumbents are to relocate to another portion of the spectrum.⁶ ET licensees have the option, however, of requiring the FMS

¹ Applications for Authorization in the Microwave Services (FCC File Nos. 0000024117, 0000024118, 0000024119) (filed Aug. 18, 1999) (Applications).

² Northwest Missouri Cellular Request for Waiver (filed Aug. 18, 1999) (Waiver Request).

³ 47 C.F.R. § 101.81.

⁴ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *First Report and Order and Third Notice of Proposed Rule Making*, ET Dkt. No. 92-9, 7 FCC Rcd 6886 (1992) (*ET First Report and Order*).

⁵ See 47 C.F.R. §§ 101.69-101.81. The rules are intended to reaccommodate the FMS licensees in a manner that would be most advantageous for the incumbent users, least disruptive to the public and most conducive to the introduction of new services. See *ET First Report and Order*, 7 FCC Rcd at 6886-87 ¶ 5.

⁶ 47 C.F.R. §§ 101.69(b), 101.79(a). See also *ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5.

incumbents to relocate sooner if they pay the additional costs caused by the earlier relocation.⁷ Second, the Commission is authorizing new FMS stations and most modifications of FMS systems in the 2 GHz band only on a secondary basis to ET systems.⁸ Primary status is granted for a limited number of technical changes including, *inter alia*, data corrections which do not involve a change in the location of an existing facility.⁹ All other minor modifications render the modified license secondary unless the FMS licensee justifies primary status and the modification does not add to the relocation costs to be paid by the new ET licensees.¹⁰

3. On June 13, 1991, NMC was granted licenses to operate three FMS stations, with primary status, under the following Call Signs: Rockport, WLS569; Mound City, WLS566; and St. Joseph, WLS565.¹¹ The facilities, which have been in operation from the time of the grant, are operationally connected to NMC's wide area cellular telephone network.¹² The microwave system of which the subject facilities are a part is used to link individual cell sites to each other, switching facilities, and the public switched telephone network.¹³

4. FMS licensees must construct their stations within eighteen months of license grant,¹⁴ and must file a construction certification on a FCC Form 494A within that time or the license is automatically forfeited.¹⁵ NMC never submitted construction certification for Stations WLS569, WLS566, and WLS565.¹⁶ Consequently, the licenses were deemed forfeited and deleted from the Commission's licensing data base.

⁷ See 47 C.F.R. §§ 101.69(a), 101.71-101.77.

⁸ 47 C.F.R. § 101.81; see Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rulemaking*, ET Dkt. No. 95-157, 11 FCC Rcd 8825, 8868 ¶ 88 (1996) (*Cost Sharing First Report and Order*). Secondary operations may not cause interference to operations authorized on a primary basis (*e.g.*, the new ET licensees) and are not protected from interference from primary operations. See 47 C.F.R. § 101.3.

⁹ *Cost Sharing First Report and Order*, 11 FCC Rcd at 6888 ¶ 88; 47 C.F.R. § 101.81(d).

¹⁰ *Cost Sharing First Report and Order*, 11 FCC Rcd at 6888 ¶ 88; 47 C.F.R. § 101.81.

¹¹ See *Public Notice*, Report No. 1365 (rel. June 19, 1991).

¹² Waiver Request at 1.

¹³ *Id.*

¹⁴ 47 C.F.R. §§ 21.7 (1991), 21.43(a)(1) (1991).

¹⁵ 47 C.F.R. § 21.44(a)(1) (1991).

¹⁶ Letter from Susan C. Belardi, Kurtis & Associates, P.C., counsel for Northwest Missouri Cellular, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (dated Aug. 17, 1999). In this letter, NMC concludes that its stations were not properly licensed, and that NMC has been inadvertently operating these stations in violation of the Commission's Rules. The present *Order* address only NMC's waiver request. The Commission reserves its discretion to take enforcement action at a later date with respect to NMC's unauthorized operation.

5. While performing engineering work in 1999, NMC realized that it never filed FCC Forms 494A.¹⁷ NMC states that it immediately began construction of the three stations at issue once its applications were granted on June 13, 1991.¹⁸ Around that time, NMC experienced a change in personnel, and a new individual gained responsibility for overseeing NMC's operations.¹⁹ When the three stations began operating under this new management, NMC inadvertently failed to advise the Commission that it had completed construction and begun operation.²⁰ Upon realizing this error, NMC brought the situation to the Commission's attention.²¹ On August 18, 1999, NMC filed the above-captioned applications for initial authorization to operate these facilities with a waiver request seeking primary status, and requested special temporary authority (STA) to continue to operate its facilities pending a grant of its application. The STA was granted on August 27, 1999, and subsequently extended; it currently is scheduled to expire on August 25, 2000.

III. DISCUSSION

6. In this case, the stations at issue were originally licensed with primary status, but that authorization terminated after NMC failed to file FCC Form 494A. NMC now requests a waiver of the Commission's Rules so that its new station licenses can be accorded primary status. We may grant a request for waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case and a grant of the requested waiver would be in the public interest, or (ii) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²² NMC has not shown that it meets either of these standards. We therefore deny NMC's request that we waive Section 101.81 of the Rules.

7. NMC asserts that licensing the three stations on a secondary basis would render its system unprotected from interference, which could possibly result in the disruption of service or jeopardize the provision of calls for emergencies and public safety.²³ NMC further states that they are not trying to modify or expand its system in such a way that the modification or expansion would add to the relocation costs to be incurred by a PCS licensee.²⁴ NMC therefore believes that primary status would be in the public interest.²⁵

¹⁷ *Id.*

¹⁸ Northwest Missouri Cellular Request for Special Temporary Authority at 1 (filed Aug. 16, 1999) (August 1999 STA Request).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² 47 C.F.R. § 1.925(b)(3).

²³ Waiver Request at 1.

²⁴ *Id.*

²⁵ *Id.*

8. Turning to the first of the two standards for deciding a waiver request, we do not believe that the underlying purpose of Section 101.81 of the Commission's Rules would not be served or would be frustrated by granting NMC secondary status. Granting NMC secondary status does not impair the Commission's efforts to reallocate portions of the 2 GHz band from FMS to ET services. Furthermore, that NMC is not trying to modify or expand its system in such a way that such modification or expansion would add to the relocation costs incurred by a PCS licensee is not sufficient to warrant a waiver. As we explained in *Duke Power Company*,²⁶ the goals of the 2 GHz licensing rules are not only to limit relocation costs, but also to clear the 2 GHz spectrum.²⁷ In declining to expand the licensing policy, the Commission previously has stated that limiting primary site-by-site license grants is necessary to protect the interests of PCS (and other ET) licensees.²⁸ Moreover, the Rules themselves demonstrate that limiting relocation costs is not the only purpose they serve. For example, all major modifications result in 2 GHz FMS stations being accorded secondary status regardless of the effect on relocation costs.²⁹ Further, licensees who make certain minor modifications must affirmatively justify primary status, not just show that the modifications will add to relocation costs, in order to retain primary status.³⁰ Thus, NMC's argument that primary status will not add to relocation costs is insufficient to warrant a waiver.

9. Turning to the second of two standards for granting a waiver, NMC has failed to demonstrate that unique or unusual circumstance exist, making application of the rules inequitable, unduly burdensome or contrary to the public interest.³¹ NMC explains that it inadvertently failed to file FCC Form 494A during a change in management.³² We are not persuaded that an inadvertent failure to file a construction certification in a timely manner due to an internal reorganization is so unusual as to warrant a waiver of the rules.³³

IV. CONCLUSION

10. NMC's applications to re-license the stations at issue are new applications which, if granted would be accorded secondary status pursuant to the Commission's Rules. For the reasons discussed above, NMC has not demonstrated how the Rules would be frustrated or how application of the Rules would be contrary to the public interest, or that unique or unusual circumstances are present. We therefore deny NMC's request for a waiver of Section 101.81 of the Commission's Rules, and forward the application to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch, for processing in accordance with the applicable Commission Rules.

²⁶ *Duke Power Company*, Order, 14 FCC Rcd 19431, 19433 ¶ 6 (WTB PSPWD 1999) (*Duke Power Company*); see also *Tampa Electric Company*, Order, 14 FCC Rcd 21344, 21347 ¶ 7 (WTB PSPWD 1999).

²⁷ See 47 C.F.R. § 101.69.

²⁸ *Cost Sharing First Report and Order*, 11 FCC Rcd at 8869 ¶ 88.

²⁹ See 47 C.F.R. § 101.81.

³⁰ *Id.*

³¹ 47 C.F.R. § 1.925(b)(3)(ii).

³² August 1999 STA Request at 1.

³³ See *Duke Power Company*, 14 FCC Rcd at 19434 ¶ 8.

V. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the Request for Temporary Waiver of Section 101.81 of the Commission's Rules of Northwest Missouri Cellular, filed on August 18, 1999, IS DENIED.

12. IT IS FURTHER ORDERED that application FCC File Nos. 0000024117-0000024119, filed by Northwest Missouri Cellular on August 18, 1999, SHALL BE PROCESSED by the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch in accordance with the applicable Commission Rules.

13. 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