

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

In the Matter of)	
)	
CELTRONIX TELEMETRY, INC.)	FCC File No. D128959
)	
Application for Private Land Mobile Radio)	
Services Licenses in the 218-219 MHz Band and)	
Request for Waiver of Sections 90.127(b) and)	
90.155(a) of the Commission's Rules)	

ORDER ON RECONSIDERATION

Adopted: August 24, 2001

Released: August 31, 2001

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

I. INTRODUCTION

1. On April 14, 2000, Celtronix Telemetry, Inc. (Celtronix) filed a petition requesting reconsideration of the March 15, 2000 *Order* by the Public Safety and Private Wireless Division (Division), Wireless Telecommunications Bureau (Bureau), which dismissed the above-captioned application and denied the associated waiver request filed by Celtronix. Celtronix sought to provide vehicle tracking services by means of a private land mobile radio (PLMR) system operating in the 218-219 MHz band on a secondary basis pursuant to Part 90 of the Commission's Rules.¹ On April 12, 2001, Celtronix filed an amendment to its application requesting, *inter alia*, withdrawal of its waiver requests. For the reasons set forth herein, we grant the Petition in part, reinstate Celtronix' application, dismiss the request for waiver, and forward the application, as amended, to the Licensing and Technical Analysis Branch (LTAB) for processing.

II. BACKGROUND

2. On July 19, 1999, Celtronix filed the subject application² and waiver request³ in which it proposed to construct and operate a system in the Virginia Tidewater area⁴ to serve businesses that need to track fleets of vehicles. The systems Celtronix proposed would use vehicle-mounted units that would transmit Global Positioning System (GPS) location information to one of a number of base stations, using

¹ See Celtronix Telemetry, Inc., *Order*, 15 FCC Rcd 9984 (PSPWD WTB 2000) (*March 15 Order*).

² See Celtronix Telemetry, Inc. Private Land Mobile Services Application for Telemetry License in the 218-219 MHz Band, filed July 19, 1999 (Celtronix Application).

³ See Petition of Celtronix Telemetry, Inc. for Waiver of Section 90.127(b) and 90.155(a) of the Commission's Rule, filed July 19, 2000 (Waiver Request).

⁴ Specifically, Celtronix's originally proposed system would operate in multiple counties and independent cities in the Newport News, Norfolk and Virginia Beach, Virginia area. Celtronix Application, Exhibit I at 1. See also Celtronix Application at Attachment 1 to Schedule E (listing multiple control station points in southeastern Virginia and northeastern North Carolina).

the 218-219 MHz band.⁵ The base stations, in turn, would relay information via a wireline connection to a system hub, which would relay location data – via a wireline connection – to subscribers’ personal computers.⁶

3. Because Celtronix’s proposed system required one-way radio communications between vehicle mounted units and base stations on the 218-219 MHz band, it applied for authority to operate a land mobile system under Part 90 of the Commission Rules.⁷ The Commission’s Rules permit PLMR radio use of the 216-220 MHz band – which includes the 218-219 MHz frequencies that were the subject of Celtronix’s application - and the 1427-1435 MHz band only for telemetering purposes on a secondary basis.⁸ In addition, the portion of the band between 218-219 MHz is allocated on a primary basis to the 218-219 MHz Service.⁹

4. In connection with its application, Celtronix sought waiver of: (1) Section 90.155(a) of the Commission’s Rules, which requires that a station be in operation within eight months from the date of the grant¹⁰ and (2) Section 90.127(b) of the Commission’s Rules, which requires an applicant to limit its request for authorized mobile transmitters to those that will be installed and operated immediately after authorization or for which purchase orders have already been signed and which will be in use within eight months of the authorization date.¹¹

5. On March 15, 2000, the Division determined that Celtronix’s proposal required a waiver of Section 90.259 of the Commission’s Rules, which limits Part 90 use of the 216-220 to telemetering operations.¹² The Division also concluded that Celtronix did not provide sufficient justification for a waiver of Section 90.259, and thus, denied the waiver request and dismissed the associated application.¹³

⁵ See Celtronix Application, Exhibit I at 1.

⁶ *Id.*

⁷ Specifically, Celtronix requested authority pursuant to Sections 90.35, 90.117, 90.119, 90.137, 90.238 and 90.259 of the Commission’s Rules, 47 C.F.R. §§ 90.35, 90.117, 90.119, 90.137, 90.238, 90.259. *Id.*

⁸ 47 C.F.R. §§ 90.35(c)(55), 90.259.

⁹ 47 CFR § 2.106 footnote US317. The 218-219 MHz Service was formerly known as the Interactive Video and Data Service. See Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, WT Docket 98-169, 13 FCC Rcd 19064, 19075 ¶ 16 (1998).

¹⁰ 47 C.F.R. § 90.155(a).

¹¹ 47 C.F.R. § 90.127(b).

¹² *March 15 Order*, 15 FCC Rcd at 9986 ¶ 5. The Division determined that Celtronix apparently assumed that its proposed operations came within the definition of telemetering. However, the Division disagreed because neither the rules for the 218-219 MHz Service nor the rules for the Location and Monitoring Service (LMS) define the types of operation Celtronix proposes as telemetering. Therefore, the Division concluded that Celtronix’s proposed operation did not come within the definition of telemetering and found that a waiver of Section 90.259 of the Commission’s Rules was required. *Id.* at n.11.

¹³ *Id.*, 15 FCC Rcd at 9989 ¶ 12.

Because the Division concluded that a waiver of Section 90.259 was not warranted, it did not address Celtronix's request for waiver of Sections 90.127(b) and 90.155(a) of the Commission's Rules.¹⁴

6. On April 14, 2000, Celtronix filed the subject Petition, requesting reconsideration of the *March 15 Order*. On April 12, 2001, Celtronix filed a supplement to its Petition in which it amended its application.¹⁵ In the Amendment, Celtronix changed its contact information, the number of base stations and mobile units it requested and the area in which it sought to operate.¹⁶ Celtronix also provided additional information pursuant to Section 90.259 of the Commission's Rules.¹⁷ As a result of these amendments, Celtronix determined that waivers of Sections 90.127(b) and 90.155(a) of the Commission's Rules are no longer necessary, and thus, requested withdrawal of its waiver request.¹⁸

III. DISCUSSION

7. *Petition for Reconsideration*. In its Petition, Celtronix argues that vehicle tracking comes within the definition of telemetering.¹⁹ Therefore, Celtronix believes that waiver of Section 90.259 of the Commission's rules is not necessary because its vehicle tracking service fits within the definition of "telemetering" provided in Section 90.7 of the Commission's Rules and thus is permitted in the 218-219 MHz band.²⁰

8. Based on the additional details of its system and other supporting information provided by Celtronix in its Petition, we agree that the Celtronix's proposed system does fit within the Part 90 definition of "telemetering." The Commission defines telemetering as "[t]he transmission of non-voice signals for the purpose of automatically indicating or recording measurements at a distance from the measuring instrument."²¹ In its Petition, Celtronix demonstrates that the proposed vehicle tracking service meets the Commission's definition of telemetering. The proposed system would transmit non-voice signals, specifically, the geographic coordinates of the vehicle, which are received from the GPS satellites that provide the vehicle's location, speed and direction.²² The proposed system would transmit those signals for the purpose of automatically indicating and recording those measurements (location, speed and direction).²³ Finally, the measurements are indicated and recorded at a distance from the measuring system.²⁴

¹⁴ *Id.*, 15 FCC Rcd at 9984 n.11

¹⁵ See Celtronix, Inc. Supplement to Petition for Reconsideration: Amendment, filed April 12, 2001 (Amendment).

¹⁶ *Id.* at 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Petition at 2.

²⁰ *Id.*

²¹ See 47 C.F.R. § 90.7.

²² Petition at 2.

²³ *Id.*

Accordingly, we reverse our prior determination that Celtronix's application was inconsistent with Section 90.259 of the Commission's Rules because it was not proposing "telemetrying."

9. We note that the *March 15 Order* cited the notice of proposed rulemaking adopting the original version of this rule for the proposition that the band would only "be available for local area requirements," as opposed to wide-area coverage systems such as vehicle locator systems.²⁵ At that time, the resulting rule limited the permissible use to "local area operational fixed and mobile station and telemetrying and associated base station telecommand purposes."²⁶ The current version of the rule, however, does not contain the "local area" limitation. In light of the additional information submitted by Celtronix, we conclude that Celtronix's proposed use is consistent with the current definition of "telemetrying." Accordingly, we will reinstate the Celtronix application.

10. *Amended Application.* As stated above, Celtronix has amended its application. Celtronix originally requested authority to operate in Newport News, Norfolk and Virginia Beach, Virginia²⁷ but, in its Amendment, Celtronix deletes Newport News as a location.²⁸ Celtronix also originally requested authority to operate a total of 52 base stations and 1,625 mobile units.²⁹ However, in the Amendment, Celtronix requests a total of five base stations and 205 mobile units.³⁰ Celtronix also provides additional information in its Amendment concerning emission characteristics, transmitter frequency deviation, output power, type and characteristics of the antenna and the minimum necessary hours of operation of its system.³¹ As a result of these amendments, Celtronix contends that it no longer requires a waiver of Sections 90.127(b) and 90.155(a) and therefore requests withdrawal of its request for waiver filed on July 19, 1999 in association with its original application.³²

11. Celtronix's proposed amendments constitute major changes to its application under Section 1.929(c)(4) of the Commission's Rules.³³ Where an amendment to an application constitutes a major change, the amendment is considered a new application.³⁴ Because this amended application must be

(Continued from previous page) _____

²⁴ *Id.*

²⁵ *March 15 Order*, 15 FCC Rcd at 9986 ¶ 6, *citing* Amendment of Parts 2, 87 and 91 to Delete Provisions for Aeronautical Telemetrying in the Industrial Radio Services in the Frequency Band 216-220 MHz, *Notice of proposed Rulemaking*, Docket No. 18924, 24 FCC 2d 554, 556 ¶ 8 (1970).

²⁶ *See, e.g.*, 47 C.F.R. § 91.504 n.36 (1974).

²⁷ *See* FCC File No. D128959.

²⁸ *See* Amendment at 1.

²⁹ *See* FCC File No. D128959.

³⁰ *See* Amendment at 1.

³¹ *Id.*

³² *Id.* at 2.

³³ 47 C.F.R. § 1.929(c)(4).

³⁴ 47 C.F.R. § 1.927.

treated as a new application, we will forward the amendment to the Division's Licensing and Technical Analysis Branch (LTAB) for processing. In addition, we find that granting Celtronix's request for withdrawal of its request for waiver would serve the public interest because it will conserve the resources of Celtronix and the Commission. Therefore, we will dismiss Celtronix's request for waiver of Sections 90.127(b) and 90.155(a).

12. We note that Celtronix states that there is no need for the Commission to submit its application to the Interdepartment Radio Advisory Committee (IRAC) of the National Telecommunications and Information Administration (NTIA) for frequency coordination.³⁵ Celtronix bases this claim on the fact that the 218-219 MHz band has been allocated on a primary basis to the 218-219 MHz Service and is no longer shared with the Federal Government or mobile satellite operations.³⁶ We disagree. Section 90.259 of the Commission's Rules provides that "each application" must be coordinated with the Federal Government.³⁷ Section 90.259 does not waive the requirement for applicants requesting operation in the 218-219 MHz band. Furthermore, Celtronix does not request waiver of that requirement. Accordingly, as part of the processing of its application, the LTAB will submit this application to IRAC for frequency coordination.

V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 309 and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309 and 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Celtronix Telemetry, Inc. on April 14, 2000, IS GRANTED to the extent indicated, and FCC File No. D128959 IS REINSTATED.

14. IT IS FURTHER ORDERED that FCC File No. D128959, as amended, is forwarded to the Licensing and Technical Analysis Branch for processing.

15. IT IS FURTHER ORDERED that Celtronix's request for waiver of Sections 90.127(b) and 90.155(a) of the Commission's Rules, filed on July 19, 1999, IS DISMISSED.

16. 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

³⁵ Celtronix Application, Exhibit I at 2.

³⁶ *Id.*

³⁷ 47 C.F.R. § 90.259.