

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

In the Matter of)
)
LICENSE COMMUNICATIONS SERVICES,)
INC.)
)
Licensee of Industrial/Business Pool (YG) Station)
WPQF492, Los Angeles County, California)
)
Petition for Partial Reconsideration and Request)
for Further Modification of License)

ORDER

Adopted: March 17, 2009

Released: March 19, 2009

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. In an Order Proposing Modification, the Wireless Telecommunications Bureau, Mobility Division (Division) proposed to modify the license of License Communications Services, Inc. (LCS) for Industrial/Business Pool Station WPQF492, Los Angeles County, California, by deleting frequency pairs 472/475.9250 MHz and 472/475.9500 MHz. Subsequently, James A. Kay, Jr. and Comm Enterprises, LLC (collectively, Kay) requested deletion of frequency pairs 472/475.4250 MHz, 472/475.4500 MHz, and 472/475.7000 MHz from the license. For the reasons set forth below, we conclude that the license should not be modified at this time. Consequently, we decline to modify the license as proposed in the Order Proposing Modification, and we deny the request for further modification.

2. Background. In 1997, the Commission directed the certified frequency coordinators for the private land mobile radio services to reach a consensus on the applicable coordination procedures for the 12.5 kHz "offset" channels in the 470-512 MHz frequency band. That consensus is embodied in the Land Mobile Communications Council (LMCC) procedures for evaluating adjacent channel interference in the 470-512 MHz band using the interference criteria of TIA/EIA/TSB-88 (TSB-88). The LMCC

1 See License Communications Services, Inc., Order Proposing Modification, 22 FCC Record 17596, 17598 ¶ 8 (WTB MD 2007) (Order Proposing Modification).

2 See Petition for Partial Reconsideration and Request for Further Modification (filed Nov. 1, 2007) (Kay Request). Kay captioned the request as a petition for partial reconsideration of the Order Proposing Modification, in that he seeks action beyond what was proposed. We agree with LCS, however, that Kay lacks standing to seek reconsideration of the Order Proposing Modification because he was not adversely affected by it. See Opposition of License Communications Services, Inc. (LCS) to Petition for Further Reconsideration by Comm Enterprises and James A. Kay Jr. at 2-3 (filed Nov. 13, 2007) (citing 47 C.F.R. § 1.106(b)(1)). Consequently, we will treat the Kay Request as an informal request under Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41.

3 See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, Second Report and Order, PR Docket No. 92-235, 12 FCC Red 14307, 14330-31 ¶ 43 (1997).

4 See Telecommunications Industry Association/Electronics Industry Association Telecommunications Systems Bulletin 88 (TIA/EIA/TSB-88), Wireline Communications System - Performance in Noise and Interference-Limited Situations - Recommended Methods for Technology-Independent Modeling, Simulation, and Verification (January 1998).

Consensus provides that an application shall not be certified if an incumbent or the applicant has unacceptable interference of more than five percent reduction of the calculated service area reliability.⁶

3. The license for Station WPQF492 authorizes operation of temporary base stations and mobile units on 12.5 kHz “offset” frequency pairs 472/475.4250 MHz, 472/475.4500 MHz, 472/475.7000 MHz, 472/475.9250 MHz, and 472/475.9500 MHz. LCS’s application⁷ for Station WPQF492 was coordinated by the American Automobile Association (AAA),⁸ and granted on June 23, 2000. On March 23, 2004, Mobile Relay Associates (MRA) requested that the license be modified by deleting frequency pairs 472/475.9250 MHz and 472/475.9500 MHz on the grounds that the coordination was defective in that Station WPQF492 did not provide the required protection to MRA’s Station WIL648, Corona, California, operating on adjacent frequency pair 472/475.9375 MHz.⁹ On January 31, 2007 the Division directed AAA to indicate whether alternate frequencies were available for Station WPQF492.¹⁰ On March 6, 2007, AAA responded that it believed that the application for Station WPQF492 was properly coordinated.¹¹

4. On October 2, 2007, the Division released the *Order Proposing Modification*. The Division noted that its independent engineering analysis using the interference criteria of TSB-88 found that LCS’s operations would degrade the service area of MRA’s Station WIL648 on frequency pair 472/475.9375 MHz by seven percent.¹² It concluded that Section 316(a)(1) of the Communications Act of 1934, as amended, provided the appropriate vehicle for resolving this matter.¹³ Section 316(a)(1) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.¹⁴ The Division concluded that deleting frequency pairs 472/475.9250 MHz and 472/475.9500 MHz from LCS’s license for Station WPQF492 would serve the public interest by precluding harmful interference to Station WIL648, and would not unduly disrupt the operations of LCS, which is authorized on other channels under this and other licenses in the area.¹⁵ Consequently, the Division proposed to modify LCS’s license for Station WPQF492 by deleting frequency pairs 472/475.9250 MHz and 472/475.9500 MHz.¹⁶

(...continued from previous page)

⁵ See Filing Freeze to be Lifted for Applications under Part 90 for 12.5 kHz Offset Channels in the 421-430 and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942, 5942 (WTB 1997) (citing Letter from Larry A. Miller, President, LMCC, to Daniel B. Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau (Sept. 10, 1997) (LMCC Consensus)).

⁶ See LMCC Consensus, Attachment at 2.

⁷ FCC File No. D130079.

⁸ AAA Frequency Coordination No. CA9AA00177.

⁹ See Request to Initiate Modification Proceedings (filed Mar. 23, 2004) (MRA Request).

¹⁰ See Letter dated January 31, 2007, from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Gary Ruark, American Automobile Association.

¹¹ See Letter dated March 6, 2007, from Gary Ruark, Manager, Fleet Communications, American Automobile Association, to Marlene H. Dortch, Secretary, Federal Communications Commission. On March 22, 2007, MRA filed an opposition.

¹² See *Order Proposing Modification*, 22 FCC Rcd at 17597 ¶ 4, 17598 ¶ 7.

¹³ 47 U.S.C. § 316(a)(1).

¹⁴ *Id.*

¹⁵ See *Order Proposing Modification*, 22 FCC Rcd at 17598 ¶ 7.

¹⁶ *Id.* at 17598 ¶ 8.

5. On October 26, 2007, LCS protested the proposed modification.¹⁷ On November 1, 2007, Kay requested that the Division further modify LCS's license by deleting frequency pairs 472/475.4250 MHz, 472/475.4500 MHz, and 472/475.7000 MHz, because Kay's frequency coordinator's analysis showed that operation on those frequencies would degrade the service area of certain Kay stations¹⁸ by over five percent.¹⁹

6. *Discussion.* As we stated recently, "because MRA 'did not raise these arguments until after the licensing action[] had become final, the issue is not whether any procedural error occurred in the processing of [the] application, but whether license modification would "promote the public interest, convenience, and necessity.'""²⁰ Thus, while there is a strong public interest in upholding the Commission's rules and procedures, the fact that LCS's application may have been improperly granted does not by itself require license modification under Section 316.²¹

7. In its protest, LCS argues that the proposed modification would not promote the public interest, convenience, and necessity.²² Specifically, it asserts that modification is not called for because MRA has not suffered any actual interference, or even alleged that it has suffered any actual interference.²³ MRA responds that it "did in fact lodge a complaint of harmful interference with the Commission via its March 23, 2004 Request."²⁴ We have reviewed MRA's March 23, 2004 request, and we agree with LCS that it does not allege actual interference; rather, it states only that LCS's application was defectively coordinated, and that the requested modification would "prevent[] harmful interference."²⁵ Moreover, as the Commission has noted, "the amount of time a party waits to request the modification of another licensee's authorization is certainly a legitimate question for consideration as part of the public interest, convenience, and necessity inquiry under the Communications Act."²⁶ Thus, the fact that MRA did not file its modification request until almost four years after NSTN's application was granted weighs against a claim that modification would be in the public interest.

¹⁷ See Protest of License Communications Services, Inc. to Proposed Modification to Delete Frequency Pairs 472/475.9250 MHz and 472/475/9500 MHz from Station WPQF492 (filed Oct. 26, 2007) (Protest). MRA filed an opposition. See Opposition to Protest of Proposed Modification (filed Nov. 7, 2007) (Opposition). LCS filed a reply. See Reply to Opposition of Mobile Relay Associates, Inc. to Protest of License Communications Services, Inc. to Proposed Modification to Delete Two Frequency Pairs from Station WPQF492 (filed Nov. 14, 2007) (Reply).

¹⁸ Stations WIL343, WIJ362, WIL441, and WQAD395.

¹⁹ See Kay Request at 3.

²⁰ National Science and Technology Network, Inc., *Order on Reconsideration*, 22 FCC Rcd 20973, 20975 ¶ 9 (WTB MD 2007) (NSTN) (quoting Samuel Moses, *Order on Reconsideration*, 22 FCC Rcd 7425, 7427 ¶ 6 (WTB MD 2007) (quoting 47 U.S.C. § 316(a)(1)), *review pending*, *review pending*; see also Pacific Gas and Electric Company, *Memorandum Opinion and Order*, 18 FCC Rcd 22761, 22767-68 ¶ 16 (2003) ("License modification pursuant to Section 316 should be undertaken only under those limited and unusual cases where, in the light of the circumstances, it is clear that such action will promote the public interest, convenience, and necessity.").

²¹ NSTN, 22 FCC Rcd at 20975-76 ¶ 10 (citing Industrial Telecommunications, Inc., *Order*, 18 FCC Rcd 25267, 25270 ¶ 9 (WTB PSCID 2003)).

²² See Protest at 8-10.

²³ *Id.* at 8-9; Reply at 1. LCS also argues that the two percent difference between the Division's engineering analysis and what is permitted by TSB-88 should be deemed *de minimis*. See Protest at 8 n.8.

²⁴ See Opposition at 3. Interestingly, the Opposition does not assert that MRA suffered or is suffering interference, only that MRA previously complained that it was suffering interference.

²⁵ See MRA Request at 5.

²⁶ JPI Electronic Communications, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 5512, 5515 ¶ 6 (2002).

8. Under these circumstances, we conclude that MRA has not advanced sufficient public interest considerations or otherwise showed that the requested modification of the LCS license is warranted under Section 316(a)(1). We therefore decline to modify LCS's license as proposed in the *Order Proposing Modification*. Should MRA in the future experience actual, documented interference from LCS's adjacent-channel operations, it may file a new request for license modification.

9. We reach the same conclusion with respect to Kay's request for further modification. Kay's request also does not allege any actual interference, and was filed more than seven years after LCS's application was granted.²⁷ We therefore deny Kay's request.²⁸ Should Kay in the future experience actual, documented interference from LCS's adjacent-channel operations, he may file a new request for license modification.

10. *Conclusion and Ordering Clauses.* We conclude, under the current circumstances, that modifying the license for Station WPQF492 would not promote the public interest, convenience, and necessity. Consequently, we decline to modify the license as proposed in the *Order Proposing Modification*, and we deny Kay's request for further modification. Should MRA or Kay in the future experience actual, documented interference from LCS's adjacent-channel operations, they may file new requests for license modification.²⁹

11. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316, and Sections 1.41 and 1.87 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.87, that the request to initiate modification proceedings submitted by Mobile Relay Associates on March 23, 2004 IS DENIED.

12. IT IS FURTHER ORDERED that the joint petition for partial reconsideration and request for further modification of license filed by Comm Enterprises, LLC and James A. Kay, Jr. on November 1, 2007 IS DENIED.

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 COMMUNICATION COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

²⁷ Indeed, it does not appear that Kay felt aggrieved by LCS's operations prior to the release of the *Order Proposing Modification*. His request is based solely on his frequency coordinator's analysis, which was not prepared until November 1, 2007. See Kay Request at Exs. 1.1-1.6.

²⁸ Kay's request falls particularly short, given that the cumulative effect of granting Kay's request on top of the modification proposed in the *Order Proposing Modification* would have been to revoke LCS's license entirely. License revocation requires a higher showing than license modification, and has additional procedural requirements. Compare 47 U.S.C. § 312 with 47 U.S.C. § 316.

²⁹ We also note that Station WPQF492 will be subject to the Commission's pending decision regarding how to treat FB8T (temporary fixed base station not subject to a monitoring requirement) stations. See Amendment of Part 90 of the Commission's Rules, *Notice of Proposed Rulemaking and Order*, WP Docket No. 07-100, 22 FCC Rcd 9595, 9602 ¶ 16 (2007) (proposing to renew FB8Ts as FBTs).