

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

In the Matter of Application of )  
 )  
TOWN OF CHEROKEE ) FCC File No. 0003129824  
 )  
Request for Waiver of Section 90.259 to Exceed )  
Maximum Antenna Height Above Average )  
Terrain )

ORDER

Adopted: March 17, 2009

Released: March 17, 2009

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

1. *Introduction.* We have before us an application and waiver request filed by the Town of Cherokee, North Carolina (Cherokee).<sup>1</sup> Cherokee requests a waiver of the antenna height limitation for secondary fixed telemetry operations in the 217-220 MHz frequency band. For the reasons discussed herein, we grant Cherokee’s waiver request.

2. *Background.* Cherokee seeks authorization for a fixed telemetry system on two 218-219 MHz band frequencies<sup>2</sup> for use by the Town of Cherokee Water Utility in connection with potable water production, purification, storage, and distribution, and wastewater collection.<sup>3</sup> One of the requested transmitter locations is Burnett Knob in the southern Smoky Mountains. Cherokee seeks to use this location because the site offers the necessary coverage, and space is available on an existing tower that Cherokee uses for police, fire, and other emergency services.<sup>4</sup> Because Burnett Knob is higher than much of the surrounding area, the two antennas proposed for that site would have a height above average terrain (HAAT) of 361 meters (1184.4 feet) and 364 meters (1194.2 feet), respectively. Consequently, Cherokee seeks a waiver of Section 90.259(a)(4) of the Commission’s Rules,<sup>5</sup> which limits the HAAT for secondary fixed telemetry in the 217-220 MHz band to 152 meters (500 feet).

3. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that the underlying purpose of the rule(s) would not be served or would be frustrated by application

<sup>1</sup> FCC File No. 0003129824; Letter dated June 10, 2008 from Donald B. Schultze, Data Flow Systems, to Federal Communications Commission (Waiver Request).

<sup>2</sup> Initially, the application sought frequencies in the 217-218 MHz and 219-220 MHz bands. AMTS Consortium, LLC (ACL), which is licensed on a primary basis in those bands in the area of the proposed operations, filed an informal objection. *See* Informal Objection and Motion for Sanctions (filed June 7, 2008). ACL is now known as Environmental LLC (Environmental). *See, e.g.*, FCC File No. 0003649428. Cherokee subsequently amended the application to request frequencies in the 218-219 MHz band. Because Environmental is not licensed on the frequencies now requested by Cherokee, we conclude that the informal objection is moot.

<sup>3</sup> *See* Waiver Request at 1. For example, the frequencies would be used to control and monitor pump stations, and monitor ground storage tank levels.

<sup>4</sup> *Id.*

<sup>5</sup> 47 C.F.R. § 90.259(a)(4).

to the present case and that grant of the waiver would be in the public interest;<sup>6</sup> or that, in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>7</sup> We conclude that Cherokee has made the requisite showing for grant of a waiver.

4. The purpose of the HAAT limitation is to limit harmful interference from secondary fixed telemetry operations to primary operations.<sup>8</sup> We have reviewed Cherokee's application, and conclude that the proposed facilities would not cause harmful interference to any primary licensee. The nearest station licensed on the requested frequencies is more than three hundred miles away.<sup>9</sup> Further, we concur with Cherokee's assessment that terrain shielding from mountains surrounding Burnett Knob reduces the potential for harmful interference in the event that primary operations are authorized closer to Cherokee's proposed facilities.<sup>10</sup> We therefore conclude that granting a waiver of the HAAT limit will not frustrate the underlying purposes of the rule. We also conclude that a waiver grant is in the public interest, because it will improve the operation of Cherokee's water distribution and wastewater collection systems.<sup>11</sup>

5. *Ordering Clauses.* Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by Town of Cherokee, North Carolina with respect to application FCC File Number 0003129824 IS GRANTED, and application FCC File No. 0003129824 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

6. IT IS FURTHER ORDERED that the informal objection filed by AMTS Consortium, LLC on June 7, 2008 IS DISMISSED AS MOOT.

7. 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

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>6</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>7</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>8</sup> See Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Report and Order*, WT Docket No. 02-8, 17 FCC Rcd 9980, 10035 ¶ 141 (2002).

<sup>9</sup> See license for Station KIVD0444.

<sup>10</sup> See Waiver Request at 2.

<sup>11</sup> See, e.g., Milwaukee Metropolitan Sewerage District, *Order*, 19 FCC Rcd 2623, 2626 ¶ 10 (WTB PSCID 2004).