

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

In the Matter of)
SOUTHERN UNION GAS COMPANY)
952/928 MHz Multiple Address System)
Call Sign WPOT834)
Petition to Revoke filed by Union Oil Company)
of California)

MEMORANDUM OPINION AND ORDER

Adopted: June 16, 2000

Released: June 19, 2000

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

1. In this Memorandum Opinion and Order, we address the petition to revoke filed by Union Oil Company of California (Unocal) against the license of Southern Union Gas Company (Southern Union) to provide multiple address system (MAS) services. In its petition, Unocal argues that Southern Union's license for Station WPOT834 should be revoked due to a lack of required co-channel interference protection. Based on the record in this proceeding, we conclude that Southern Union's authorization for Station WPOT834 was granted in error.

2. By way of background, Southern Union allowed its license for Station WNTQ780 to expire on January 29, 1998. On January 29, 1999, Unocal applied for a MAS authorization for a nearby station. We granted Unocal's application on April 12, 1999 as Station WPOR500. On April 13, 1999, Southern Union filed for reinstatement of Station WNTQ780. The Division's Licensing and Technical Analysis Branch (Branch) treated the application as an application for a new station. As part of its application, Southern Union included an engineering analysis; however, such analysis did not take into account Unocal's Station WPOR500. On July 12, 1999, three months after the Unocal grant, the Branch granted

1Union Oil Company of California, Petition to Revoke (filed Aug. 10, 1999) ("Unocal Petition").

2Id. at 3.

3Id. at 2.

4Id. Unocal operates the station as part of its supervisory control and data acquisition (SCADA) system to remotely monitor its oil and gas production. Id. at 2. This system increases Unocal's operating efficiency, worker and public safety, and well production. Id. at 3. Unocal also uses its MAS service for voice communications, potentially involving safety problems or other emergencies. Id.

5See 47 C.F.R. § 101.65(b) (petitions for reinstatement must be filed within 30 days of the expiration date, must explain failure to timely file, and must specify procedures to ensure timely future filings).

6Unocal Petition at 3.

Southern Union's application.⁷ On August 10, 1999, Unocal filed its petition to revoke Southern Union's license for Station WPOT834. Unocal contends that Southern Union failed to comply with the Commission's co-channel licensing rules,⁸ and that Southern Union filed its reinstatement application too late and was properly treated as an application for a new license.⁹

3. Before we may address the merits of Unocal's Petition, we must first determine whether Unocal's objections are properly before us for consideration. Here, Unocal has styled its request as a petition to revoke Southern Union's license based on Section 312(a)(2) of the Communications Act of 1934, as amended (the Act). Under Section 312 of the Act, the Commission has authority to revoke a station license when, *inter alia*, conditions come to its attention that would have warranted an original refusal of the application.¹⁰ However, we do not recognize petitions to revoke submitted by third parties. Rather, we treat such requests as informal requests for Commission action, pursuant to Section 1.41 of the Commission's Rules.¹¹ Reconsideration under the Section 312(a)(2) revocation provision has been fundamentally predicated on a lapse of this 30-day period.¹² However, in this immediate case, thirty days had not lapsed when Unocal filed its petition. Thus, Unocal could have requested the same relief through reconsideration under Section 405 of the Communications Act of 1934, as amended.¹³

4. We find that Unocal's "Petition to Revoke" should be treated as a petition for reconsideration of the grant of Southern Union's license for Station WPOT834 because it requests that we change the Branch's determination regarding Southern Union's application for a license for Station WPOT834.¹⁴ Because Unocal's petition was filed within thirty days of the grant of Southern Union's license, we may properly consider the merits of the Unocal Petition pursuant to Section 405 of the Act.¹⁵

5. Unocal notes in its petition that when Southern Union allowed Station WNTQ780 to expire, the license was forfeited because Southern Union failed to request reinstatement of its license within thirty days

⁷*Id.*

⁸*Id.* at 1, 2, 5.

⁹*Id.* at 4, 5.

¹⁰*See* 47 U.S.C. § 312(a)(2).

¹¹*See* Danbury Cellular Telephone Company, Inc., 6 FCC Rcd. 4186, 4188 n.2 (1991).

¹²*See, e.g.,* Radio Para La Raza, 40 FCC 2d 1102, 1105 ¶ 8 (1973).

¹³47 U.S.C. § 405. Section 405 of the Act sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on reconsideration. Section 405 of the Act, as implemented by Section 1.106(f) of the Commission's Rules, 47 C.F.R. § 1.106(f), requires that a petition for reconsideration be filed within thirty days of the date of public notice of the final Commission action.

¹⁴*See* 47 C.F.R. § 1.106.

¹⁵*Cf.* Longstreet Communication International, Inc., 14 FCC Rcd. 4032, 4032 ¶ 1 (1999) (treating a petition for waiver as a petition for reconsideration); Industrial Communications & Electronics, Inc., 13 FCC Rcd. 8417, 8417 n.1 (1998) (treating a misnamed "petition for consideration" as a petition for reconsideration); Burlington Cablevision, Inc., 13 FCC Rcd. 772, 772 ¶ 1 (1998) (treating an application for review as a petition for reconsideration).

of the expiration date.¹⁶ Consequently, Unocal contends that the expiration of the license for Station WNTQ780 became a final action and was not subject to review after March 2, 1998. Accordingly, the Branch properly treated Southern Union's application as a request for a new license, and granted the station a new call sign, WPOT834.

6. An application for a new license must satisfy certain requirements. Section 101.105(c) of the Commission's Rules requires a showing of 145 kilometers of co-channel separation between all existing stations and pending applications for fixed-to-fixed systems in the 928-929/952-960 MHz bands.¹⁷ When this standard cannot be met, an engineering analysis must include a "statement that all parties affected have agreed to the engineering analysis and will accept the calculated levels of interference."¹⁸ Southern Union's Station WPOT834 is approximately 90 kilometers from Unocal's Station WPOR500. However, Southern Union's application did not include a statement from Unocal agreeing to the Southern Union engineering analysis.¹⁹ Because Southern Union's application was defective, it must be dismissed. Accordingly, the grant of the application must be rescinded.²⁰

7. Therefore, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition filed by Union Oil Company of California on August 10, 1999, IS GRANTED to the extent stated herein.

8. IT IS FURTHER ORDERED that pursuant to Sections 4(i), 309 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the grant of the license application of Southern Union Gas Company (FCC File No. 748888) IS RESCINDED, and the application IS DISMISSED.

9. This action is taken pursuant to delegated authority granted under the provisions of 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

¹⁶Unocal Petition at 4 (citing 47 C.F.R. § 101.65(a) (1998)); *see also* 47 C.F.R. § 101.65(b) (1998).

¹⁷47 C.F.R. § 101.105(c)(3)(i).

¹⁸47 C.F.R. § 101.105(c)(3)(iii)(D).

¹⁹Unocal Petition at 5.

²⁰*See* 47 C.F.R. §§ 1.4; 1.103; 1.104(b); 1.106(b)(2)(ii) (a petition for reconsideration may be entertained when it relies on facts unknown to the petitioner until its last opportunity to present such matters).