

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

In the Matters of)
)
AirCell, Inc. and)
California RSA No. 3, Limited Partnership,)
a California Limited Partnership d/b/a)
Golden State Cellular)
)
AirCell, Inc. and)
Douglas Telecommunications, Inc.)
)
)
Petitions for Waiver of the Airborne Cellular Rule)

ORDER

Adopted: July 18, 2000

Released: July 19, 2000

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

I. INTRODUCTION

1. On December 24, 1998, the Wireless Telecommunications Bureau (Bureau) released an Order granting AirCell, Inc. (AirCell) and certain participating cellular carriers a waiver of section 22.925¹ of the Commission's rules, subject to certain conditions.² The *AirCell Order* allows other cellular licensees that wish to participate with AirCell and operate under the terms and conditions of the *AirCell Order*, as amended, to file their own waiver requests.³ On January 21, 2000, the Commission received such a request filed jointly by AirCell and Douglas Telecommunications, Inc. (Douglas Telecom). On March 20, 2000, the Commission received such a request filed jointly by AirCell and California RSA No. 3, Limited Partnership, a California Limited Partnership d/b/a Golden State Cellular (collectively, Petitioners). For the reasons expressed below, we grant the waiver requests.

¹ 47 C.F.R. § 22.925.

² In re AirCell, Inc., Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Order*, 14 FCC Rcd 806 (Wireless Tel. Bur. 1998) (*AirCell Order*).

³ *AirCell Order* at 818, ¶ 25. The Bureau amended the *AirCell Order* on July 30, 1999. In re AirCell, Inc., Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Order on Reconsideration*, DA 99-1522 (Wireless Tel. Bur. July 30, 1999) (*Reconsideration Order*).

II. BACKGROUND

2. AirCell has developed a system of specially engineered mobile cellular terminals for use aboard general aviation aircraft.⁴ The AirCell equipment, which includes a modified cellular mobile telephone and specially designed aircraft antenna, is designed to avoid causing significant interference to terrestrial cellular systems. AirCell ground stations are collocated at cellsites of cellular licensees that have entered into partnership arrangements with AirCell.⁵ Customer traffic from an AirCell mobile telephone is interconnected with the public switched network through an AirCell partner's cellular switch.⁶

3. On December 24, 1998, the Bureau granted in part the petition by AirCell and its partners, as amended, for waiver of section 22.925 of the Commission's rules, which prohibits the airborne use of cellular telephones.⁷ The waiver authorized certain cellular providers to furnish system capacity for the provision of cellular service on a secondary basis to airborne mobile units utilizing AirCell technology, and established a number of mandatory conditions and recommended guidelines regarding operation of the AirCell equipment.⁸ On July 30, 1999, the Bureau amended the *AirCell Order* by granting, in part, AirCell's request to modify the channel selection and frequency coordination process set out in the *AirCell Order*.⁹ On the same day, the Bureau also approved waiver requests for seven additional AirCell partners.¹⁰ On November 24, 1999, the Bureau approved waiver requests for six other new AirCell partners.¹¹ On December 21, 1999, the Bureau approved a waiver request for another new AirCell partner.¹² Finally, on June 9, 2000, the Commission released a *Memorandum Opinion and Order* that

⁴ See *AirCell Order* at 806, ¶ 1.

⁵ See *id.* at 807, ¶ 3.

⁶ *Id.*

⁷ *AirCell Order* at 811, ¶ 13; see Amendment of Sections of Part 22 of the Commission's Rules in the Matter of Airborne Use of Cellular Telephones and the Use of Cell Enhancers in the Domestic Public Cellular Radio Service, CC Docket No. 88-411, *Report and Order*, 7 FCC Rcd. 23 (1991).

⁸ *AirCell Order* at 806, 817-18, 821-23, ¶¶ 2, 23-24, Appendices A and B.

⁹ See *Reconsideration Order*.

¹⁰ In re AirCell, Inc., Pine Belt Cellular, Inc., Tennessee RSA No. 3 Limited Partnership, WESTEX Telecommunications, Inc., XIT Cellular, ETEX Cellular Co., Inc., Cellular Network Partnership and North Alabama Cellular, LLC, Petitions for Waiver of the Airborne Cellular Rule, *Order*, DA-99-1523 (Wireless Tel. Bur. July 30, 1999).

¹¹ In re AirCell, Inc., ALLTEL Communications, Inc., American Rural Cellular, Inc., Centennial Cellular Corporation, CenturyTel Wireless, Inc., Kentucky RSA 4 Cellular General Partnership, Smith Bagley, Inc. d/b/a Cellular One of Northeast Arizona, Petitions for Waiver of the Airborne Cellular Rule, *Order*, DA-99-2640 (Wireless Tel. Bur. Nov. 24, 1999).

¹² In re AirCell, Inc., and Western Wireless Corporation, Petitions for Waiver of the Airborne Cellular Rule, *Order*, DA 99-2950 (Commercial Wireless Div. December 21, 1999).

affirmed the Bureau's decision to grant AirCell and its partners a waiver of section 22.925 and denied four Applications for Review and four Stay requests filed against the Bureau Orders by a number of cellular carriers.¹³ The Commission also re-set the two-year term of the waiver to begin on the effective date of the *Memorandum Opinion and Order* and resolved outstanding issues related to AirCell's operation under experimental authorization of the Office of Engineering and Technology ("OET") by affirming two OET Letter Rulings.

4. On January 21, 2000, AirCell and Douglas Telecom filed a joint waiver request seeking inclusion and identical treatment with the original cellular licensees.¹⁴ On March 17, 2000, AirTouch Communications, Inc., AT&T Wireless Services, Inc., Bell Atlantic Mobile, Inc., BellSouth Cellular Corp., GTE Wireless Incorporated, and SBC Wireless, Inc. filed an Opposition to Request for Waiver (Douglas Opposition). On March 20, 2000, AirCell and Golden State Cellular filed a joint waiver request seeking inclusion and identical treatment with the original cellular licensees.¹⁵ On April 27, 2000, AT&T Wireless Services, Inc., BellSouth Cellular Corp., GTE Wireless Incorporated, SBC Wireless, Inc., and Verizon Wireless filed an Opposition to Request for Waiver (Golden State Opposition).

III. DISCUSSION

5. The opposing carriers object to these additional waiver requests for the same reasons they opposed the previous AirCell partner waiver requests. Their arguments set forth in previous oppositions to similar requests are all incorporated by reference into the Douglas Opposition and the Golden State Opposition, and they make no arguments beyond these.¹⁶ In the previous AirCell proceedings, the Bureau and its Commercial Wireless Division fully considered each of the opposing carriers' arguments. No new information or evidence has been received regarding AirCell, Douglas Telecom, Golden State Cellular, or their proposed operations that would justify reversing the previous waiver grants or treating these waiver requests differently from those. Consequently, because Petitioners have made the showings and commitments required by the *AirCell Order*, as amended, and the opposing carriers have not persuaded us that granting these identical waivers is otherwise contrary to the public interest, we hereby grant the Petitioners' requests for waiver of section 22.925 of the Commission rules.

¹³ In the Matter of AirCell, Inc., Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, Or, in the Alternative, for a Declaratory Ruling, *Memorandum Opinion and Order*, FCC 00-188 (released June 9, 2000) (*Memorandum Opinion and Order*).

¹⁴ See Public Notice, DA 00-523 (released March 8, 2000).

¹⁵ See Public Notice, DA 00-842 (released April 13, 2000).

¹⁶ The opposing carriers' arguments against the grant of additional waivers have been previously stated in letters filed March 5, 1999, May 3, 1999, September 24, 1999, and October 18, 1999, and in their Applications for Review of the Bureau's orders in the AirCell proceeding filed January 25, 1999 and August 30, 1999, all of which are incorporated here by reference. Specifically, the Douglas Opposition and the Golden State Opposition state that the carriers oppose the instant waiver requests "for the reasons stated in the Carriers' letter dated September 24, 1999." Douglas Opposition at 1 and Golden State Opposition at 1.

IV. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED, pursuant to sections 1.3 and 22.119(a) of the Commission's rules, 47 C.F.R. §§ 1.3, 22.119(a), that the requests of AirCell, Inc., Douglas Telecommunications, Inc., and California RSA No. 3, Limited Partnership, a California Limited Partnership d/b/a Golden State Cellular, for waiver of section 22.925 of the Commission's rules, 47 C.F.R. § 22.925, ARE GRANTED, subject to the terms and conditions set forth In re AirCell, Inc., Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling, *Order*, 14 FCC Rcd 806 (Wireless Tel. Bur. 1998), as modified In re AirCell, Inc., *Order on Reconsideration*, DA 99-1522 (Wireless Tel. Bur., July 30, 1999), and as affirmed In the Matter of AirCell, Inc., Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, Or, in the Alternative, for a Declaratory Ruling, *Memorandum Opinion and Order*, FCC 00-188 (released June 9, 2000), and as those terms and conditions may be subsequently modified or amended.

7. This action is taken pursuant to the authority delegated in section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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