

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

In the Matter of)	
)	
TUCSON ELECTRIC POWER COMPANY)	
)	FCC File Nos. 0000034259, 0000036633,
Request for Waiver of Section 101.81)	0000049087
of the Federal Communications Commission Rules)	
)	

ORDER

Adopted: September 26, 2000

Released: September 29, 2000

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

I. INTRODUCTION

1. The Tucson Electric Power Company (Tucson) has filed applications¹ to modify its license for 2 GHz Fixed Microwave Service (FMS) Station WNEX482, Greaterville, Arizona, and requests a waiver of the Commission’s Rules that would otherwise result in the reauthorization of the subject license on a secondary basis.² For the reasons set forth below, we grant Tucson’s request to retain primary status for Station WNEX482.

II. BACKGROUND

2. The Commission has reallocated portions of the 2 GHz band from FMS to emerging technology (ET) services, including the personal communications services.³ To this end, the Commission has adopted certain transition rules.⁴ In doing so, the Commission balanced the needs of incumbent FMS licensees to continue to operate their systems with the need to conserve vacant 2 GHz spectrum for use by ET licensees, to provide ET licensees with a stable environment in which to plan and implement new

¹FCC File No. 0000034259 (filed Oct. 13, 1999); FCC File No. 0000036633 (filed Oct. 19, 1999); FCC File No. 0000049087 (filed Nov. 17, 1999 and amended Apr. 11, 2000).

²See Request for Rule Waiver: Section 101.81(f), dated October 7, 1999 (Waiver Request).

³Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1992) (*ET First Report and Order*).

⁴47 C.F.R. §§ 101.69-101.81. The rules are intended to re-accommodate the FMS licensees in a manner that would be most advantageous for the incumbent users, least disruptive to the public, and most conducive to the introduction of new services. *ET First Report and Order*, 7 FCC Rcd at 6886-87 ¶ 5.

services, and to prevent ET licensees from bearing any additional costs of relocating FMS licensees.⁵ Thus, rather than immediately clearing the 2 GHz band of the incumbent FMS users, we permit the incumbents to continue to occupy the band on a co-primary basis with the ET licensees for a significant length of time, by the end of which the incumbents are to relocate to other spectrum.⁶ ET licensees have the option, however, of requiring the FMS incumbents to relocate sooner if they pay the additional costs caused by the earlier relocation.⁷ In addition, we authorize new FMS stations, extensions of existing FMS systems, and major modifications of existing FMS stations only on a secondary basis to ET systems.⁸ Most minor modifications of FMS stations are also authorized on a secondary basis unless the licensee can demonstrate that it needs primary status and that the modifications will not add to the relocation costs to be paid by the ET licensee.⁹ The result is that while incumbent FMS licensees are able to continue operating their systems with primary status – as those systems currently exist – any expansions and most modifications to the systems result in secondary status.

3. Station WNEX482 is part of an FMS system used by Tucson, an electric utility, for high speed power line protection, and control and monitoring of its high voltage power transmission system that serves the Green Valley community and a large mining operation.¹⁰ The facility is at Melendrez Pass, a United States Forest Service (Forest Service)-designated electronic site in the Coronado National Forest.¹¹ Station WNEX482 is currently located on an 18-foot monopole.¹²

4. On July 15, 1998, the Forest Service authorized the licensee of Television Station KWBA (KWBA) to construct a broadcast facility at Melendrez Pass with the stipulation that KWBA become the site landlord and consolidate several of the individual sites into its building and onto its 158-foot tower.¹³ Tucson now has a contract with KWBA to move into its facilities.¹⁴

⁵*ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5, 6891 ¶ 30; Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8825, 8867-69 ¶¶ 86-88 (1996) (*Cost Sharing First Report and Order*).

⁶47 C.F.R. §§ 101.69(b), 101.79(a). *See also ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5.

⁷*See* 47 C.F.R. §§ 101.69(a), 101.71-101.77.

⁸47 C.F.R. § 101.81. Secondary operations may not cause interference to operations authorized on a primary basis (*e.g.*, the new ET licensees) and they are not protected from interference from primary operations. *Cost Sharing and First Report and Order*, 11 FCC Rcd at 8869 ¶ 89. Thus, an incumbent operating under a secondary authorization must cease operations if it poses an interference problem to an ET licensee. *Id.*

⁹47 C.F.R. § 101.81.

¹⁰Letter from James R. Maneval, Tucson Electric Power Company, to Federal Communications Commission, dated October 13, 1999, at 1 (Tucson Letter).

¹¹*Id.*; Letter from John C. Lacy, DeConcini McDonald Yetwin & Lacy, P.C., to James Maneval, Tucson Electric Power Company, dated Oct. 5, 1999 (Lacy Letter).

¹²Waiver Request at 1.

¹³*Id.*; Lacy Letter at 1.

¹⁴Waiver Request at 1.

5. To facilitate this move, Tucson filed the above-captioned applications seeking to modify its licenses for Call Sign WNEX482. Tucson argues that it meets the standard for retaining primary status,¹⁵ and also submitted a request for waiver of Section 101.81(f) of the Commission's Rules such that Commission approval of its applications to modify its license will not result in the Commission reclassifying the licenses from primary to secondary status.¹⁶ Further, Tucson requests that, in the event that we deny the waiver request, we dismiss the applications, as Tucson would prefer having to negotiate further with the Forest Service rather than risk the loss of primary status.¹⁷

III. DISCUSSION

6. Section 101.81 provides that major modifications of 2 GHz facilities will result in secondary status; minor modifications will result in secondary status unless the incumbent affirmatively justifies primary status and establishes that the modification would not add to the relocation costs of ET licensees; and certain "technical changes" will not result in secondary status.¹⁸ Section 101.81(f) lists as a technical change "[m]inor changes (increases or decreases) in structure height."¹⁹

7. Tucson requests a waiver of Section 101.81(f). It argues that the rule deeming only minor changes in structure height to be technical changes that do not result in secondary status should not be applied in this case. Tucson states that its proposed move from an 18-foot monopole to a 158-foot tower is being undertaken at the request of the Forest Service, and will clean up the site both aesthetically and with respect to RF interference, and that Tucson will derive no benefit from the increased structure height.²⁰

8. We conclude, however, that we need not address the waiver request. Tucson's modification applications propose numerous changes to the technical parameters of Station WNEX482 other than the increase in structure height, including changes to the station's location, beamwidth, and azimuth. Some of these changes are technical changes under Section 101.81,²¹ but others are minor modifications.²² Therefore, regardless of whether we decide that the change in structure height should be treated as a technical change, Tucson still must make the showing required by Section 101.81 to avoid secondary status as a result of its other proposed changes. Moreover, the same showing would suffice to avoid the imposition of secondary status due to the change in structure height, which if it is not deemed a technical change, is a minor modification. Therefore, we decline to address Tucson's waiver request.

¹⁵Tucson Letter at 1.

¹⁶Waiver Request at 1.

¹⁷Tucson Letter at 2.

¹⁸47 C.F.R. § 101.81.

¹⁹47 C.F.R. § 101.81(f).

²⁰Waiver Request at 1; Tucson Letter at 2.

²¹See, e.g., 47 C.F.R. § 101.81(c) (location change up to two seconds is a technical change).

²²We have renewed the applications, and find that none of the proposed changes constitute major modifications. See 47 C.F.R. § 1.929.

9. Instead, we propose to resolve Tucson's claim that it has met the standard for retaining primary status while making minor modifications. To affirmatively justify primary status, Tucson states that it utilizes its 2.1 GHz microwave repeater to provide communications circuits for high speed power line protection, and control and monitoring of its high voltage power transmission system that serves the Green Valley community and a large mining operation.²³ Tucson asserts that in providing such services, it relies upon the protection that primary status provides.²⁴ Tucson states that, as a licensee with primary status, secondary status licensees cannot force Tucson to cease transmission of its radio signals upon discovery that Tucson is interfering with the transmission of secondary status licensees' radio signals.²⁵ Thus, according to Tucson, primary status prevents it from having to operate a portion of its system blindly, without adequate protection from interference of the transmission of its radio signals.²⁶ We note further that Tucson's move and associate changes are a result of its accommodation of the Forest Service's request that it move, rather than actions for its own business purposes. We conclude that Tucson has justified primary status.²⁷

10. Second, Tucson argues that its proposed license modifications will not add to the future relocation cost of an ET licensee.²⁸ Tucson asserts that the relocation of its repeater from the 18-foot monopole to the 158-foot tower, and the concomitant changes to preserve the existing path, will allow for a future overbuild that will facilitate testing without imposing any system changes.²⁹ According to Tucson, this in itself will reduce relocation costs.³⁰ We find, based on the information before us, that Tucson's proposed modifications will not add to ET licensees' relocation costs.³¹

IV. CONCLUSION

11. We conclude that Tucson has met the requirements of Section 101.81 of the Commission's Rules. Tucson has affirmatively justified primary status while seeking Commission approval of minor modifications to its license, and established that the license modifications would not add to the relocation costs of ET licensees. Therefore, we shall issue the modified license with primary status.

V. ORDERING CLAUSES

²³Tucson Letter at 1.

²⁴*Id.*

²⁵*Id.*

²⁶*Id.*

²⁷*See, e.g.,* Turlock Irrigation District, *Order on Reconsideration*, DA 99-1916 ¶ 8 (WTB PSPWD rel. Sept. 17, 1999).

²⁸Tucson Letter at 1.

²⁹*Id.*

³⁰*Id.*

³¹*See, e.g.,* St. John's County, *Order on Reconsideration*, 14 FCC Rcd 11756, 11758 ¶ 7 (WTB PSPWD 1999) (minor relocation found not to increase relocation costs).

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 101.69 and 101.81 of the Commission's Rules, 47 C.F.R. §§ 101.69, 101.81, the above-captioned applications to modify Tucson Electric Power Company's license to operate Call Sign WNEX482, **SHALL BE PROCESSED** in accordance with this *Order* and the applicable Commission Rules.

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 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Public Wireless Division
Wireless Telecommunications Bureau