

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

In the Matter of Application of)	
)	
RANGE TELEPHONE COOPERATIVE, INC.)	File No. 0000102168
)	
For Modification of License for Station WJM73,)	
Ashland, Montana)	

ORDER

Adopted: November 27, 2000

Released: November 29, 2000

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

1. *Introduction.* On March 29, 2000, Range Telephone Cooperative, Inc. (Range) filed an application for authorization to modify the facilities for Station WJM73, Ashland, Montana.¹ In connection with this application, Range requested a waiver² of Section 101.81 of the Commission's Rules³ that would otherwise require the station to be authorized on a secondary basis as a result of the proposed modification. For the reasons stated herein, we grant the request.

2. *Background.* The Commission has reallocated portions of the 2 GHz band from fixed microwave services (FMS) to emerging technology systems (ET), including personal communications services (PCS).⁴ To this end, the Commission has adopted certain transition rules.⁵ In doing so, the Commission balanced the needs of the 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 services, and to prevent the escalation of the costs associated with relocating FMS licensees.⁶ Thus, rather than immediately clearing the 2 GHz band of incumbent FMS users, the Commission permits the incumbents to continue to occupy the band on a co-

¹ FCC File No. 0000102168.

² See FCC File No. 0000102168, Exhibit 1: Range Telephone Cooperative, Inc. Request for Rule Waiver (Range Waiver Request).

³ 47 C.F.R. § 101.81.

⁴ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *First Report and Order and Third Notice of Proposed Rule Making*, ET Docket 92-9, 7 FCC Rcd 6886 (1992) (*ET First Report and Order*).

⁵ See 47 C.F.R. §§ 101.69-101.81. The rules are intended to reaccommodate 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. See *ET First Report and Order*, 7 FCC Rcd at 6886-87 ¶ 5.

⁶ *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*, WT Docket No. 95-157, 11 FCC Rcd 8825, 8866-69 ¶¶ 86-88 (1996).

primary basis with the ET licensees for a significant length of time, by the end of which the incumbents are to relocate to another portion of the spectrum.⁷ 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.⁸ In addition, the Commission is authorizing new FMS stations, extensions of existing FMS systems and major modifications of existing FMS systems only on a secondary basis to ET systems.⁹ 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.¹⁰ The result is that while incumbent FMS licensees are able to continue operating their system with primary status – as those systems currently exist – any expansions and most modifications to the system will result in secondary status.

3. Range operates FMS Station WJM73, Ashland, Montana, with primary status in the 2 GHz band. Range states that the station is part of a path that carries toll traffic for the rural area of southeastern Montana, including a portion of the Northern Cheyenne Indian Reservation, and extends to Forsyth, Montana.¹¹ On March 29, 2000, Range filed an application for authorization to modify the facilities for Station WJM73, by relocating Station WJM73 four-tenths of a mile.¹² In connection with this application to modify its authorization, Range requested a waiver of Section 101.81 of the Commission's Rules, which provides that all major modifications to existing FMS stations in the 2 GHz band will be authorized on a secondary basis to ET systems.¹³ In support of its waiver request, Range states that the relocation has been compelled for reasons beyond its control.¹⁴ Specifically, Range has been informed that a new building is to be constructed on property that lies between the existing location of Station WJM73 and its point of communication, a passive repeater, known as Ashland PR, that transmits the signal from Station WJM73 to Station WJM72, Home Creek, Montana.¹⁵ Range has determined that the height of the new building will block the signal and effectively destroy the radio path that exists between Ashland and Ashland PR.¹⁶ In order to maintain effective communications between Station WJM73 and Station WJM72, Range has decided to move Station WJM73 so as to get around the signal obstruction posed by the new building.¹⁷ Range further states that because Ashland is in a remote rural location, there are no

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

⁸ *See* 47 C.F.R. §§ 101.69(a), 101.71-101.77.

⁹ 47 C.F.R. § 101.81.

¹⁰ *Id.*

¹¹ Range Waiver Request at 2.

¹² FCC File No. 0000102168.

¹³ 47 C.F.R. § 101.81.

¹⁴ Range Waiver Request at 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* Range also considered increasing the height of its antenna at the existing location (which is also a major modification under the Commission's Part 101 rules) but Range's engineering consultant has concluded that a relocation is the more practical solution. *Id.*

suitable antenna sites within two seconds of the existing site. Therefore, Range determined that the only suitable location was the site of the Ashland passive repeater.¹⁸ We note that the proposed relocation of Station WJM73 to Ashland PR will result in a decrease of 62.8 meters in the height of the station's antenna from mean sea level.¹⁹ In addition, Range states that it will utilize the same equipment at the proposed location and that, therefore, the cost to an ET licensee of relocating Station WJM73 will not increase as a result of the move.²⁰

4. *Discussion.* We note, as an initial matter, that the proposed relocation of four-tenths of a mile constitutes a major modification.²¹ Without a waiver of Section 101.81, Range's modified license would be granted only on a secondary basis.²² We may grant a request for waiver of a rule if the requesting party shows (i) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²³ We believe that this case presents unusual circumstances whereby applying the rule according secondary status to Station WJM73 would be inequitable, and that Range has no reasonable alternative.

5. First, we find it highly significant that, according to Range, the relocation is caused by circumstances beyond its control, *i.e.*, that a building soon to be constructed will block the signal to the passive repeater at Ashland PR.²⁴ We also find significant Range's claim that its station is located in a remote rural area and that the proposed location is the only suitable location.²⁵ Based on the record before us, we find that this case presents unusual circumstances and that Range has no option but to relocate Station WJM73.

6. We also find, based on the record before us, that it would be inequitable to accord secondary status to Station WJM73 upon its relocation. First, as stated above, Range contends that the relocation is caused by circumstances beyond its control.²⁶ Second, it appears that Range is not expanding or changing its system but is essentially replicating Station WJM73 at the proposed site. Range states that Station WJM73 will continue to carry the same traffic at its proposed location as it does at its current location, and that it will use the same equipment at the proposed location as it does at the current location.²⁷

¹⁸ Range Waiver Request at 1.

¹⁹ See FCC File No. 0000102168.

²⁰ *Id.* at 2.

²¹ 47 C.F.R. § 1.929(d)(1)(i).

²² 47 C.F.R. § 101.81.

²³ 47 C.F.R. § 1.925(b)(3).

²⁴ Range Waiver Request at 1.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 2.

Finally, because it is using essentially the same equipment, Range contends that there will be no increase in the cost to an ET licensee of relocating Station WJM73.²⁸ Based on these facts, we conclude that it would be inequitable to accord secondary status to Station WJM73. Accordingly, given the unusual circumstances of this case, we grant Range a waiver of Section 101.81 of the Commission's Rules.²⁹

7. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Sections 1.925, 1.945 and 101.69 of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.945 and 101.69, the Request for Waiver filed by Range Telephone Cooperative, Inc. filed by Range Telephone on March 29, 2000, IS GRANTED.

8. 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

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

²⁸ *Id.*

²⁹ See Telecom Systems, Ltd., *Order*, DA 99-2296, ¶¶ 5-6 (WTB PSPWD rel. Oct. 25, 1999).