

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

In the Matter of)	
)	
TEN FOUR COMMUNICATIONS)	File No. 9911D134107
)	
Request for Modification of License for Station)	
WNXM895, a 900 MHz Trunked System located)	
in Patterson, California)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 2000

Released: December 21, 2000

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

1. *Introduction.* We have before us a petition for reconsideration (Petition) filed on behalf of Matson Development Company (Matson), relating to the March 14, 2000, grant of the captioned modification application. The subject modification application seeks to allow Ten Four Communications (Ten Four) to operate a trunked Business Radio Service station on frequency pair 898.6500/937.6500 MHz.¹ For the reasons set forth below, we grant the Petition and set aside the grant of the captioned application.

2. *Background.* On May 31, 1996, DSS Company (DSS) filed an application requesting authorization to operate a 900 MHz conventional Business Radio Service station on frequency pair 898.6500/937.6500 MHz.² The application was granted on July 10, 1996, authorizing DSS to operate on the frequency pair with sixty-five authorized mobiles under Call Sign WPJK857.³ On November 21, 1996, Matson filed an application requesting authorization to operate a 900 MHz conventional Business Radio Service station in the Walnut Creek, California area on the same frequency pair as DSS.⁴ On October 16, 1997, the Commission granted Matson's application and authorized it to operate on a shared basis, under Call Sign KNNK672 with seventy mobiles.⁵ That station is located approximately 39 miles from Ten Four's Station WNXM895, a trunked Business Radio Service station, authorized to operate on approximately forty 900 MHz frequencies.⁶

¹ Petition for Reconsideration (filed April 13, 2000) (Petition).

² See FCC File No. D040960 (filed May 31, 1996).

³ *Id.* (granted July 10, 1996).

⁴ See FCC File No. D06062 (filed Nov. 21, 1996).

⁵ *Id.* (granted Oct. 16, 1997).

⁶ Petition at 2.

3. On May 22, 1998, Ten Four filed a modification application, seeking, among other things, assignment of the frequency pair licensed under Station WPJK857 from DSS to Ten Four and authorization to allow Ten Four to add that frequency pair to its trunked Station WNXM895.⁷ On or about March 19, 1999, while Ten Four's assignment application was still pending, DSS filed an application seeking cancellation of its license for Station WPJK857.⁸ On March 24, 1999, DSS's cancellation application was granted.⁹

4. On March 14, 2000, the application to assign Station WPJK857 to Ten Four was granted, thus authorizing Ten Four to add that frequency pair to its trunked Station WNXM895.¹⁰ Matson timely filed the instant Petition on April 13, 2000, seeking the removal of frequency pair 898.6500/937.6500 MHz from Ten Four's March 14, 2000, grant.¹¹ An opposition to the Petition was never filed.

5. *Discussion.* Matson argues that as a result of the cancellation of DSS's license on March 24, 1999, Matson obtained exclusive use of the frequency pair 898.6500/937.6500 MHz because Matson's station was licensed for seventy mobile units, the number required to obtain exclusivity.¹² Matson argues that because the transmitter locations for Matson's Station KNNK672 and Ten Four's Station WNXM895 are within 70 miles of each other (*i.e.* 39 miles apart), authorizing Ten Four to use the frequencies licensed to Matson violated the Commission's Part 90 rules.¹³

6. Based on our review of the record in this proceeding, we agree with Matson that Ten Four should not have been authorized to operate on the channel formerly licensed to DSS. Under Section 90.633(b) of the Commission's Rules, a 900 MHz channel associated with a conventional system will not be assigned to additional licensees after it is loaded to seventy mobile units.¹⁴ Once DSS's license for Station WPJK857 was cancelled, Matson achieved "exclusive" use of the subject channel because Matson was licensed for seventy mobile units. Ten Four could not be licensed to share a channel in which Matson had received exclusive status.¹⁵ Moreover, an additional reason why the grant of Ten Four was inappropriate under the circumstances presented is that once the DSS authorization was cancelled, the station authorization did not exist and thus could not be assigned to Ten Four. Further, even if we treated Ten Four's application as an application for a new station, the application could not be granted. Section 90.621(b) of the Commission's Rules states that co-channel Business category systems must be at least 70

⁷ See FCC File No. D134107 (filed May 22, 1998).

⁸ See FCC Form 405A, relating to Station WPJK857 (dated March 2, 1999). Note: The filing date of the 405A cancellation application is not clear. The cover letter to the 405A application bears a date of March 18, 1999, with a notation that the 405A application was being forwarded to the FCC via federal express.

⁹ *Id.* (granted Mar. 24, 1999).

¹⁰ See FCC File No. D134107 (granted Mar. 14, 2000).

¹¹ Petition.

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ 47 C.F.R. § 90.633(b).

¹⁵ *Id.*

miles apart.¹⁶ Since the transmitter sites are only 39 miles apart, it was error to authorize Ten Four to operate on the frequency pair 898.6500/937.6500 MHz. For all of these reasons, we conclude that the subject modification application should not have been granted.

7. Accordingly, IT IS ORDERED 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(f) of the Communications Rules, 47 C.F.R. § 1.106(f), that the petition for reconsideration filed on behalf of Matson Development Company on April 13, 2000, IS GRANTED.

8. IT IS FURTHER ORDERED that the application File No. 9911D134107 BE RETURNED to pending status. The Licensing and Technical Analysis Branch shall process this application in accordance with this Memorandum Opinion and Order.

9. 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

¹⁶ See 47 C.F.R. § 90.621(b).