

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

In the Matter of the Applications of)	
)	
PLUMAS-SIERRA RURAL)	
ELECTRIC COOPERATIVE)	FCC File Nos. 748525 – 748528
)	
for Fixed Microwave Service Stations)	
and Request for Waiver of Section 101.81)	
of the Federal Communications Commission)	
Rules)	

ORDER

Adopted: March 20, 2000

Released: March 22, 2000

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

I. INTRODUCTION

1. Plumas-Sierra Rural Electric Cooperative (Plumas-Sierra) operates four fixed microwave service (FMS) radio stations in the 2 GHz band and inadvertently allowed the licenses to expire. Plumas-Sierra has now filed applications¹ for new licenses for the same stations and requests a waiver of the Commission's Rules that would otherwise authorize the stations on a secondary basis.² For the reasons set forth below, we deny Plumas-Sierra's request to authorize the stations with primary status.

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 (PCS).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 services, and to prevent ET licensees from bearing any additional costs of relocating FMS

¹Plumas-Sierra Applications for Authorization in the Microwave Services, FCC File Nos. 748525 - 748528 (filed March 23, 1999).

²Request for Waiver of Federal Communications Commission Rule Section 101.81 (filed March 23, 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.

licensees.⁵ Thus, rather than immediately clearing the 2 GHz band of the incumbent FMS users, the Commission permits 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 Second, the Commission is authorizing 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. Plumas-Sierra is a member-owned electric utility serving approximately 5,500 customers in Plumas, Sierra, and Lassen Counties in northeastern California, and in Washoe County, Nevada.¹⁰ To support its electric operations, Plumas-Sierra operates a four-link microwave system.¹¹ The four stations, formerly Stations WNES816, WNES817, WNES818, and WNES819, operate in the 2 GHz band and were originally authorized with primary status.¹²

4. Due to administrative error, Plumas-Sierra failed to renew the licenses for the subject four stations in a timely manner,¹³ and the licenses automatically expired on August 3, 1998.¹⁴ When Plumas-Sierra realized that the subject licenses had expired, the thirty-day grace period that the rules then allowed for re-instatement without re-licensing had run.¹⁵ Plumas-Sierra then submitted a request to the Commission seeking authorization to operate the four subject stations under special temporary authority,¹⁶

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.

⁷See 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.

¹⁰Waiver Request at 1.

¹¹*Id.*

¹²See *id.* at 1.

¹³*Id.*

¹⁴See 47 C.F.R. § 101.65(a) (1998) (currently codified at 47 C.F.R. § 1.955 (a)(1)).

¹⁵Waiver Request at 1. Under the rules then in effect, petitions for reinstatement had to be filed within 30 days of the license's expiration date. 47 C.F.R. § 101.65(b) (1998).

¹⁶Waiver Request at 1.

which was granted on November 24, 1998.¹⁷ On March 23, 1999, Plumas-Sierra filed applications for new licenses for its stations, along with a request for waiver of the Commission's rules that provide that new FMS stations in the 2 GHz band will be authorized on a secondary basis to ET licensees.¹⁸ Plumas-Sierra states that it seeks Commission re-licensing of Stations WNES816, WNES817, WNES818, and WNES819, on a primary basis, at their previously occupied locations and under their previous call signs and operating parameters.¹⁹

III. DISCUSSION

5. In this case, while the four stations at issue were originally authorized with primary status, Plumas-Sierra allowed the licenses for the stations to expire. Plumas-Sierra requests a waiver of the rules so that its new licenses for the stations can be accorded primary status. We may grant a request for waiver when (i) the underlying purpose of the rule(s) 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 circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no alternative.²⁰ We note, as an initial matter, that Plumas-Sierra's Waiver Request is identical in all material respects to one filed by Duke Power Company, which we recently denied.²¹ For the reasons set forth below, we conclude that grant of the requested waiver here is not warranted.

6. Turning to the first of the two standards for deciding a waiver request, Plumas-Sierra argues that the primary purpose of the 2 GHz licensing rules is to ensure that the costs of relocation do not escalate beyond the level originally contemplated by the Commission in its initial determination to reallocate the band.²² Plumas-Sierra states that, because it previously was licensed at the same four locations for which it is now seeking re-licensing, it is not adding any "new" stations, nor is it increasing the relocation costs beyond what they were at the time the Commission decided to reallocate the 2 GHz band from FMS to ET services.²³ Further, Plumas-Sierra states that its stations are still listed in the 2 GHz microwave database used by frequency coordinators, and that, therefore, no ET licensee could have detrimentally relied on the fact that Plumas' licenses had expired.²⁴ Plumas-Sierra contends, therefore, that the underlying purposes of the rules would not be served by applying the rules to its case.²⁵

7. We disagree. As we stated in Duke Power,²⁶ the goals of the 2 GHz licensing rules are not only to limit relocation costs, as Plumas-Sierra argues, but also to clear the 2 GHz spectrum by

¹⁷*Id.* at 2 n.2.

¹⁸*Id.* at 1.

¹⁹*Id.*

²⁰47 C.F.R. § 1.925(b)(3).

²¹Duke Power Company, *Order*, 14 FCC Rcd 19431 (WTB PSPWD 1999).

²²Waiver Request at 3.

²³*Id.*

²⁴*Id.* at 3-4.

²⁵*Id.* at 3.

²⁶Duke Power Co., *Order*, 14 FCC Rcd at 19433-34 ¶ 6.

allowing FMS stations to lose primary status as those stations change. In declining to expand the licensing policy beyond these contours, the Commission stated that limiting primary site grants is necessary to protect the interests of PCS (and other ET) licensees.²⁷ Moreover, the rules themselves demonstrate that limiting relocation costs are not the only purpose the rules serve. For example, all major modifications result in a 2 GHz FMS station being accorded secondary status, regardless of the effect on relocation costs.²⁸ Further, licensees that make certain minor modifications must affirmatively justify primary status, not just show that the modifications will not add to relocation costs in order to retain primary status. Thus, we believe that a determination as to whether grant of the requested waiver is warranted should not be limited to an analysis of the impact on potential relocation costs.

8. Plumas-Sierra also argues that absent grant of the Waiver Request, it will be unable to serve the public interest.²⁹ Plumas-Sierra asserts that the four stations at issue are an integral part of the telecommunications network and that without grant of the Waiver Request it will not be able to generate critical voice and radio dispatch communications associated with the safe and reliable operation of its electric distribution network.³⁰ However, Plumas-Sierra has not shown that it cannot obtain licenses to operate its stations at other frequencies. Therefore, we are not persuaded, based on the record in this proceeding, that the safety and reliability of Plumas-Sierra's operations would be compromised, if the subject stations were accorded secondary status.

9. Turning to the second of the two standards for granting a waiver, Plumas-Sierra argues that this case presents unique or unusual circumstances that render application of the licensing rules inequitable, unduly burdensome, and contrary to the public interest.³¹ Plumas-Sierra argues that the application of Section 101.81 of the Commission's Rules in the present instance is inequitable as it would result in an extreme hardship that is in no way commensurate with the clerical error associated with the expiration of the licenses of the four subject stations.³² Plumas-Sierra argues that it should not be at risk of losing its ability to operate the four subject stations in the 2 GHz band because of a clerical mistake.³³ We do not believe that an inadvertent failure to renew a license in a timely manner is so unique or unusual to warrant a waiver of the rules.³⁴ Moreover, we note that at the time Plumas-Sierra licenses expired,

²⁷*Cost Sharing First Report and Order*, 11 FCC Rcd at 8868-69 ¶ 88.

²⁸47 C.F.R. § 101.81.

²⁹*See* Waiver Request at 4.

³⁰*Id.*

³¹*Id.*

³²*Id.*

³³*Id.*

³⁴We note that a licensee is fully responsible for knowing the term of its license and for filing a timely renewal application. Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476, 11485 ¶ 21 (1999) (*ULS MO&O*). The act of filing a renewal application remains the *exclusive* responsibility of the licensee. Amendment Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, 6 FCC 7297, 7301 n.41 (1991).

petitions for reinstatement had to be filed within thirty days of the licenses' expiration.³⁵ In this case, Plumas-Sierra's applications were filed more than six months after the licenses expired.³⁶ Plumas-Sierra, therefore, is not eligible for reinstatement under the rules then in effect. Since that time, the Commission has adopted a new reinstatement policy pursuant to which, while licensees may seek reinstatement beyond thirty days after their licenses' expiration, such petitions will not be routinely granted and will be subject to stricter review.³⁷ Thus, pursuant to that policy, lapsed licenses will not be reinstated routinely. We therefore decline to waive routinely the Commission's rules in order to grant primary status to 2 GHz FMS stations when the licenses for those stations have expired because of a licensee's failure to renew such licenses in a timely manner. Moreover, we note that a denial of the Waiver Request would not mean that Plumas-Sierra could not operate the subject stations; rather, Plumas-Sierra's operating of such stations would be accorded secondary status.

10. Plumas-Sierra also argues that if the Commission denies the Waiver Request its members will be required to relocate the four subject stations to a higher microwave frequency band.³⁸ This, Plumas-Sierra argues, will be an unnecessary additional expense that will yield no additional benefits to the cooperative, and as such is clearly contrary to the public interest.³⁹ However, Plumas-Sierra is in no different a situation in this respect than is any licensee that loses primary status for its FMS stations, by modification or "re-licensing."⁴⁰ Accordingly, we do not believe that Plumas-Sierra has shown that its case presents unusual or unique circumstances warranting grant of a waiver of the Commission's rules.

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 405, and Sections 1.925 and 101.69 of the Commission's Rules, 47 C.F.R. §§ 1.925, 101.69, the Request for Waiver of Plumas, filed March 23, 1999, IS DENIED.

12. 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

³⁵47 C.F.R. § 101.65(b)(1) (1998).

³⁶See para. 4.

³⁷ULS MO&O, 14 FCC Rcd at 11485 ¶ 22.

³⁸Waiver Request at 4.

³⁹*Id.*

⁴⁰See Duke Power Company, *Order*, 14 FCC Rcd at 19435 ¶ 9.