

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

In the Matter of the Applications of)	
)	
CYBERTEL RSA CELLULAR, L.P.)	
)	FCC File Nos. 9900983, 9900984, 9900985
To Modify Fixed Microwave Stations WMJ503,)	
Concordia, Missouri, and WHB542, Sedalia,)	
Missouri, and to Establish a New Fixed)	
Microwave Station at Boonville, Missouri)	

ORDER

Adopted: March 20, 2000

Released: March 23, 2000

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

1. Introduction. Cybertel RSA Cellular, L.P. (Cybertel) has filed applications to add 2 GHz frequencies to fixed microwave service (FMS) Stations WMJ503, Concordia, Missouri, and WHB542, Sedalia, Missouri, and to establish a new 2 GHz FMS station at Boonville, Missouri.¹ Cybertel also requests a waiver of the Commission's Rules that would otherwise authorize the new paths and the new station on a secondary basis to emerging technology (ET) services. For the reasons set forth below, we deny Cybertel's request, and will grant the licenses on a secondary basis.

2. Background. The Commission has reallocated portions of the 2 GHz band from FMS to ET services, including the personal communications services.² To this end, the Commission has adopted certain transition rules.³ First, 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.⁴ 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.⁵ Second, the Commission is

¹ Cybertel Applications for Authorization in the Microwave Services, FCC File Nos. 9900983, 9900984, and 9900985 (Cybertel Applications) at Ex. C, Request for Rule Waiver (Cybertel Waiver Request) (filed March 23, 1999).

² Redevelopment 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*).

³ 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.

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

⁵ See 47 C.F.R. §§ 101.69(a), 101.71-101.77.

authorizing new FMS stations and most modifications of existing FMS stations only on a secondary basis to ET systems.⁶ One practical effect of these rules is that incumbent FMS licensees that are authorized on a primary basis will have the costs of relocating to other bands paid for by the new ET licensees if the ET licensees force them to relocate. On the other hand, ET licensees are under no obligation to pay to relocate 2 GHz links that are authorized on a secondary basis.⁷

3. Cybertel is licensed to operate an FMS system consisting of stations at Boonville (WHB541), Sedalia (WHB542), and Marshall (WMJ502), Missouri, to carry traffic from its cellular system.⁸ After the Boonville tower collapsed while it was being modified, causing serious service disruptions, Cybertel obtained special temporary authority (STA) to operate new 2 GHz links between an existing station at Concordia, Missouri (WMJ503) and its existing Sedalia station (WHB542) while its system was being repaired.⁹ It now seeks permanent authority to operate the paths currently being operated pursuant to STA, to serve either as a backup link or as a replacement link if the original Boonville facility cannot be restored, to preclude any further disruption of service to its subscribers.¹⁰ Cybertel notes that it "presently serves subscribers in the Kansas City/St. Louis, Missouri corridor . . . includ[ing] doctors, hospitals, ambulance services, law enforcement officials (such as the Johnson County Sheriff's Department) and others who utilize cellular service in connection with the protection of lives and property."¹¹ In connection with these applications, Cybertel seeks a waiver of Section 101.81 of the Commission's Rules, which would otherwise authorize the proposed facilities only on a secondary basis.

4. Discussion. We may grant a request for waiver (a) when the underlying purpose of the rule would not be served by application to the instant case and a waiver is in the public interest; or (b) when 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 reasonable alternative.¹² We find that Cybertel has not met either standard.

5. In support of its waiver request, Cybertel cites "the need to provide backup facilities is essential in order to ensure uninterrupted services and to provide the same vital communications services to its subscribers which they are now receiving . . .," and states that granting this waiver would not significantly increase the relocation costs associated with these stations.¹³ Cybertel fails to show, however, how using the proposed system as a backup to its existing system would not significantly

⁶ 47 C.F.R. § 101.81. See 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, 8868 ¶ 88 (1996) (*Cost Sharing First Report and Order*).

⁷ See *Cost Sharing First Report and Order*, 11 FCC Rcd at 8869 ¶ 89.

⁸ Cybertel Waiver Request at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² 47 C.F.R. § 1.925(b)(3).

¹³ Cybertel Waiver Request at 1.

increase the relocation costs of an ET licensee, who, under this scenario, would have to relocate two systems instead of one. Moreover, the argument that granting primary status would not increase an ET licensee's relocation costs does not establish that application of the rule would not serve its underlying purpose, because the Commission has decided that the effect on relocation costs is a factor only when licensees propose minor modifications, not when they propose major modifications (such as adding paths) or new facilities.¹⁴ Cybertel also has not shown why its circumstances are unique or so unusual that application of the rule is not warranted, or demonstrated that it has no reasonable alternative to its proposed system.¹⁵ Accordingly, we deny the waiver request, and will issue the modified licenses for Stations WMJ503 and WHB542, and the license for the new Boonville station, on a secondary basis.

6. 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, 101.69, the Request for Waiver of Cybertel RSA Cellular, L.P., filed on March 23, 1999, IS DENIED and the license for the facility at Boonville, Missouri and the modified licenses for Stations WMJ503 and WHB542 will be issued with secondary status.

7. 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

¹⁴ Cameron Telephone Company, *Order*, DA 99-2332, ¶ 6 (WTB PSPWD rel. Oct. 27, 1999); Pass Word, Inc., *Order on Reconsideration*, DA 99-2152, ¶¶ 5-8 (WTB PSPWD rel. Oct. 12, 1999). If the new Boonville facility represented a modification of the original Boonville site, then primary status could be appropriate if the distance between the two locations is less than five seconds and the modification does not increase relocation costs, 47 C.F.R. § 101.81, and perhaps even if the distance is greater, if Cybertel were to demonstrate that the new site is the closest suitable location, *compare* Telcom Systems, Ltd., *Order*, DA 99-2296, ¶¶ 5-6 (WTB PSPWD rel. Oct. 25, 1999) *with* Cameron Telephone Company at ¶ 6. Cybertel has presented the new facility as a separate station, however, rather than as a replacement/modification.

¹⁵ For example, Cybertel has not explained why repairing the original Boonville facility, which is licensed on a primary basis, is not a reasonable alternative.