

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

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|-------------------------------|---|---------------------|
| In re Request of |) | |
| |) | |
| SKYTEL COMMUNICATIONS, INC. |) | File No. 0000116431 |
| |) | |
| To Waive Section 22.813(a) of |) | |
| The Commission's Rules |) | |

ORDER

Adopted: June 8, 2001

Released: June 11, 2001

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. On April 25, 2000, Skytel Communications, Inc. ("Skytel") filed an application to operate in the Air-Ground Radiotelephone Service on the 454.975 MHz channel at South New Bern, North Carolina. Stratophone, LLC ("Stratophone") filed a request to dismiss the application on May 19, 2000 on the ground that the proposed Skytel transmitter is within 1000 kilometers (621 miles) of station CGG273 at Toronto, Canada, in violation of section 22.813(a) of the Commission's rules.¹ The Licensing and Technical Analysis Branch of the Commercial Wireless Division subsequently returned Skytel's application on September 11, 2000. In response, on September 27, 2000, Skytel filed a request to waive section 22.813(a). In this Order, we deny Skytel's waiver request and dismiss its application.

2. Pursuant to section 1.925(b)(3) of the Commission's rules, a waiver request may be granted if it is shown that: (1) the underlying purpose of the rule would not be served, or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.² Skytel states that the purpose of the distance separation requirement contained in section 22.813(a) would not be served by enforcing the rule and that grant of a waiver is in the public interest because the proposed transmitter site is only 19 miles short of the required separation distance and there is, therefore, no possibility of harmful interference to station CGG273.³ Skytel fails, however, to provide any support for its assertion that there is no possibility of harmful interference to station CGG273. We are therefore not persuaded that grant of this waiver request would be in the public interest, nor do we find that Skytel has presented unique or unusual factual circumstances sufficient to justify grant of its waiver request.

¹ 47 C.F.R. § 22.813(a).

² 47 C.F.R. § 1.925(b)(3).

³ Waiver Request at 1.

3. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the waiver request filed by Skytel Communications, Inc. on September 27, 2000, IS DENIED.

4. IT IS FURTHER ORDERED that, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 0.331, 1.925, and 1.934(d)(2) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, 1.934(d)(2), the associated application of Skytel Communications, Inc., File No. 0000116431, IS DISMISSED.

5. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 309(d)(1) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309, and by sections 0.331 and 1.939 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.939, the request to dismiss filed by Stratophone, LLC on May 19, 2000, IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari
Chief, Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau