

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

In the Matter of Application of)
POLK COUNTY)
Request for Waiver of Section 90.205(d) the)
Commissions Rules)
FCC File No. A061426

ORDER ON RECONSIDERATION

Adopted: August 8, 2001

Released: August 14, 2001

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

I. INTRODUCTION

1. On March 28, 2001, Polk County filed a petition seeking reconsideration of the March 1, 2001 action by the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) denying Polk County's request for a waiver of Section 90.205(d) of the Commission's Rules and dismissing its associated application to modify its license for Station WPPZ957 to increase the effective radiated power (ERP) of its Polk City and Dundee sites. For the reasons discussed below, we deny the petition.

II. BACKGROUND

2. On April 11, 2000, the Commission granted a license to Polk County to operate Station WPPZ957 in the 150-174 MHz band. The license further authorizes Polk County to operate Station WPPZ957 from two sites, Dundee and Polk City (the sites), at an ERP of 500 watts. Five months later, on October 10, 2000, Polk County submitted an application to modify its license to increase the ERP at both sites from 500 watts to 1,334 watts. Polk County attached to its application an engineering study from Motorola based on the Okumura propagation model. According to Polk County, its engineering

1 Polk County, Petition for Reconsideration (filed Mar. 28, 2001) (Petition).
2 Letter from Licensing and Technical Analysis Branch, Federal Communications Commission, to Polk County (Mar. 1, 2001) (Dismissal Letter).
3 Polk County, Request for Waiver (filed Oct. 10, 2001) (Waiver Request).
4 File No. A061426.
5 Polk County Application (granted Apr. 11, 2000).
6 See 47 C.F.R. § 90.205(d).
7 See supra note 5.
8 Dismissal Letter at 1. The Okumura propagation model makes use of numerous correction factors, including adjustments for the degree of urbanization, terrain slope and roughness, receiver location relative to nearby hills and valleys, general street orientation in the service area, and localized obstructions. See, e.g., Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations, First Report and Order, ET Docket No. 00-11, 15 FCC Rcd 12118, 12123-24 ¶ 11 (2000) (citing Okumura, Y., E. Ohmori, T. Kawano, and K. Fukuda, "Field strength and its variability in VHF and UHF land-mobile radio service," Rev. Elec. Com. Lab. 16 at 825-73 (1968)).

study showed that the 37 dBu signal strength is exceeded along the edges of the service area.⁹ It further shows that there are holes in coverage inside the service area.¹⁰ Polk County attached letters from the Greater Orlando Aviation Authority (Aviation Authority)¹¹ and the Department of Information Technologies of Seminole County (Seminole County),¹² the two entities that would be affected by the proposed increase in ERP. Both the Aviation Authority and Seminole County indicated they did not object to Polk County increasing the ERP of its Polk City and Dundee sites so long as Polk County decreased the power if harmful interference occurred to either the Aviation Authority or Seminole County.¹³ Polk County then requested a waiver of Section 90.205(d) of the Commission's Rules.¹⁴

3. On March 1, 2001, the Branch declined to grant the waiver request and dismissed Polk County's application to modify Station WPPZ957.¹⁵ The Branch stated that:

a review of Polk County's waiver request does not show any alternatives that they have considered or why the county has requested 1334 watts ERP. Polk County's waiver failed to show that they considered alternatives such as adding new sites, relocating an existing site for better coverage, using a directional antenna to fill in hard to cover areas, or switching to downtilt antennas.¹⁶

4. On March 28, 2001, Polk County requested reconsideration of the dismissal of its application to modify its license to operate Station WPPZ957. Polk County maintains that it is over 2000 square miles and that it has an unusual configuration and terrain, which "does not readily lend itself to coverage contours."¹⁷ Moreover, Polk County maintains that it has spent "a year and hundreds of man hours exploring design alternatives"¹⁸ and that "all possible options including additional sites, multiple frequency operation as opposed to simulcast of a single channel, various antenna altitude and power combinations and use of directional antennas were looked at."¹⁹ Polk County states:

Polk County is primarily a rural county but is sandwiched between Orlando on the East and Tampa on the West. There is little to no spectrum available to Polk and a much lower tax base provides even fewer dollars. Solutions to communication problems we experience have to be creative and make maximum use of both spectrum and funding. There are no viable alternatives to this request at this time.²⁰

⁹ Petition at 2.

¹⁰ *Id.* at 3.

¹¹ Waiver Request, attachment, Letter from Greater Orlando Aviation Authority to Association of Public-Safety Communications Officials-International, Inc. (APCO) (Apr. 6, 2000) (Aviation Authority Letter).

¹² Waiver Request, attachment, Letter from Department of Information Technologies, Seminole County to APCO (Apr. 17, 2000) (Seminole County Letter).

¹³ Aviation Authority Letter at 1; Seminole County Letter at 1.

¹⁴ Waiver Request at 1.

¹⁵ Dismissal Letter at 1-2.

¹⁶ *Id.* at 2.

¹⁷ Petition at 3. According to Polk County, the county has a wide southern boundary with a stair stepping up the east side, a narrow northern boundary, and a singular protrusion out of the west side. It also has the highest point in the Florida peninsula and some of the lowest spots in the state.

¹⁸ Petition at 5.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 2.

III. DISCUSSION

5. Section 90.205 of the Commission's Rules states that "[a]pplicants for licenses must request and use no more power than the actual power necessary for satisfactory operation."²¹ For applicants seeking to operate in the 150-174 MHz band,

[t]he maximum allowable station ERP is dependent upon the station's antenna HAAT [height upon average terrain] and required service area and will be authorized in accordance with table 1. Applicants requesting an ERP in excess of that listed in table 1 must submit an engineering analysis based upon generally accepted engineering practices and standards that includes coverage contours to demonstrate that the requested station parameters will not produce coverage in excess of that which the applicant requires.²²

According to table 1, footnote 2, Polk County is required to operate its two sites at a maximum ERP of 500 watts.²³ According to table 1, footnote 4, an application for a service area with a radius of 80 kilometers (the approximate service area for Polk County) "may be granted upon specific request with justification and must include a technical demonstration that the signal strength at the edge of the service area does not exceed 37 dBu."²⁴

6. As mentioned above, Polk County's propagation model shows that if it were to operate the sites at an ERP of 1,334 watts it would exceed 37 dBu at its service contour, thus violating footnote 4 of table 1. Consequently, Polk County requests a waiver not only of the ERP limit, but also of the limitation set forth in footnote 4.²⁵ The Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) 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
- (ii) 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.²⁶

7. We believe that Polk County has failed to establish that it grant of a waiver is warranted under the circumstances presented. Polk County maintains that in operating its two sites at an ERP of 500 watts it cannot adequately cover its service area.²⁷ Polk County admits, however, that even if it increased the ERP of the sites to 1,334 watts, which is nearly triple the level allowed under Section 90.205(d) of the Commission's Rules, the Okumura propagation model shows "some contour outside the service area" and "some coverage holes inside the coverage area."²⁸ Thus, merely increasing the ERP of its two sites does not appear to completely resolve Polk County's underlying problem. Moreover, there is harm to the

²¹ 47 C.F.R. § 90.205.

²² 47 C.F.R. § 90.205(d).

²³ 47 C.F.R. § 90.205(d), table 1, note 2.

²⁴ 47 C.F.R. § 90.205(d), table 1, note 4.

²⁵ Petition at 2.

²⁶ 47 C.F.R. § 1.925(b)(3).

²⁷ Waiver request at 1.

²⁸ Petition at 3.

public interest in increasing the ERP to such an extent. Our propagation model²⁹ shows that if the ERP of the sites is increased to 1,334 watts, the signal will travel from the Atlantic Coast to the Gulf Coast. Although Polk County presents letters from the two entities that would be affected currently, any future user would suffer severe interference. Moreover, both the Aviation Authority and Seminole County agree to an increase in power based on Polk County's assurances to them that it will reduce the power if either the Aviation Authority or Seminole County experience harmful interference.³⁰ In neither the waiver request nor in the petition has Polk County shown why it needs an ERP of 1,334 watts, when such a level will not cover its entire service area. We believe that it is not in the public interest to waive Section 90.205(d) of the Commission's Rules when there are significant potential adverse effects on effective spectrum utilization and so few concomitant public interest benefits.

8. Based on our review of the record, it appears that Polk County's service area problems are not the result of Section 90.205(d) of Commission's Rules being inequitable, unduly burdensome, or contrary to the public interest or the lack of a reasonable alternative, but that Polk County is having problems finding a solution within its fiscal constraints. In its petition, Polk County stated that even at operating the sites at an ERP of 1,334 watts, both the Okumura model and R-6602 contour (the propagation model used by the Commission) show "gaps within the service area which the county is *fiscally unable to address at this time.*"³¹ Polk County further stated that "[s]olutions to communication problems we experience have to be creative and make maximum use of both spectrum and funding. There are no viable alternatives to this request *at this time.*"³² We believe that lack of funding is an insufficient reason to waive Section 90.205(d) of the Commission's Rules to the extent requested by Polk County, based on the information before us.³³ Further, given that Polk County's proposed approach is not a complete solution to the problem, it is unclear from the record why this alternative was chosen over incomplete solutions which may not necessitate a waiver. As a result, we believe that Polk County failed to make a sufficient showing that grant of the requested relief is warranted or to demonstrate that the Branch erred in the substance of its decision. Thus, we affirm the Branch's decision.

IV. CONCLUSION AND ORDERING CLAUSES

9. For the foregoing reasons, we deny Polk County's Petition requesting reconsideration of a denial of a waiver of Section 90.205(d) of the Commission's Rules.

10. ACCORDINGLY, IT IS ORDERED that pursuant to Section 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 405, and Sections 1.106, 1.925 and 90.205(d) of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.925, 90.205(d), the petition for reconsideration filed by Polk County on March 28, 2001, IS DENIED.

²⁹ R-6602.

³⁰ Aviation Authority letter at 1; Seminole County letter at 1.

³¹ Petition at 5 (emphasis added).

³² *Id.* at 2 (emphasis added).

³³ Country Cousins, Inc., *Order*, 14 FCC Red 19351 (WTB PSPWD 1999).

11. This action is taken under delegated authority pursuant to 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
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Wireless Telecommunications Bureau