

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

In the matter of
CAMBRIDGE TELEPHONE COMPANY, INC.
Request for Waiver of Section 101.81 of the
Federal Communications Commission's Rules
FCC File Nos. 0000227439, 0000227440,
0000227441

ORDER

Adopted: August 15, 2001

Released: August 16, 2001

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

1. Introduction. Cambridge Telephone Company, Inc. (Cambridge) has filed applications for modifications to its licenses to operate 2 GHz Fixed Microwave Service (FMS) Stations WHD922 (Snowbank, Idaho), WHD923 (Jackson Peak, Idaho), and WHD924 (Lowman, Idaho), and requests a waiver of the Commission's Rules that would otherwise require us to authorize the stations on a secondary basis. For the reasons set forth below, we deny Cambridge's request to authorize the stations with primary status.

2. Background. The Commission has reallocated portions of the 2 GHz band from FMS to emerging technology (ET) services, including the personal communications services (PCS). To this end, the Commission has adopted certain transition rules. 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 licensees. Thus, rather than immediately clearing the 2 GHz band of the incumbent FMS users, we permit 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. 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. In addition, we authorize new FMS stations, extensions

1Cambridge Telephone Company, Inc. Request for Waiver: Rule Section 101.81 (filed Dec. 7, 2000) (Waiver Request).

2Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, First Report and Order and Third Notice of Proposed Rule Making, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992) (ET First Report and Order).

3See 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. ET First Report and Order, 7 FCC Rcd at 6886 ¶ 5.

4ET 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, WT Docket No. 95-157, 11 FCC Rcd 8825, 8867-69 ¶¶ 86-88 (1996) (Cost Sharing First Report and Order).

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

6See 47 C.F.R. §§ 101.69(a), 101.71-101.77

of existing FMS systems, and major modifications of existing FMS stations only on a secondary basis to ET systems.⁷ 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.⁸ 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. In connection with its delivery of telephone services to a rural area of southwest Idaho, Cambridge operates a microwave system.⁹ The system was originally installed in approximately 1982 using 2 GHz analog microwave equipment.¹⁰ Cambridge states that a critical element in this system is the solar-powered repeater located on Jackson Peak in the Boise National Forest, an extremely remote area that is inaccessible most of the year due to weather conditions.¹¹ The solar-powered repeater is used because of its low maintenance requirements and its negligible impact on the environment.¹² Cambridge states that the equipment has become unreliable and must be replaced for it to continue to provide reliable telephone service.¹³ It states that it cannot use 6 GHz equipment because 6 GHz systems require more power than the current solar installation at Jackson Peak can provide, and the necessary modifications associated with a 6 GHz installation (*e.g.*, more solar panels and batteries) would increase the station's environmental impact.¹⁴ Cambridge also states that, as a consequence of the Commission's actions reallocating the 2 GHz band to ET services, there is no suitable 2 GHz analog equipment on the market to replace the existing equipment, and very few choices for digital equipment.¹⁵ Therefore, it seeks to replace its current analog equipment with digital equipment that has different technical specifications from Cambridge's current equipment, such as a higher frequency tolerance.¹⁶

4. *Discussion.* In this matter, the stations at issue are currently authorized with primary status. Cambridge's proposed changes are major modifications under the Commission's Rules.¹⁷ As Cambridge recognizes, absent a waiver of Section 101.81, the subject license modification applications would be granted only on a secondary basis. 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 unique or unusual circumstances of the case, application of the rule(s) would be inequitable, unduly burdensome or contrary

⁷47 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 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.*

⁸47 C.F.R. § 101.81.

⁹Waiver Request at 1.

¹⁰*Id.*

¹¹*Id.*

¹²*Id.*

¹³*Id.*

¹⁴*Id.* at 1-2.

¹⁵*Id.* at 2.

¹⁶*Id.*

¹⁷*See* 47 C.F.R. § 1.929(d).

to the public interest, or the applicant has no reasonable alternative.¹⁸ For the reasons set forth below, we conclude that grant of the requested waiver is not warranted under the circumstances presented.

5. In support of its waiver request, Cambridge argues that a waiver would benefit the public interest for the following reasons: a) Cambridge must change equipment because of its age, the inability to maintain the equipment, and a failure to change equipment could result in the cessation of telephone service to the Lowman, Idaho area; b) there is no suitable analog equipment available that can be purchased to replace the existing equipment, and few choices for replacement equipment even considering the change to digital modulation; c) replacing the microwave equipment with digital equipment will result in better service to this remote area including the possibility to provide better Internet access and services to this remote area; d) this area is extremely remote with very low population density, and Cambridge anticipates that PCS and ET services will not be introduced into the area for many years due to the high cost of providing service; and e) secondary status could result in Cambridge having to discontinue service to Lowman because developing some other transmission system to provide service is not economically feasible given the small number of subscribers in the area.¹⁹

6. We are not persuaded by Cambridge's arguments. The need to replace equipment is a normal and foreseeable event. Given the Commission's expressed goal of relocating incumbent FMS licensees from the 2 GHz band to the other fixed microwave bands, we do not believe it would be consistent with such goal to allow a microwave incumbent to retain primary status after a major²⁰ equipment change.²¹ Second, we are not persuaded that Cambridge's assertion that the subject stations are in a remote rural location, where the implementation of ET systems is not expected in the near future, is a sufficient basis upon which to waive Section 101.81 of the Commission's Rules.²² Moreover, if that assertion is correct, we believe that secondary status will not impair Cambridge's ability to retain its stations and continue to serve its subscribers; thus, based on the information before us, it does not appear that application of the rule would unduly burden Cambridge.²³ Finally, we are concerned that a waiver would increase the cost of relocating Cambridge's system,²⁴ a result that would be contrary to the Commission's goal of limiting relocation costs.²⁵

7. *Conclusion.* Based on the record in this proceeding, we conclude that Cambridge has failed to make a sufficient demonstration that grant of a waiver of Section 101.81 of the Commission's Rules is warranted. We therefore deny its request for a waiver of Section 101.81 of the Commission's Rules. We note, however, that a denial of the waiver request does not mean that Cambridge may not operate the subject stations; rather, Cambridge's authorization to operate such stations will be accorded secondary status.

¹⁸47 C.F.R. § 1.925(b)(3).

¹⁹Waiver Request at 2-3.

²⁰Primary status is retained after minor equipment changes. 47 C.F.R. § 101.81(h).

²¹See Minnkota Power Cooperative, Inc., *Order*, DA 99-2333, ¶ 5 (WTB PSPWD rel. Oct. 27, 1999) (citing *Cost Sharing First Report and Order*, 11 FCC Rcd at 8829 ¶ 3).

²²Bell South Telecommunications, Inc., *Order*, 14 FCC Rcd 18680, 18682 ¶ 6 (WTB PSPWD 1999) (Bell South) (citing Cameron Tel. Co., *Order*, DA 99-2332 (WTB PSPWD rel. Oct. 27, 1999); Cal-One Cellular L.P., *Order on Reconsideration*, DA 99-2103 (WTB PSPWD rel. Oct. 7, 1999)).

²³See Bell South, 14 FCC Rcd at 18682 ¶ 6.

²⁴ See Cybertel RSA Cellular, L.P., *Order*, 15 FCC Rcd 5577, 5578-79 ¶ 5 (WTB PSPWD 2000).

²⁵ See, e.g., *ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5, 6891 ¶ 30.

8. ACCORDINGLY, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.925, 101.69, and 101.81 of the Commission's Rules, 47 C.F.R. §§ 1.925, 101.69, and 101.81, the Request for Waiver of Cambridge Telephone Company, Inc., filed on December 7, 2000, IS DENIED.

9. IT IS FURTHER ORDERED that applications FCC File Nos. 0000227439, 0000227440, 0000227441 SHALL BE REFERRED to the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division for processing consistent with this *Order* and the applicable Commission Rules.

10. 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