

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

In the Matter of)
)
CELTRONIX TELEMETRY, INC.) FCC File No. 0000306557
)
Petition for Reconsideration of Request for Special)
Temporary Authority to Operate 218-219 MHz)
Service Network in the Norfolk-Virginia Beach)
Metropolitan Statistical Area)

ORDER ON RECONSIDERATION

Adopted: September 17, 2001

Released: September 19, 2001

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

I. INTRODUCTION

1. On March 2, 2001, Celtronix Telemetry, Inc. (Celtronix) filed a petition requesting reconsideration of the grant of a sixty-day Special Temporary Authorization (STA) to operate a 218-219 MHz Service system in the Norfolk-Virginia Beach Metropolitan Statistical Area (MSA) by the Public Safety and Private Wireless Division (Division), Wireless Telecommunications Bureau (Bureau).¹ In the Petition, Celtronix requests that its STA be extended with conditions.² Alternatively, Celtronix requests that its STA be converted to an authorization for interim developmental authority with the same conditions.³ In further support of its request for an extension of its STA, Celtronix filed a supplement to its Petition on April 12, 2001.⁴ For the reasons set forth herein, we conclude that the Petition should be denied.

II. BACKGROUND

2. On January 18, 1995, Celtronix was authorized to operate Station KIVD0054, a 218-219 MHz Service system in the Norfolk-Virginia Beach MSA. In 1996, Celtronix demonstrated and then constructed a vehicle tracking system.⁵ It is our understanding that Celtronix has used Station KIVD0054 to offer a low-cost vehicle tracking service.⁶

¹ Celtronix Telemetry, Inc., Petition for Reconsideration (filed Mar. 2, 2001) (Petition).

² *Id.* at 1.

³ *Id.*

⁴ Celtronix Telemetry, Supplement to Petition for Reconsideration (filed April 12, 2001) (Supplement). We note that in its Supplement, Celtronix requested interim operating authority as an additional alternative to its earlier requests. *Id.* at 4-9.

⁵ *Id.* at 2.

⁶ *Id.* at 4.

3. In 1999, the Commission adopted an installment payment restructuring plan for the 218-219 MHz Service in WT Docket 98-169.⁷ Under the terms of the restructuring plan, an eligible licensee could: (1) elect to retain its license (either by resuming the installment payments it agreed to at the time it obtained its license (reamortization and resumption) or by paying off the existing balance due on the license (prepayment)); or (2) choose “amnesty,” under which the eligible licensee returns the license to the Commission in exchange for debt forgiveness and a refund of certain payments.⁸ Pursuant to this restructuring plan, Celtronix was deemed to be an eligible licensee⁹ and elected the amnesty option.¹⁰ By electing amnesty, Celtronix was required to cease operation by February 1, 2001. However, on December 26, 2000, Celtronix requested an STA effective February 1, 2001, and lasting for 180 days, “to permit continued operation of its 218-219 MHz Service system” in the Norfolk-Virginia Beach MSA.¹¹

4. The Division found that there is a public interest benefit in granting an STA in situations where a licensee that is serving customers returns its license, because affected customers are provided an opportunity to seek comparable communications facilities.¹² The Division found that a grant of a limited, sixty-day STA would provide sufficient transition time for Celtronix’s customers.¹³ Therefore, on January 31, 2001, the Division granted a limited, sixty-day STA.¹⁴ On March 2, 2001, Celtronix requested an extension of its STA with conditions or, alternatively, conversion of its STA to interim developmental authority with the same conditions.¹⁵ The Division extended the STA for an additional thirty days pending

⁷ Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, WT Docket 98-169, 15 FCC Rcd 1497 (1999) (218-219 MHz R&O).

⁸ *Id.*

⁹ Celtronix was listed as an eligible licensee in Wireless Telecommunications Bureau Announces Revised Election Date (January 31, 2001) and Amended Eligibility List for 218-219 MHz Service, *Public Notice*, DA 01-9 (WTB rel. Jan. 3, 2001) (*Elections and Eligibility Notice*).

¹⁰ See Celtronix Telemetry, Inc., Election Notice Submission (filed Jan. 31, 2001); see also Wireless Telecommunications Bureau Announces the Election for the 218-219 MHz Service, *Public Notice*, DA 01-583 (Mar. 5, 2001).

¹¹ Celtronix STA Request, filed December 26, 2000 (STA Request) at 1.

¹² See Letter from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division to Richard S. Myers, President, Celtronix Telemetry, Inc. (dated Apr. 25, 2001) (STA Extension Letter).

¹³ *Id.*

¹⁴ STA Letter at 2.

¹⁵ Petition at 1. Celtronix provides four conditions: (1) customers will be notified that service is being provided on a temporary, limited basis and will cease in accordance with the issuance of a permanent license; (2) the numbers of tracking devices in operation will be limited to 205; (3) Celtronix, at the Commission’s instruction, will submit a full report of its operations that can be made available for public inspection; and (4) Celtronix will be prepared to cease operations upon the new, permanent licensing of the 218-219 MHz spectrum. *Id.* at 8.

resolution of the instant Petition.¹⁶ On April 12, 2001, Celtronix filed a supplement in further support of its requests.

III. DISCUSSION

5. *Special Temporary Authority.* Section 1.931 of the Commission's Rules provides for the grant of a STA in the Private Wireless Services under five circumstances: (1) in emergency situations; (2) to permit the restoration or relocation of existing facilities to continue communication service; (3) to conduct tests to determine necessary data for the preparation of an application for regular authorization; (4) for a temporary, non-recurring service where a regular authorization is not appropriate; or (5) in other situations involving circumstances which are of such an extraordinary nature that delay in the institution of service would seriously prejudice the public interest.¹⁷ The applicant for a STA must fully describe the nature of the circumstances that, in its opinion, warrants the requested STA grant.¹⁸ We conclude that Celtronix has not demonstrated that an indefinite extension¹⁹ of its STA request is warranted under the circumstances presented.

6. In its Petition, Celtronix argues that it is in the public interest for the Commission to extend the STA indefinitely and permit Celtronix to continue to operate Station KIVD0054.²⁰ Specifically, Celtronix argues that if it were no longer authorized to operate, its customers would be left without an effective alternative because its vehicle tracking service is less expensive than comparable services using cellular service or satellite networks.²¹ Celtronix also argues that its service provides important public safety benefits, such as monitoring vehicles for speeding, assisting customers and police with the recovery of stolen vehicles and locating vehicles that require assistance.²² Celtronix further argues that its limited operations will assist in the development of a promising 218-219 MHz technology.²³ Finally, Celtronix argues that continued operation of Station KIVD0054 is in the public interest because it will provide two

¹⁶ See Letter from D'wana Terry, Chief, Public Safety and Private Wireless Division to Richard S. Myers, President, Celtronix Telemetry, Inc. at 2 (dated Jan. 31, 2001)

¹⁷ 47 C.F.R. § 1.931(b)(2)(i)-(v).

¹⁸ 47 C.F.R. § 1.931(b)(3).

¹⁹ Celtronix requests temporary authority that will cease in accordance with issuance of a permanent license. Petition at 8.

²⁰ Petition at 5.

²¹ *Id.*

²² Petition at 5-6

²³ *Id.* at 6.

small businesses (Celtronix and Gateway Communications, Inc.²⁴) an opportunity to participate in wireless telecommunications, an objective of the Commission and Congress.²⁵

7. We believe that the public interest would not be served by extending the current STA as requested by Celtronix or by converting the STA to interim developmental authority because that would, in effect, allow Celtronix to retain its authorization when it voluntarily decided to do otherwise. Celtronix was given the same opportunity as other eligible licensees in the 218-219 MHz Service to retain its license by electing reamortization and resumption or prepayment. Celtronix, instead, voluntarily elected amnesty, under which it was required to return the license to the Commission. By electing amnesty, Celtronix received debt forgiveness and a refund of certain payments. If we allowed Celtronix to continue operating indefinitely pursuant to an STA, Celtronix would receive the benefits of amnesty without realizing the concomitant disadvantage of having to cease operations. Clearly, it would not be in the public interest or equitable to allow one eligible licensee to receive the advantages of both options while the remaining eligible licensees in the 218-219 MHz Service who complied with the rules established by the restructuring plan could not selectively comply with portions of the various options to, in effect, establish their own options.

8. In its Supplement, Celtronix states that in SouthEast Telephone, Inc., *Order*, 15 FCC Rcd 15702 (WTB CWD 2000) (*SouthEast Order*), SouthEast Telephone, Inc. (SouthEast) was granted an STA to allow existing customers to have service without disruption until a new licensee commenced operation.²⁶ Celtronix further argues that the STA was not granted in order to allow affected customers to wrap up business before a new licensee has commenced operations.²⁷ We believe our action in this case is consistent with the *SouthEast Order*. SouthEast and Celtronix were both granted STAs for the purpose of providing a transition period to their customers.²⁸ The Bureau's Commercial Wireless Division (CWD) granted the STA for the lesser of (1) 180 days or (2) a period of ten days following receipt of written notice from ComScape Communications, Inc. (ComScape), the new licensee in the area, to SouthEast notifying SouthEast of ComScape's intention to commence operation.²⁹ CWD also ordered SouthEast to notify its customers that they must make arrangements with another carrier to obtain continued service at the end of the STA period. We believe that we have provided a similar and adequate transition period here.

²⁴ Gateway Communications, Inc. (Gateway) is located Tucson, Arizona and manufactures equipment for the 218-219 MHz Service. *Id.* at 2. Celtronix began working with Gateway in 1996 and used Gateway's equipment to create its vehicle tracking service. *Id.*

²⁵ *Id.* at 5-6.

²⁶ Supplement at 2 n.2.

²⁷ *Id.*

²⁸ Compare *SouthEast Order*, 15 FCC Rcd at 15704 ¶ 7 (requiring SouthEast to "make a diligent effort to facilitate transition of its current PCS customers to another licensed carrier") and STA Letter at 2 (noting the public interest benefits of allowing affected customers to wrap up business or seek comparable communications facilities).

²⁹ See *SouthEast Order*, 15 FCC Rcd at 15704 ¶ 6. The STA was extended for an additional sixty days. See Letter from Paul D'Ari, Chief, Policy and Rules Branch, Commercial Wireless Division, to Michele C. Farquhar, Counsel for SouthEast Telephone, Inc. (August 25, 2000).

9. Further, we believe any public interest benefits from the indefinite continuation of Celtronix's service would be outweighed by the unfairness to the other licensees in the 218-219 MHz spectrum. Celtronix devotes the majority of its Petition describing the benefits of the "Safetrail" service it has offered using Station KIVD0054. Celtronix describes Safetrail as "a low cost vehicle tracking service focused on safety benefits that is affordable for many individuals and small businesses for the first time."³⁰ While we do not dispute that the Safetrail service could be of interest and benefit to individuals and small businesses, the Commission provided Celtronix with the opportunity to continue providing that service by allowing Celtronix to keep its license and resume payments. Instead, Celtronix made the voluntary decision to turn in its license. We do not believe the benefits of the Safetrail service are so extraordinary as to justify allowing Celtronix to continue operating indefinitely in contravention of the restructuring plan that the Commission established.

10. The Commission has received several letters from Celtronix customers taking issue with the Division's decision to allow only a sixty-day transition period to Celtronix.³¹ We are sensitive to the interests of the Celtronix customers. Indeed, the Division granted Celtronix a limited STA for sixty days (later extended to an additional thirty days) because it believed that it was in the public interest to provide its customers with a sufficient transition period.³² In this connection, it should be noted, as we reiterate here, that Celtronix made the voluntary business decision to turn in its license and obtain the benefits of amnesty. It is only as a direct consequence of that decision that Celtronix had to discontinue its operation of Station KIVD0054. We would note that as early as September 17, 1998, the Commission proposed a restructuring plan for the 218-219 MHz Service in which licensees such as Celtronix could elect to surrender their licenses.³³ Finally, we note that Celtronix could offer the Safetrail service using a cellular network, although such service would be more expensive than Celtronix's existing service.³⁴ We will not question Celtronix's business judgment to choose amnesty and to turn in its license. We nonetheless believe that Celtronix was responsible for planning for the possibility that it would elect amnesty and for making appropriate arrangements with its customers.

11. *Temporary Development Status.* In the alternative, Celtronix requests "temporary developmental status" for its system.³⁵ In support thereof, Celtronix argues that grant of temporary developmental authority will permit testing and development of enhancements to the tracking service and will permit further test marketing of the vehicle tracking system.³⁶ Celtronix states that it has only deployed "a small number of tracking devices" and it is interested in learning network performance with the

³⁰ Petition at 4.

³¹ See, e.g., Letter from Carol Bluestein to Magalie Roman Salas, Secretary, Federal Communications Commission dated February 20, 2001.

³² See STA Letter at 2-3; STA Extension Letter.

³³ Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service and Amendment of Part 95 of the Commission's Rules to Allow Interactive video and Data Service Licensees to Provide Mobile Services, *Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, Docket 98-169, 13 FCC Rcd 19064 (1998) (*218-219 MHz Order, MO&O and NPRM*).

³⁴ Petition at 5.

³⁵ *Id.* at 8-9.

³⁶ *Id.* at 9.

deployment of up to 205 units.³⁷ Celtronix further states that it will share such information with all interested parties.³⁸ Finally, Celtronix contends that its vehicle tracking system utilizes a new 218-219 MHz technology that provides a low-cost method for modifying at-risk driving behavior.³⁹

12. Based on our review of the record in this proceeding, we do not believe that grant of Celtronix's alternative request for temporary developmental authority is warranted. Part 95 of the Commission's Rules makes no provision for developmental authorization, and Celtronix does not cite any authority for the proposition that developmental authority is or should be available under Part 95 of the Commission's Rules.⁴⁰ Moreover, we believe a grant of developmental authority would not be in the public interest for the same reasons that we have found that an extension of the STA is not in the public interest. The Commission has held that developmental authority is not appropriate when an applicant has tested its technology and is seeking authority to market its service commercially.⁴¹ Based on the information before us, we believe that the primary, if not sole, purpose underlying Celtronix's development authority request is to allow it to further market its service commercially.⁴² Therefore, we deny Celtronix's alternative request for temporary developmental authority.

13. In its Supplement, Celtronix cites to Illinois Bell Telephone Company, *Order*, 63 FCC 2d 655 (1977) (*Illinois Bell*) and Contemporary Communications Corp., *Memorandum Opinion and Order*, 98 FCC 2d 1229 (1984) (*Contemporary*) as examples of cases where the Commission has granted developmental authority for "full commercial market trials that compete in the marketplace for customers."⁴³ We believe that *Illinois Bell* and *Contemporary* differ significantly from the instant matter because in *Illinois Bell* and *Contemporary* the systems were still in the testing phase and service to customers had not yet begun. Here, Celtronix's Safetrail system is beyond the testing phase and is already serving numerous customers. As the Commission stated in *Hye Crest*, temporary developmental authority is not appropriate when the technical testing is completed and the operator is seeking authority for commercial application of its system.⁴⁴

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ In its supplement, Celtronix argues that the Commission could grant developmental authority to Celtronix for its 218-219 MHz service by "[e]xercising its Section 4(i) powers." Supplement at 9. Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), provides that "[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." For the reasons stated above, we do not believe it would not serve the public interest to grant such authority. Furthermore, we note that the Commission previously has not found it necessary to exercise its Section 4(i) powers to create a rule permitting parties to operate pursuant to developmental authority under Part 95 of the Commission's Rules.

⁴¹ *Hye Crest Management, Inc.*, *Memorandum Opinion and Order*, 6 FCC Rcd 332, 335 ¶ 25 (1991) (*Hye Crest*).

⁴² See Petition at 3; see also Attachment 2 of Petition.

⁴³ Supplement at 10.

⁴⁴ *Hye Crest*, 6 FCC Rcd at 335 ¶ 25.

14. *Interim Operating Authority.* In its Supplement, Celtronix argues that interim operating authority is another appropriate alternative that would provide Celtronix with authorization to continue its 218-219 MHz Service operations. Celtronix states that the Commission, exercising its powers under Section 4(i) of the Communications Act of 1934, as amended (Act),⁴⁵ has granted interim operating authority to permit continued operations by a party that has lost its license to operate.⁴⁶ In support of its request for interim operating authority Celtronix cites *Liberty Cable Company, Inc.*⁴⁷ and *Otis L. Hale*⁴⁸ to demonstrate that there is precedent for granting such authority.⁴⁹ Celtronix also argues that Section 7 of the Act⁵⁰ provides a mandate to encourage the provision of new technologies and services to the public and is further justification for the Commission to grant interim operating authority to Celtronix so it may continue operating its system in the 218-219 MHz band.⁵¹

15. We acknowledge that there have been instances in which the Commission has granted interim operating authority to permit continued operation by a party that has lost its license. But, the Commission has only granted such authority when it would serve the public interest. In both *Liberty Cable* and *Otis L. Hale*, the Commission granted interim operating authority because it determined that it would serve the public interest.⁵² To the contrary, here we do not believe that a grant of interim operating authority would serve the public interest for the same reasons that we found that an extension of the STA or a grant of developmental authority would not serve the public interest.

16. Furthermore, we believe that Celtronix's reliance on *Otis L. Hale* and *Liberty Cable* is misplaced. Indeed, we believe that the Commission's action in *Otis L. Hale* supports our grant of a limited STA to Celtronix. In *Otis L. Hale*, the Commission denied renewal of Hale's licenses because he misrepresented facts and lacked candor concerning the construction and operational status of his stations.⁵³ In response to Hale's request for interim authorization, the Commission permitted Hale to operate for a period of 180 days, or until an interim or permanent successor was selected, whichever came first.⁵⁴ Because the Commission limited the interim operating authority to 180 days, the Commission did not guarantee that Hale could operate until a successor who would serve its customers was chosen. We believe that the grant of interim operating authority was, in effect, a grant of a transition period similar to the

⁴⁵ 47 U.S.C. § 154(i).

⁴⁶ See Supplement at 4.

⁴⁷ *Liberty Cable Company, Inc., Hearing Designation Order and Notice of Opportunity for Hearing*, 11 FCC Rcd 14133 (1996) (*Liberty Cable*).

⁴⁸ *Otis L. Hale d/b/a Mobilfone Communications, Memorandum Opinion and Order*, 60 Rad. Reg. 2d (P&F) 1185 (1986) (*Otis L. Hale*).

⁴⁹ See Supplement at 4-6.

⁵⁰ 47 U.S.C. § 157.

⁵¹ See Supplement at 8.

⁵² See *Otis L. Hale*, 60 Rad. Reg. 2d (P&F) at 1186 ¶ 5-6; *Liberty Cable*, 11 FCC Rcd at 14140 ¶¶ 21.

⁵³ See *Otis L. Hale*, 60 Rad. Reg. 2d (P&F) at 1186 ¶ 2.

⁵⁴ *Id.*, 60 Rad. Reg. 2d (P&F) at 1186 ¶ 5.

transition period we have provided for here.⁵⁵ Therefore, we conclude that *Otis L. Hale* supports our decision to provide a limited transition period here.

17. In *Liberty Cable*, the Commission stated that there were specific reasons the grant of interim operating authority served the public interest in that case. First, it found that there had been no determination made about the operator's qualifications as a licensee.⁵⁶ Second, the Commission stated that the operator's continued operation would promote competition, which would benefit the consumer.⁵⁷ Third, there were no competing applications whose rights were implicated by grant of interim operating authority.⁵⁸ Fourth, the Commission found that interim authority would not prejudice any challenges to the operator's qualifications.⁵⁹ Finally, the Commission found denying the request for interim authority would result in the loss of service to some of the consumers.⁶⁰ In *Liberty Cable*, there was an interim period because no final determination was made regarding the qualifications of the operator as a licensee. The operator was granted interim authority until such a final determination could be made in that case. Here, when Celtronix elected amnesty, the Commission took an action regarding Celtronix's licensee status when it accepted and placed Celtronix's amnesty election on Public Notice.⁶¹ Therefore, we conclude that *Liberty Cable* does not apply because there are no outstanding unresolved issues regarding Celtronix's or any other entity's status as the licensee of Station KIVD0054.

18. Finally, we believe that grant of interim operating authority would be inconsistent with Section 7 of the Act. Section 7(b) provides that the Commission shall determine whether any technology or service proposed in a petition or application is in the public interest.⁶² For the reasons stated above, we do not believe that grant of Celtronix's request for interim operating authority would serve the public interest under the circumstances presented. Therefore, we deny the request for interim operating authority.

19. *Secondary Authority*. We note that Celtronix has filed an application⁶³ to operate its vehicle tracking service by means of a private land mobile (PLMR) system operating in the 218-219 MHz band on a secondary basis pursuant to Part 90 of the Commission's Rules. In its Supplement, Celtronix states that,

⁵⁵ We note that although the *Order* granting the interim operating authority was released on June 16, 1986, the Commission made the grant of such authority retroactive to March 26, 1986, the date Hale's licenses were canceled. *See Id.*, ¶ 7. Therefore, the actual time *Otis L. Hale* was permitted to continue serving its customers was little more than the 90 days Celtronix has been provided.

⁵⁶ *Liberty Cable*, 11 FCC Rcd at 14140 ¶ 21.

⁵⁷ *Id.*, ¶ 22.

⁵⁸ *Id.*, ¶ 23.

⁵⁹ *Id.*, ¶ 24.

⁶⁰ *Id.*, 11 FCC Rcd at 14141 ¶ 25.

⁶¹ *See* 47 C.F.R. § 1.102(b).

⁶² *See* 47 U.S.C. § 157(b).

⁶³ FCC File No. D128959.

simultaneous to filing its Supplement, it has amended its Part 90 application.⁶⁴ Because Celtronix's Part 90 application is being addressed in a separate order, we need not address it here.

IV. CONCLUSION

20. For the reasons stated herein, we find that Celtronix has not demonstrated that an indefinite extension of its current STA is warranted. We also find that it would be inappropriate to grant Celtronix's alternate requests for temporary developmental authority or interim operating authority.

V. ORDERING CLAUSE

21. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 309 and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309 and 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Celtronix Telemetry, Inc. on March 2, 2001 and the Supplement to the Petition for Reconsideration filed on April 12, 2001 ARE DENIED.

22. 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

⁶⁴ Supplement at 9.