

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

In the Matter of)	
)	
NORTHWEST AIRLINES, INC.)	
)	FCC File No. A047712
Application for a new 800 MHz Trunked Radio)	
System, Memphis, Tennessee)	

ORDER ON RECONSIDERATION

Adopted: January 29, 2001

Released: February 2, 2001

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

1. *Introduction.* On May 17, 2000, Northwest Airlines, Inc. (Northwest) filed a petition for reconsideration (Petition) of the action by the Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division, Wireless Telecommunications Bureau dismissing the above-captioned application for a new authorization in the 800 MHz Land Mobile Radio Service.¹ For the reasons discussed below, we deny the Petition.

2. *Background.* On October 19, 1999, Northwest filed an application for a new 800 MHz trunked radio system at Memphis, Tennessee.² The application requested a waiver of the co-channel spacing requirements contained in Section 90.621(b)(4) of the Commission's Rules,³ as well as a waiver of the Commission's "intercategory sharing freeze."⁴ On January 4, 2000, Entergy Services, Inc. (Entergy) filed a petition to deny Northwest's application, alleging that the waiver request was incomplete and that the waiver standard was not met.⁵ On January 19, 2000, Northwest requested an extension of time in

¹ Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Paul Anderson, Northwest Airlines, Inc., dated April 17, 2000 (Branch Letter).

² FCC File No. A047712 (Application).

³ 47 C.F.R. § 90.621(b)(4) requires that co-channel stations be separated by at least 88 km (55 miles).

⁴ Application. Prior to 1995, "intercategory sharing" enabled SMR, Business, Industrial Land Transportation, and Public Safety eligibles to apply for frequencies in other service categories regardless of eligibility criteria under certain circumstances. 47 C.F.R. §§ 90.615(a) and 90.621(e) (1994). In April 1995, the Wireless Telecommunications Bureau instituted an "intercategory sharing freeze" that prohibited the filing of applications for intercategory sharing among the aforementioned eligibles. Inter-Category Sharing of Private Mobile Radio Frequencies in the 806/821/851-866 MHz Bands, *Order*, 10 FCC Rcd 7350 (1995). The objective of the intercategory freeze was to prohibit the acceptance of intercategory sharing applications for spectrum by non-eligibles until the Commission resolved eligibility and geographic area licensing issues regarding the 800 MHz band. *Id.* at 7351-53 ¶ 8.

⁵ Entergy Services, Inc. Petition to Deny, filed January 4, 2000 (Petition to Deny).

which to file its opposition,⁶ and on February 9, 2000, Northwest timely filed an opposition to Entergy's petition to deny.⁷ Entergy filed its reply to the opposition on February 17, 2000.⁸

3. Before a decision resolving these pleadings was issued, the Branch dismissed Northwest's application and waiver request for failing to adequately protect existing co-channel licensees.⁹ Specifically, the Branch noted that Section 90.621(b)(4) of the Commission's Rules requires an analysis of interference potential from mobile transmitters to existing co-channel base station receivers.¹⁰ Because the interference study was not included with Northwest's waiver request, the Branch dismissed the application without prejudice, in accordance with Section 1.925 of the Commission's Rules.¹¹ As a result, Entergy's petition to deny was dismissed as moot.¹²

4. On May 17, 2000, Northwest filed the instant petition seeking reconsideration of the dismissal of its application.¹³ On May 30, 2000, Entergy filed an opposition,¹⁴ and on June 9, 2000, Northwest filed its reply.¹⁵

5. *Discussion.* We affirm the Branch's ruling dismissing Northwest's application. Section 90.621(b)(4) of the Commission's Rules¹⁶ states:

Upon an applicant's specific request to the Commission or a frequency coordinator, co-channel stations may be separated by less than 113 km (70 mi) by meeting certain transmitter ERP and antenna height criteria. The following Table indicates separations assignable to such co-channel stations for various transmitter power and antenna height combinations. The minimum separation permitted is 88 km (55 mi). Applicants will provide the Commission with a statement that the application is submitted for consideration under the Table, a list of all co-channel stations within 113 km (70 mi), and

⁶ Northwest Airlines, Inc. Request for Extension of Time, filed January 19, 2000. The request was granted on February 9, 2000. See Letter from Zenji Nakazawa, Acting Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Alan S. Tilles, Esq. of Shulman, Rogers, Gandal, Pordy & Ecker, P.A., counsel for Northwest Airlines, Inc., dated February 9, 2000.

⁷ Northwest Airlines, Inc. Opposition, filed February 9, 2000 (Northwest Opposition).

⁸ Entergy Services, Inc. Reply, filed February 17, 2000 (Entergy Reply).

⁹ Branch Letter at 1.

¹⁰ *Id.*

¹¹ *Id.* 47 C.F.R. § 1.925.

¹² Letter from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Russell H. Fox, Esquire, Gardner, Carton & Douglas, counsel for Entergy Services, Inc., dated April 25, 2000.

¹³ Northwest Airlines, Inc. Petition for Reconsideration, filed May 17, 2000 (Petition).

¹⁴ Entergy Services, Inc. Opposition, filed May 30, 2000 (Entergy Opposition).

¹⁵ Northwest Airlines, Inc. Reply, filed June 9, 2000 (Northwest Reply).

¹⁶ 47 C.F.R. § 90.621(b)(4).

the DHAATs and ERPs for these stations and the applicant's proposed station. Applicants seeking to be licensed for stations located at distances less than those prescribed in the Table are required to secure a waiver and must submit with the application, in addition to the above, an interference analysis, based upon any of the generally-accepted terrain-based propagation models, that shows that co-channel stations would receive the same or greater interference protection than provided in the Table. Requests for separations less than 88 km (55 mi) must also include an analysis of interference potential from mobile transmitters to existing co-channel base station receivers. Applicants seeking a waiver must submit with their application a certificate of service indicating that concurrent with the submission of the application to the Commission or a coordinator, all co-channel licensees within the applicable area were served with a copy of the application and all attachments thereto. Licensees thus served may file an opposition to the application within 30 days from the date the application is filed with the Commission.

Northwest's original application and waiver request did not include the mobile unit interference analysis required by Section 90.621. In fact, Northwest did not provide an interference analysis until it filed its opposition to Entergy's petition to deny. In *Park City Mountain Resort*, 14 FCC Rcd 17178 (WTB PSPWD 1999), we affirmed the Branch's dismissal of an application because the applicant had failed to serve its application upon co-channel licensees, as required by Section 90.621(b)(4). We rejected Park City's argument that its application should be reinstated because it cured the defect by serving the co-channel licensees after the Branch dismissed its application. Similarly, in this case, Northwest's application and waiver request were clearly deficient as originally filed. Consistent with our holding in *Park City*, we believe Northwest's submission of a mobile interference study in its opposition to Entergy's petition to deny did not cure that deficiency. Accordingly, we affirm the Branch's dismissal of Northwest's application without prejudice.

6. Further, we note that the Branch's action still affords Northwest the opportunity to file a new application with a mobile interference study. As a result, we take this opportunity to point out that the mobile interference study Northwest submitted with its opposition to Entergy's petition to deny is deficient in several respects. Specifically, the Northwest engineering study (i) fails to indicate which propagation model was used in calculating Entergy's coverage contours; (ii) does not include reference points or coordinates in the coverage contour drawings; (iii) is based upon Entergy's actual licensed facilities instead of the maximum power (ERP) of 1000 watts that is to be assumed when determining if interference protection exists;¹⁷ and (iv) fails to list certain assumptions used in the coverage contour drawing (*e.g.*, what correction factors were used in constructing the contours).¹⁸ Consequently, the coordinates used in the analysis do not provide sufficient information as to whether the mobiles are operating within the requested service area of operation, or whether operation from other locations within that service area would cause harmful interference to Entergy's stations. If we considered the merits of Northwest's interference submission, we would conclude that the engineering analysis fails to establish that there will be no harmful interference to Entergy's operations. Accordingly, if Northwest chooses to file a new application for the facilities in question, the mobile interference study it submits with that application should cure those defects. We also note that the Commission has held that a shortage of spectrum cannot be considered a unique or unusual circumstance that, standing alone, would warrant a waiver of our

¹⁷ See 47 C.F.R. § 90.621(b)(4), "Short Spacing Separation Table," n. 3.

¹⁸ Entergy Reply at 3-4.

Rules.¹⁹ Moreover, Northwest has not addressed the issue of whether it has a reasonable alternative in fulfilling its spectrum needs. In the absence of any showing to the contrary, we would presume that other reasonable possibilities exist for Northwest to meet its communications needs. Based on the foregoing, we affirm the Branch's dismissal of Northwest's application because the Branch correctly concluded that the application was defective.

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and Sections 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, Northwest Airlines, Inc.'s Petition for Reconsideration filed May 17, 2000, IS DENIED.

8. 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

¹⁹ License Communications Services, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 23781 ¶ 21 (1998).