

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

In the Matter of)
)
WWC Holding Co., Inc.)
)
Applications to Extend CGSA Into Unserved Area) Call Sign: KNKN409
Within Block A Portion of the Colorado 9-Costilla) File No. 0000015947
RSA, the Pueblo, Colorado MSA, the Colorado 7-)
Saguache RSA, the Colorado 8-Kiowa RSA, the)
New Mexico 2-Colfax RSA, and the Colorado 4-)
Park RSA)

ORDER ON RECONSIDERATION

Adopted: November 8, 2001

Released: November 9, 2001

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On October 13, 1999, N.E. Colorado Cellular, Inc. (NECC) filed a Petition to Deny the captioned Phase II Cellular Unserved Area application filed by WWC Holding Co., Inc. (WWC). The Commercial Wireless Division (Division) dismissed the Petition to Deny in an order released on December 26, 2000 (December Order). On January 25, 2001, NECC filed a petition seeking reconsideration or clarification (Reconsideration Petition) of the December Order. For the reasons discussed below, we deny NECC's Reconsideration Petition.

II. BACKGROUND

2. WWC is the licensee of station KNKN409, operating on the Block A frequencies in the Colorado 9-Costilla, RSA (Colorado 9). On June 25, 1999, WWC filed the captioned unserved area application (Application), requesting Commission consent to calculate the Cellular Geographic Service Area (CGSA) of existing Colorado 9 cell sites at Walsenburg, La Veta Pass, and Springfield, Colorado

1 Petition of CellularOne of Northeast Colorado to Deny (Oct. 13, 1999) (Petition to Deny). NECC recognized in its reply to WWC's opposition to the Petition to Deny that its use of "CellularOne" was incorrect. Reply of N.E. Colorado Cellular, Inc. at 2, n.1. N.E. Colorado Cellular, Inc. is the petitioner in this proceeding.

2 In the Matter of WWC Holding Co., Inc. Applications to Extend CGSA into Unserved Area Within Block A Portion of the Colorado 9-Costilla RSA, the Pueblo, Colorado MSA, the Colorado 7-Saguache RSA, the Colorado 8-Kiowa RSA, the New Mexico 2-Colfax RSA, and the Colorado 4-Park RSA, Order, 16 FCC Rcd. 72 (2000).

3 Petition of N.E. Colorado Cellular, Inc. for Reconsideration or Clarification (Jan. 25, 2001).

using an alternative method, as prescribed under section 22.911(b) of the Commission's rules.⁴ If granted, the alternative CGSA proposals in the Application would expand WWC's existing CGSA beyond the boundaries currently authorized under section 22.911(a) of the Commission's rules.⁵ WWC's Application appeared on public notice as accepted for filing on June 30, 1999.⁶

3. On July 30, 1999, NECC filed five Phase II Cellular Unserved Area applications.⁷ The Division released a public notice on August 26, 1999, stating that NECC's five applications appeared to be mutually exclusive with WWC's Application for station KNKN409.⁸ On October 13, 1999, NECC filed a Petition to Deny, almost three and one-half months after WWC's Application appeared on public notice as accepted for filing. On December 26, 2000, the Division dismissed NECC's Petition to Deny as untimely filed. On that same day, the Division's Licensing and Technical Analysis Branch (Branch) issued a letter to WWC asking for additional information on the alternative CGSA proposals at the sites located at Springfield and Walsenberg.⁹ NECC seeks reconsideration and clarification of the *December Order*.

III. DISCUSSION

4. We deny NECC's Reconsideration Petition for several reasons. First, we dismissed NECC's Petition to Deny in the *December Order* because the petition was filed almost two and one-half months late. Pursuant to section 1.939 of the Commission's rules, a petition to deny must be filed within 30 days of the date that an application is listed on public notice as accepted for filing.¹⁰ The public notice listing WWC's Application as accepted for filing was released on June 30, 1999. Petitions to deny were therefore due no later than July 30, 1999. NECC filed its Petition to Deny on October 13, 1999, well after that filing deadline. In a footnote to its Petition to Deny, NECC stated that it was aware of the filing requirements.¹¹ Contending that it was "a continuing interested party in this matter" because its applications were mutually exclusive with WWC's Application, and the "petition brings into question material technical representations made to the Commission," NECC requested that the Commission accept its late-filed Petition to Deny.¹²

5. By dismissing the Petition to Deny, the *December Order* also implicitly denied any request for waiver of the filing deadline to the extent NECC's statements were intended to be a waiver request. A waiver may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would

⁴ 47 C.F.R. § 22.911(b).

⁵ See 47 C.F.R. § 22.911(a) (outlining the primary method for making CGSA determinations).

⁶ Wireless Telecommunications Bureau Site-By-Site Accepted for Filing, *Public Notice*, Report No. 260 (rel. Jun. 30, 1999).

⁷ File Nos. 0000017401, 0000017402, 0000017408, 0000017409, and 0000017410.

⁸ Wireless Telecommunications Bureau Commercial Wireless Information, *Public Notice*, Report No. CWD-99-59 (rel. Aug. 26, 1999).

⁹ Letter from Roger S. Noel, Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, to William J. Hackett (Dec. 6, 2000) (*December Letter*).

¹⁰ 47 C.F.R. § 1.939(a)(2).

¹¹ NECC Petition to Deny at 2, n.2.

¹² NECC Petition to Deny at 2, n.2.

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 would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹³ NECC's statements quoted above fail to meet this standard. Deeming itself a "continuing party in interest" and concluding that the petition provides evidence of misrepresentation on the part of WWC shows neither how the purpose of the 30-day deadline would be frustrated by its applications here nor the presence of any unique or unusual factual circumstances in this case. NECC appears to assert that, to the extent it might have standing in this case as a mutually exclusive applicant, it should be permitted to file its Petition to Deny on its own schedule. Standing alone, however, does not provide a basis for granting a waiver of section 1.939 of the Commission's rules. Rather, NECC was fully aware of the 30-day deadline, and for reasons not explained, filed its Petition to Deny well after that deadline. Accordingly, we affirm the *December Order*'s dismissal of NECC's Petition to Deny as late-filed.

6. NECC also interprets the *December Order* as having considered its Petition to Deny as an informal objection under section 1.41 of the Commission's rules. NECC contends that its objections caused the Branch to request additional information from WWC about its Application.¹⁴ NECC then reasons that, because the Application was returned to WWC and WWC was required to file an amendment, the Application "was not grantable" and the Division dismissed NECC's Petition to Deny prematurely.¹⁵ We disagree. NECC misinterprets the decisions made in the *December Order* and confuses two separate processes associated with license applications. In the *December Order*, we noted that it was within our discretion to treat the Petition to Deny as an informal objection under section 1.41 of the Commission's rules, but we were not persuaded that NECC had presented any substantive reasons for doing so.¹⁶

7. With respect to its substantive arguments, NECC alleges that WWC misapplied section 22.911(b) of the Commission's rules so that WWC could artificially expand its CGSA beyond where a potential customer could receive coverage.¹⁷ In its Petition to Deny, NECC argued that WWC submitted incorrect CGSA calculations at the Springfield site because WWC based its measurements at that site on the points at which the predicted signal strength no longer exceeded 32 dBuV/m, the minimal signal strength for service. NECC appears to argue that, under section 22.911(b), the expanded coverage area cannot include "dead spots" and must be measured based on the points at which some undefined average signal strength no longer exceeds 32 dBuV/m.¹⁸ For the purpose of propagation studies under section 22.911(b), cellular service includes "'dead spots' between the transmitter location and the locus of points where the predicted or measured median field strength finally drops to 32 dBuV/m (*i.e.*, does not exceed 32 dBuV/m further out)."¹⁹ Thus, an applicant is permitted to submit propagation studies under section

¹³ 47 C.F.R. § 1.925(a)(3).

¹⁴ Reconsideration Petition at 2.

¹⁵ Reconsideration Petition at 2.

¹⁶ *December Order*, 16 FCC Rcd at 73, ¶ 4.

¹⁷ Petition to Deny at 5; Reconsideration Petition at 1.

¹⁸ Petition to Deny at 5. NECC specifically stated that "it appears the Applicant submitted distances at which the predicted signal strength never exceeds 32 dBuV/m rather than the distances at which the predicted *median signal strength* never again exceeds 32 dBuV/m. *Id.* (emphasis in original).

¹⁹ 47 C.F.R. § 22.911(b).

22.911(b) where the alternative CGSA boundary is measured at the point at which signal strength will no longer exceed 32 dBuV/m. The rule does not require that these calculations be based on some *average* signal strength over the distance to the point where the signal no longer exceeds 32 dBuV/m. In addition, while we discourage submitting proposals that include areas where customers will not receive service, the rules explicitly allow alternative CGSA calculations to include “dead spots.”

8. NECC also provided its own alternative CGSA analyses in its Petition to Deny using multiple methods to contest the accuracy of the calculations at the Springfield site that WWC provided in its Application on its alternative CGSA.²⁰ Recognizing that it had performed analyses on only one site, NECC then suggested that similar problems existed in the analyses for all three sites.²¹ Section 22.911(b) does not require the use of multiple predictive models for calculating alternative CGSAs.²² WWC based its predicted signal strength calculations on a model that is acceptable and therefore complies with section 22.911(b). Moreover, we cannot impute conclusions based on NECC’s data from the Springfield site to all three sites. We find that WWC properly met the alternative CGSA requirements of Section 22.911(b) in its Application and affirm the decision in the *December Order* not to consider the Petition to Deny as an informal objection.

9. We further explain that our consideration of arguments raised in petitions filed to deny applications is separate from our procedures for returning applications where we determine that we need additional information. The Branch reviews all alternative CGSA proposals. In this case, the Branch was unable to interpret certain colors representing some of the proposed boundaries on the contour maps. As a result, the Branch sought numeric verification of WWC’s alternative CGSA determinations for the Springfield and Walsenberg sites. Our request for clarification was independent of any specific objections raised by NECC, and was not sought on the basis of some defect that would require dismissal of WWC’s Application.²³ Under our policy on returning applications, the Branch may return an application that requires clarification of some matters or more detailed information than initially submitted by the applicant. This return does not, by itself, indicate a defect that would require dismissing the application. Rather, the processing of the application is temporarily suspended until the applicant submits an amendment to its application providing the requested information.²⁴ This is the procedure we followed when we sent WWC the *December Letter*. On February 23, 2001, WWC provided the requested information through a minor amendment.²⁵ While the amendment allowed the Branch to accept the Application, we note that WWC’s

²⁰ Petition to Deny at 5-8.

²¹ Petition to Deny at 8.

²² 47 C.F.R. § 22.911(b). Section 22.911(b) specifically provides that the depiction of the proposed alternative CGSA “must be accompanied by one or more supporting propagation studies.” *Id.*

²³ Instances that require dismissing applications as defective include, for example, applications that are unsigned or incomplete with respect to answers to questions, informational showings, or other matters of a formal character, applications that request an authorization that would not comply with Commission rules and do not include a waiver request, or applications that do not contain an adequate fee. Wireless Telecommunications Bureau Announces Unified Policy for Dismissing and Returning Applications and Dismissing Pleadings Associated with Applications, *Public Notice*, 14 FCC 5499, 5500-01 (1999) (*Unified ULS Dismissal Policy Public Notice*).

²⁴ *Unified ULS Dismissal Policy Public Notice*, 14 FCC Rcd at 5501 (outlining the Bureau’s policy on returned applications); *see also* 47 C.F.R. § 1.744 (authorizing the Commission to order an applicant to amend its application so as to make it more definite and certain).

²⁵ FCC Form 601, File No. 0000015947, filed February 23, 2001, by WWC.

amendment does not resolve the mutual exclusivity between its Application and the applications NECC filed on July 30, 1999.

10. NECC also seeks clarification on whether it may respond to WWC's amendment "within a reasonable amount of time after it is filed."²⁶ WWC's filing constitutes a minor amendment to its Application,²⁷ and therefore is not a new application for purposes of triggering new dates for filing petitions to deny or other comments.²⁸ Thus, Commission rules do not provide any formal procedures for submitting comments on WWC's February 23, 2001 amendment to its Application.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 405 of the Communications Act, as amended, 47 C.F.R. §§ 154(i), 405, and sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition for Reconsideration filed by N.E. Colorado Cellular, Inc. on January 25, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

²⁶ Reconsideration Petition at 3.

²⁷ Amendments to applications for stations in the wireless radio services are classified as major or minor. 47 C.F.R. § 1.929. WWC's amendment does not expand the CGSA proposed in the Application, request that a CGSA boundary be determined using an alternative method, or request a *de minimus* SAB extension. *See id.* § 1.929(b). Any change not specifically listed in section 1.929 as major is considered minor. *Id.* § 1.929(k).

²⁸ 47 C.F.R. § 1.927(h) (stating that where an amendment to an application constitutes a major change, as defined in § 1.929, the amendment shall be treated as a new application for determination of filing date, public notice, and petition to deny purposes).