

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

In the Matter of)	
)	
MCNC)	File No. 0000513881
)	
Request for Waiver of Section 101.97 of the)	
Commission's Rules)	

ORDER

Adopted: November 30, 2001

Released: December 7, 2001

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

I. INTRODUCTION

1. On July 6, 2001, MCNC filed a request for waiver of Section 101.97 of the Commission's Rules¹ to permit authorization on a primary basis in the 17.7-19.7 GHz ("18 GHz") Fixed Microwave Service (FMS) of a new station to replace FMS Station WHJ607, Research Triangle Park, North Carolina, the license for which has expired.² For the reasons discussed below, we grant MCNC's request.

II. BACKGROUND

2. The Commission has reallocated portions of the 18 GHz band from terrestrial fixed services (FS), including the FMS, to satellite services.³ To this end, the Commission has adopted certain transition rules.⁴ In doing so, the Commission balanced the needs of incumbent FS licensees to continue operating their systems with the need to conserve vacant 18 GHz spectrum for use by satellite licensees, to provide satellite licensees with the flexibility to establish new services in a timely and economic manner, and to preclude satellite licensees from bearing any unwarranted additional costs in relocating FS licensees.⁵ Thus, rather than immediately clearing the entire 18 GHz band of the incumbent FS users, the

¹ 47 C.F.R. § 101.97.

² See FCC File No. 0000513881, Attachment 1 (Request for Waiver of Section 101.97 of the Commission's Rules) (filed July 6, 2001) ("Waiver Request"). MCNC amended the application on August 10, 2001. MCNC is the Microelectronics Center of North Carolina.

³ See Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3 - 17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use, *Report and Order*, IB Docket No. 98-172, 15 FCC Rcd 13430 (2000) (*18 GHz Report and Order*). The satellite services operating in the 18 GHz band consist of both the Fixed Satellite Service (FSS) and the Mobile Satellite Service (MSS).

⁴ See 47 C.F.R. §§ 101.83-101.97. The rules are intended to protect the incumbent FS and FMS licensees in the 18 GHz band "to the maximum extent possible while at the same time providing for the growth of both satellite and terrestrial services." *18 GHz Report and Order*, 15 FCC Rcd at 13432 ¶ 2; see also *id.* at 13470 ¶ 82 (noting that the adopted rules should lead to efficient relocation and thereby serve the public interest).

⁵ See *18 GHz Report and Order*, 15 FCC Rcd at 13460-70 ¶¶ 61-84.

Commission permits the incumbents to continue to occupy portions of the band on a co-primary basis with the FSS and MSS licensees for a significant length of time, by the end of which the incumbents are to relocate to other spectrum.⁶ FSS and MSS licensees have the option, however, of requiring the FS and FMS incumbents to relocate sooner if they pay the additional costs caused by the earlier relocation.⁷ In addition, we authorize extensions and major modifications of existing FS systems only on a secondary basis to FSS and MSS systems.⁸ Most minor modifications of FS 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 FSS or MSS licensees.⁹ The result is that while incumbent FS 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. At the time that the Commission adopted and released the *18 GHz Report and Order*, MCNC was an incumbent licensee operating Station WHJ607 on a primary basis. MCNC's authorization to operate Station WHJ607 was scheduled to expire on October 4, 2000. On September 25, 2000, MCNC filed an application to renew the license.¹⁰ The Licensing and Technical Analysis Branch ("Branch"), Public Safety and Private Wireless Division ("Division"), Wireless Telecommunications Bureau dismissed the application on October 7, 2000 because it contained an invalid signature.¹¹ Specifically, although the name and title "William R. Kress, President of MCNC" appeared in the application signature block, the application itself was actually signed by Becky French "for" Mr. Kress.¹² On November 8, 2001, MCNC filed a second application to renew the license for Station WHJ607,¹³ which the Branch dismissed on

⁶ See 47 C.F.R. §§ 101.85, 101.95; see also *18 GHz Report and Order*, 15 FCC Rcd at 13460-67 ¶¶ 61-75. With the exception of incumbent licensees in the 19.26-19.3 GHz band, FS and FMS licensees have until June 8, 2010 – ten years from the adoption of the *18 GHz Report and Order*. See *18 GHz Report and Order*, 15 FCC Rcd. at 13462-65 ¶¶ 65-72. Incumbent FS and FMS licensees in the 19.26-19.3 have until October 31, 2011. See *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use, First Order on Reconsideration*, IB Docket No. 98-172, FCC 01-323, ¶ 25 (rel. Nov. 1, 2001) (*18 GHz Reconsideration Order*).

⁷ See 47 C.F.R. §§ 101.85(a), 101.89-101.99.

⁸ See 47 C.F.R. §§ 101.83, 101.97. Secondary operations may not cause interference to operations authorized on a primary basis and are not protected from interference from primary operations. Thus, an incumbent operating under a secondary authorization must cease operations if it poses an interference problem to an FSS or MSS licensee. See, e.g., *18 GHz Reconsideration Order*, ¶ 91.

⁹ See 47 C.F.R. § 101.97; see also *18 GHz Report and Order*, 15 FCC Rcd at 13460-70 ¶¶ 61-84.

¹⁰ See FCC File No. 0000234563 (filed Sept. 25, 2000) ("September 25 Application").

¹¹ See Notice of Application Dismissal (dated Oct. 10, 2001).

¹² See September 25 Application.

¹³ See FCC File No. 0000259843 (filed Nov. 8, 2000) ("November 8 Application").

November 14, 2000 because it was untimely filed and MCNC did not request a waiver to permit the untimely filing.¹⁴

4. MCNC currently remains authorized to continue its operations on the subject frequency paths pursuant to special temporary authority (STA).¹⁵ The station serves as the central hub of MCNC's communications system. It permits MCNC to carry out its business of providing data transmission, internet access, and interactive video services to colleges and universities throughout the State of North Carolina.¹⁶ On July 6, 2001, MCNC filed the instant application requesting waiver of Section 101.97 of the Commission's Rules¹⁷ to permit authorization on a primary basis of a new station to replace Station WHJ607.

III. DISCUSSION

5. Pursuant to Section 1.925 of the Commission's Rules, we may grant a waiver if it is shown that either (1) 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 (2) 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.¹⁸ For the reasons discussed below, we agree with MCNC that grant of the requested waiver of Section 101.97 of the Commission's Rules is warranted under the circumstances presented.

6. We conclude that MCNC has demonstrated that under the circumstances presented, application of the rule would be inequitable and contrary to the public interest. MCNC clearly evinced its intent to renew its license for Station WHJ607 in a timely manner when it filed its September 25 Application prior to the scheduled October 4 expiration of the license. The September 25 Application was dismissed only because MCNC failed to explain that Becky French, Secretary and General Counsel to MCNC, was duly authorized to sign applications to the Commission.¹⁹ In other instances where a licensee's timely renewal application was dismissed for an error unrelated to the actual operation of the station, we have granted waivers to permit authorization of a replacement station on a primary basis.²⁰ As in those cases, MCNC seeks primary status to operate with no modifications to the operating parameters

¹⁴ See Notification of Application Dismissal (dated Nov. 14, 2000). The Division affirmed the dismissal on reconsideration. See MCNC, *Order on Reconsideration*, 16 FCC Rcd 14045 (WTB PSPWD 2001) (*MCNC Order*).

¹⁵ See FCC File Nos. 0000288184 (filed Dec. 11, 2000) (original application for STA); 0000497721 (filed June 14, 2001) (renewal application for STA).

¹⁶ See Waiver Request at 2-3.

¹⁷ 47 C.F.R. § 101.97.

¹⁸ 47 C.F.R. § 1.925(b)(3).

¹⁹ See *MCNC Order*, 16 FCC Rcd at 14045 ¶ 2.

²⁰ See, e.g., Navopache Electric Cooperative, Inc., *Order*, 16 FCC Rcd 11870 (WTB PSPWD 2001) (granting primary status for 2 GHz stations where licensee timely filed renewal applications that were dismissed due to its failure to specify the application file numbers on the payment remittance form); see also Florida Power and Light Company, *Order*, 15 FCC Rcd 13607 (WTB PSPWD 2000); Motorola, Inc., *Order on Reconsideration*, 14 FCC Rcd 16110, 16114 ¶¶ 10-12 (WTB PSPWD 1999).

licensed under its prior authorization for Station WHJ607. Therefore, we conclude that grant of the present waiver request is warranted. We further concluded that such grant will not adversely affect or impose additional costs on satellite licensees in the 18 GHz band.

IV. CONCLUSION

7. For the reasons discussed above, we conclude that application of the rule according secondary status to all new 18 GHz applications would be inequitable and contrary to the public interest under the circumstances presented in this matter. We therefore grant MCNC's request for a waiver of Section 101.97 of the Commission's Rules and forward the application to the Branch for processing in accordance with this decision and the applicable Commission Rules.

V. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925 and 101.97 of the Commission's Rules, 47 C.F.R. §§ 1.925, 101.97, the Request for Waiver of Section 101.97 of the Commission's Rules filed by MCNC on July 6, 2001 IS GRANTED.

9. IT IS FURTHER ORDERED that the Licensing and Technical Analysis Branch SHALL PROCESS MCNC's pending application, FCC File No. 0000513881, in accordance with this *Order* and the applicable Commission Rules.

10. These actions are 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