

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

In the Matter of	)	
	)	
SISKIYOU TELEPHONE COMPANY	)	File No. 0000421758
	)	
Application and Request for Waiver of Section	)	
101.141(a)(3) of the Commission's Rules	)	

**ORDER**

**Adopted:** December 17, 2001

**Released:** December 19, 2001

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

1. *Introduction.* We have before us a modification application and request by Siskiyou Telephone Company (Siskiyou) for a waiver of Section 101.141(a)(3) of the Commission's Rules, 47 C.F.R. § 101.141(a)(3), to permit it to replace its existing radio equipment used in conjunction with its operation of Fixed Microwave Service Station WML774, Shasta Bally, California, with equipment that does not meet the Commission's minimum payload capacity and utilization requirements.<sup>1</sup> For the reasons set forth below, we grant the waiver request.

2. *Background.* Section 101.141(a)(3) of the Commission's Rules sets forth the minimum capacity and loading requirements for microwave transmitters employing digital modulation techniques and operating below 19.7 GHz that are applied for, authorized, and placed in service after June 1, 1997.<sup>2</sup> For equipment operating in the 6 GHz band using a nominal bandwidth of 30 MHz, the minimum payload capacity is 134.1 megabits per second (MBPS), which has a typical utilization of 3 DS-3/STS-1.<sup>3</sup> In addition, the minimum traffic loading capacity is fifty percent of the payload capacity.<sup>4</sup>

3. Siskiyou operates point-to-point microwave stations in the 6 GHz band to carry common carrier telephone traffic, including emergency calls.<sup>5</sup> On August 21, 2001, Siskiyou filed the above-captioned application to modify its license for Station WML774. It also requested a waiver of Section 101.141(a)(3) to allow it to replace its repeaters for Station WML774 with new 2 DS-3 radios.<sup>6</sup> It states that the current equipment, which was manufactured by Peninsula Engineering Group, Inc. (Peninsula), must be replaced because Peninsula no longer makes replacement parts, so a breakdown may be irreparable

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<sup>1</sup> Siskiyou Telephone Company, Request for Waiver (filed Aug. 21, 2001) (Waiver Request).

<sup>2</sup> 47 C.F.R. §101.141(a)(3).

<sup>3</sup> *Id.* DS and STS refer to the number of voice circuits a channel can accommodate. 3DS-3/STS-1 is equivalent to 2016 voice circuits.

<sup>4</sup> *Id.*

<sup>5</sup> Waiver Request at 3.

<sup>6</sup> *Id.* at 1. 2 DS-3 is equivalent to 1344 voice circuits. 47 C.F.R. § 101.141(a)(3).

and likely would cause an interruption in Siskiyou's service to the public.<sup>7</sup> Siskiyou forecasts that it will load one hundred percent of the 2 DS-3 equivalent voice channels within the timeframe<sup>8</sup> required by the Commission's Rules.<sup>9</sup>

4. Station WML774 has a path to Station WMM438, Redding, California (licensed to Pacific Bell), and a path to Station WML775, Scott Mountain, California. Station WML775 has another path to Station KMZ81, Fort Jones, California. Siskiyou states that a 3 DS-3 transmitter at Station WML774 would not be compatible with the 2 DS-3 receivers at Stations WMM438 and KMZ81 because 2 DS-3 radios and 3 DS-3 radios utilize different modulation types.<sup>10</sup> It also states that reconfiguring the 2 DS-3 radios to the 3 DS-3 modulation type would be unduly expensive, and would result in a loss of transmitter output power that, given the distance between Stations WML774 and KMZ81, would result in unreliable service.<sup>11</sup>

5. *Discussion.* We may grant a request for a 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 the unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>12</sup> Based on the record before us, we conclude that grant of a waiver is warranted under the circumstances presented, provided that Siskiyou meets the conditions set forth in its request. Specifically, we find that a waiver would not frustrate the underlying purpose of the rule and would be in the public interest, so long as Siskiyou meets the minimum traffic loading requirement.

6. The purpose of Section 101.141(a)(3) is to promote efficient utilization of the spectrum used for fixed microwave services.<sup>13</sup> As noted above, for a 30 MHz bandwidth in the 6 GHz band, the rule requires a minimum traffic loading of fifty percent of a 3 DS-3, or the equivalent of 1008 voice circuits. Siskiyou represents that, if it is permitted to install new 2 DS-3 radios, it will load them to one hundred percent capacity, or the equivalent of 1344 voice circuits. We therefore agree with Siskiyou that its proposed use of 2 DS-3 transmitters at Station WML774 would not frustrate the underlying purpose of Section 101.141(a)(3). We further find that a grant of this waiver is in the public interest because it will allow Siskiyou to continue to provide reliable, uninterrupted toll and emergency 911 service.<sup>14</sup> In addition,

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<sup>7</sup> Waiver Request at 1.

<sup>8</sup> The loading requirement must be met within 30 months of licensing. 47 C.F.R. § 101.141(a)(3).

<sup>9</sup> Waiver Request at 3.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

<sup>12</sup> 47 C.F.R. § 1.925(b)(3).

<sup>13</sup> Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, *Report and Order*, WT Docket No. 94-148, 11 FCC Rcd 13449, 13476 ¶ 77 (1996); *see also* Wilderness Valley Telephone Company, *Order*, 15 FCC Rcd 11751, 11752 ¶ 5 (WTB PSPWD 2000) (*Wilderness Valley*).

<sup>14</sup> Waiver Request at 3.

it will permit Siskiyou to install more reliable equipment for Station WML774. Thus, we conclude that granting a waiver to Siskiyou is appropriate under the circumstances presented.<sup>15</sup> However, if Station WML774 is not carrying the equivalent of at least 1008 voice circuits within thirty months of the grant of its modification application, Siskiyou will be required to reduce its bandwidth or take other action to bring the station into compliance with the Commission's Rules.

7. 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 and 101.141(a)(3) of the Commission's Rules, 47 C.F.R. §§ 1.925, 101.141(a)(3), the request for waiver filed by Siskiyou Telephone Company on August 21, 2001 IS GRANTED ON THE CONDITION THAT Station WML774 is carrying the equivalent of at least 1008 voice circuits within thirty months of the grant of its modification application. Application FCC File No. 0000421758 SHALL BE FORWARDED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for processing consistent with this *Order* and the applicable Commission Rules.

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

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<sup>15</sup> We note that although cost alone is an insufficient basis for waiving the requirements of Section 101.141(a)(3) of the Commission's Rules, it can be a relevant factor combined with other considerations weighing in favor of granting a waiver request. *See, e.g., Wilderness Valley*, 15 FCC Rcd at 11753 ¶ 6.