



PUBLIC NOTICE

Federal Communications Commission
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DA 01-623
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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON PACIFIC WIRELESS TECHNOLOGIES, INC. PETITION FOR DECLARATORY RULING

Comment Date: March 26, 2001
Reply Comment Date: April 5, 2001

On September 22, 2000, Pacific Wireless Technologies, Inc., licensee of various Specialized Mobile Radio Service ("SMR") stations in the 800 MHz band in California, filed a petition for declaratory ruling ("Petition")¹ pursuant to section 1.2 of the Commission's rules,² seeking to clarify the meaning of section 90.621(b)(2) of the rules.³

The request for clarification apparently stems from negotiations between Pacific and Nextel Communications, Inc. ("Nextel") pursuant to section 90.699(b)(2) of the Rules.⁴ Certain facilities operated by Pacific involve transmitters located in Northern California north of 35 degrees latitude and west of 118 degrees longitude ("Protected Area"). Moreover, Pacific employs a high tower-high power design at some of its sites in the Protected Area. Pacific and Nextel apparently have taken different positions regarding the level of co-channel protection that must be afforded Pacific's incumbent facilities in the Protected Area.

Pacific requests the Commission to declare that high elevation transmitter sites within the Protected Area are protected from harmful interference from: (1) other high sites by reference to Table 1 of section 90.621(b)(2)(i), and (2) all other sites in a manner similar to the protection afforded high sites in Southern California⁵ and the state of Washington.⁶ According to Pacific, the Commission should clarify that applicants in such cases are required to locate their transmitters at an increased distance from high site

¹ See Pacific Wireless Technologies, Inc., Petition for Declaratory Ruling, In the Matter of Protection of Part 90 800 MHz Two-Way Radio Systems Operating in the Northern California Region (filed Sept. 22, 2000).

² 47 C.F.R. § 1.2.

³ 47 C.F.R. § 90.621(b)(2).

⁴ 47 C.F.R. § 90.699(b)(2).

⁵ 47 C.F.R. § 90.621(b)(1).

⁶ 47 C.F.R. § 90.621(b)(3).

transmitters. Pacific also argues that section 90.621(b)(2) should be interpreted similarly to section 90.621(b)(1) even though their language is not identical. Thus, Pacific seeks a determination that the protection criteria afforded high site licensees operating in the Protected Area will be similar to the protection afforded high site licensees in Southern California.

Pacific also asks the Commission to declare that section 90.621(b)(2) of the Commission's rules requires applicants for facilities in the Protected Area to demonstrate that no harmful interference will be caused to existing high site licensees. Further, such an applicant should, according to Pacific, bear the burden of production and persuasion, and should be required, in the case of co-channel proposals, to submit all necessary engineering studies, contour analyses and other required material to the Commission and to the potentially affected high site licensee. Finally, Pacific requests that the Commission declare that applications for such facilities may not be submitted as notification filings.

We seek comment on all aspects of Pacific's requested declaratory ruling. Interested parties may file comments on or before **March 26, 2001**. The deadline for filing reply comments is **April 5, 2001**. All comments and reply comments should reference "Pacific Wireless Technologies, Inc. Petition for Declaratory Ruling," and include the designated authority number of this *Public Notice*, **DA 01-623**. An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D. C. 20554. In addition, one copy of each pleading should be delivered to each of the following locations: (1) the Commission's duplicating contractor, International Transcription Services, Inc. ("ITS"), 445 Twelfth Street, S.W., Room CY-B492, Washington, D. C. 20554; (2) Office of Media Relations, Reference Operations Division, 445 Twelfth Street, S.W., Washington, D.C. 20554; and (3) Kathy Harris, Commercial Wireless Division, Wireless Telecommunications Bureau, Room 4-C236, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D. C. 20554.

By this *Public Notice*, we announce, pursuant to section 1.1200(a) of the Commission's rules,⁷ that this proceeding will be governed by "permit-but-disclose" *ex parte* procedures under section 1.1206 of the Commission's rules.⁸ We believe the public interest will best be served by applying permit-but-disclose *ex parte* procedures in this case because this proceeding involves broad public policy issues. These procedures permit interested parties to make *ex parte* presentations to the Commissioners and Commission employees, but require that these presentations be disclosed in the record of the relevant proceeding. If a person makes a written *ex parte* presentation to a Commissioner or Commission employees, the written presentation must be filed with the Commission Secretary no later than the next business day after the presentation.⁹ Oral *ex parte* presentations must be summarized in writing, filed with the Commission Secretary, and copies must be delivered to the Commissioners or Commission employees involved with the oral presentation no later than the next business day after the presentation.¹⁰ All *ex parte* filings must also reference the designated authority number of this *Public Notice* as well as any other applicable docket or file numbers. Accordingly, as of the release date of this *Public Notice*, all parties making *ex parte* presentations in this proceeding shall file any written *ex parte* presentations and summaries of any oral *ex*

⁷ 47 C.F.R. § 1.1200(a). Section 1.1200(a) permits the Commission to adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires.

⁸ 47 C.F.R. § 1.1206.

⁹ 47 C.F.R. § 1.1206(b)(1).

¹⁰ 47 C.F.R. § 1.1206(b)(2).

parte presentations in accordance with the procedures applicable to permit-but-disclose proceedings set forth in section 1.1206 of the Commission's rules.¹¹

The petition for declaratory ruling is available for public inspection and copying in the Reference Center, Room CY-A257, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D.C. 20554. Copies of this document are also available from ITS.

For further information, contact Kathy Harris at (202) 418-0609.

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

¹¹ 47 C.F.R. § 1.1206.