



PUBLIC NOTICE

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DA 01-688
March 15, 2001

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST FOR RULE CHANGE AND CONDITIONALLY WAIVES SECTION 1.929(C)(1) TO PERMIT EXPANSION OF PAGING CONTOURS OVER WATER ON A SECONDARY BASIS.

Pursuant to Section 1.925 of the Commission's rules,¹ the Wireless Telecommunications Bureau (Bureau) seeks comment on a Request for Rule Change filed by the Paging and Messaging Alliance of the Personal Communications Industry Association (PCIA). PCIA filed the request seeking amendment of Section 1.929(c)(1) of the Commission's rules to treat certain modifications to paging stations as minor modifications.² Specifically, PCIA requests that the Commission treat as minor modifications those expansions of paging composite interference contours (CICs) that occur solely (1) beyond the land border of the United States or (2) over large bodies of water (oceans, gulfs, sounds, bays, and the Great Lakes, but not rivers).

According to PCIA, the Commission's historical practice in the paging service has been to allow permissive extensions of CICs over water when processing applications. As a result, PCIA argues that a significant number of paging licensees have considered all extensions over water to be minor and have not filed major modification applications for such extensions.³ The filing of this Request for Rule Change was precipitated by an order released by the Policy and Rules Branch of the Commercial Wireless Division wherein the Branch concluded that all increases of CICs, including extensions over water, should be treated as major filings under section 1.929(c)(1). *See* Karl A. Rinker, d/b/a Rinker's Communications, Request for Declaratory Ruling, 14 FCC Rcd. 19546 (WTB 1999).⁴ PCIA claimed in

¹ Section 1.925 permits the Commission to waive specific requirements of the rules pursuant to a waiver request, or on its own motion, if it finds that (1) the underlying purpose of the rule would not be served or would be frustrated by application of the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of the 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. 47 C.F.R. § 1.925(a) and (b).

² Licensees may make minor modifications to station authorizations, as defined in Section 1.929, as a matter of right without prior Commission approval. 47 C.F.R. § 1.947(b).

³ 47 C.F.R. § 1.947. Section 1.947(a) states, "All major modifications, as described in section 1.929 of this part, require prior Commission approval. Applications for major modifications also shall be treated as new applications for determination of filing date, Public Notice, and petition to deny purposes."

⁴ Rinker sought a declaratory ruling from the Commission as to whether contour extensions over the Atlantic Ocean are major or minor modifications. The Branch concluded that Rinker's request was effectively asking for

its request that the *Rinker* decision has caused uncertainty about whether prior expansions over water that licensees carried out on a permissive basis are in compliance with the rules, and about what procedures should apply to similar future expansions. We seek comment on PCIA's request.

While the PCIA request is pending, the Bureau believes there is good cause to waive the rules conditionally to permit paging contour extensions over water on an interim basis. Licensees providing service in coastal areas often need to relocate or adjust transmitting facilities in order to maintain and improve coverage. While these extensions do not involve expansion of composite contours over land, they may involve expansion of contours over water. Further, CIC expansions that take place solely over water should pose no risk of interference to other systems on land, and processing such modification applications would be a major burden on both licensees and the Bureau. The Bureau concludes that conditional waiver is appropriate to allow licensees to continue to maintain and upgrade their systems while the Commission considers PCIA's request.

We therefore conditionally waive Section 1.929(c)(1) of the Commission's rules in order to consider permissive CIC extensions over water subject to the following conditions. First, all such extensions are on a secondary, non-interference basis, and must not cause interference to co-channel licensees. Second, we define "over water" for purposes of this waiver to mean into bodies of water that extend beyond county boundaries, *i.e.* including but not limited to oceans, the Gulf of Mexico, and the Great Lakes. Third, this waiver does not change our rules and policies regarding expansions over land. Paging licensees that seek contour expansions over land, or expansions over water on a primary basis, must continue to seek prior Commission approval and request a waiver of the rules.

This matter shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 C.F.R. §§ 1.1200(a) & 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

Comments on the Waiver Request must be filed on or before April 16, 2001, and reply comments by May 1, 2001. All documents filed in this proceeding should indicate in the caption that this matter is before the Wireless Telecommunications Bureau, Commercial Wireless Division, Policy and Rules Branch and reference Public Notice DA No. 01-688. Comments may be filed via the Commission's Electronic Comment Filing System (ECFS) via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name and Postal Service mailing address, and reference Public Notice DA No. 01-688. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to: ecfs@fcc.gov, including "get form < your e-mail address >" in the body of the message. A sample form and directions will be sent in reply.

Interested parties who choose to file by paper must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W.,

a rule change and was not properly the subject of a declaratory ruling. The Branch, accordingly, denied Rinker's request.

Room TW-A325, Washington, D.C. 20554.

In addition, parties should send: one paper copy to Leon Jackler, Room 4B-445, and one paper copy to Policy and Rules Branch, Room 4-A-207, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, S.W. Washington D.C. 20554; one paper copy to the Public Reference Room, Federal Communications Commission, 445 Twelfth Street, S.W, 20554; and one paper copy and one diskette copy to ITS, Room CYB-400, 445 Twelfth St. S.W., Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leon Jackler of the Commercial Wireless Division at (202) 418-0946 or ljackler@fcc.gov.

By the Deputy Chief, Wireless Telecommunications Bureau.