

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

In the Matter of)
)
Adams Telephone Cooperative)
) File No. 31973-CD-P/ML-96
Applications for Paging Radiotelephone)
Service on 152.84 MHz at Quincy, Carthage, and)
Mt. Sterling, Illinois)
)
)

ORDER

Adopted: March 30, 2001

Released: April 2, 2001

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

1. This order addresses the Petition for Further Reconsideration or Waiver (Petition) filed by Adams Telephone Cooperative (Adams) on November 19, 1999. Adams seeks further reconsideration of the Wireless Telecommunications Bureau, Commercial Wireless Division's (Division) decision dated October 20, 1999, which denied Adams's Petition for Reconsideration of the dismissal of its paging application.1 For the reasons discussed below, we deny Adams's Petition for Further Reconsideration, but grant Adams a waiver of the current paging application freeze in order to file an application for a license to operate on a secondary basis.

2. Background. On July 31, 1996, Adams filed an application requesting authority to add new paging stations at Quincy, Mt. Sterling, and Carthage, IL, and to operate each station at an effective radiated power (ERP) in excess of 500 Watts. On May 21, 1997, the Division dismissed, without prejudice, Adams's application as defective because it did not contain an encompassment exhibit required pursuant to Commission rule 22.559.2

3. On June 20, 1997, Adams filed a Petition for Reconsideration, arguing that the Bureau erred in dismissing its application because an encompassment exhibit was unnecessary where its proposed operations were consistent with the height-power limits of Commission rule section 22.535(c), even where its proposed operation exceeded 500 Watts ERP.3 Adams sought to have its application reinstated, or in the alternative, sought leave to amend its dismissed application to conform to the 500 Watt limitation.4

1 See Adams Telephone Cooperative Application for Paging Radiophone Service on 152.84 MHz at Quincy, Carthage, and Mt. Sterling, Order, October 20, 1999, 1999 WL 958580 (Division Order).

2 47 C.F.R. § 22.559 (1996). See Letter from James H. Bennett, Deputy Chief, Licensing and Technical Analysis Division, to Sylvia Lesse, Esq., dated May 21, 1997.

3 See Adams Telephone Cooperative Petition for Reconsideration filed June 20, 1997.

4 Id. at 5. Adams argued that, under Section 22.559(b), an encompassment exhibit is only necessary to operate a transmitter with an ERP exceeding both the basic power limit and the height-power limit of section 22.535. (continued....)

4. On October 20, 1999, the Division denied Adams's Petition for Reconsideration, stating that under rule section 22.559(b), an encompassment exhibit is required where proposed operation exceeds the basic power limits set forth in section 22.535(b), as well as for applications that exceed the height-power limits of § 22.535(c).⁵ The Division indicated that, under rule section 22.559, the exhibit must show that the area within the interfering contour of the proposed transmitter would be totally encompassed by interfering contours of operating co-channel base transmitters controlled by the applicant.⁶

5. On November 19, 1999, Adams filed a Petition for Further Reconsideration or Waiver. Adams argues that the Division erred in its decision to dismiss its application, and failed to address Adams's request for leave to amend its dismissed application to reflect a maximum ERP of 500 Watts.⁷ In support of its request, Adams argues that its misinterpretation of the rule was the result of ambiguities and inconsistencies in sections 22.535(d) and 22.559(b), and it therefore should be granted leave to amend.⁸ Adams also argues that a waiver is appropriate in this case to permit amendment of its application, as the underlying purpose of the rule will be frustrated if Adams is not allowed to expand its system because citizens in an unserved area will continue to go unserved.⁹

6. **Discussion.** We find that the Division properly dismissed Adams's application, and that Adams should therefore not be granted leave to amend to reflect primary operation at 500 Watts. Rule section 22.535 requires that basic power not exceed 500 Watts and height-power combinations not exceed the amount that would result in an average distance to the service contour of 32.2 kilometers (20 miles).¹⁰ Adams argues that if it complies with the height-power limits, it need not comply with the basic power limits.¹¹ Adams's interpretation is incorrect. Rule section 22.535 states that an application must comply with both the basic power limits and the height-power limits, unless its interfering contour is totally encompassed by the interfering contours of operating co-channel base transmitters operated by the same licensee.¹² The purpose of rule section 22.535 is to require an applicant proposing a transmitter that would exceed either the basic power limits or height-power limits to demonstrate that, in either situation, the

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Assuming, *arguendo*, that Adams's argument had merit, Adams's application remained defective because it did not comply with Section 22.535(d), which provides that transmitters are exempt from basic power and height-power limits of this section if the area within their interfering contour is totally encompassed by the interfering contours of operating co-channel base transmitters controlled by the same licensee. By its own admission, Adams's application proposes transmitters that would expand its current interference contour.

⁵ *Division Order* at 2.

⁶ *Id.*

⁷ Petition at 1-2.

⁸ *Id.* at 4-6.

⁹ *Id.* at 8-9.

¹⁰ 47 C.F.R. § 22.535.

¹¹ Petition at 4. Adams does not seek further reconsideration on this issue if Adams's request for further reconsideration or waiver is granted on other grounds.

¹² 47 C.F.R. § 22.535.

interfering contour of the proposed transmitter would not expand the applicant's existing composite interference contour. In the *Division Order*, the Division reasoned that if an applicant could avoid making a demonstration that exceeding the basic power limit would not expand the applicant's composite interference contour, because the proposed transmitter would not exceed the height-power limit, the purpose of the rule would be defeated.¹³ Adams's failure to include the required encompassment exhibit properly resulted in the dismissal of its application. We are not persuaded that Adams should be permitted to amend an application that was properly dismissed. Under our rules, an applicant seeking to refile an application that is dismissed without prejudice must file a new application, which requires a new filing fee and the issuance of a new application file number.¹⁴

7. Under section 1.925 of the Commission's rules, a waiver may be granted if it is shown that (1) the underlying purpose of the rule 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 would be inequitable, unduly burdensome or contrary to the public interest, or that the applicant has no reasonable alternative.¹⁵ As the paging application freeze remains currently in effect, Adams is unable, in the absence of a waiver, to submit a new application seeking authority to expand its existing contour. However, we find that a waiver of the paging application freeze to permit Adams to operate on a secondary basis, as discussed herein, is in the public interest, as Adams proposes to provide needed paging service to rural, sparsely populated areas. Consistent with our decisions in *Acadian Ambulance*¹⁶ and *JSM Telepage*,¹⁷ we grant Adams a waiver of the paging application freeze to file an application for a license to extend its service area on a secondary basis, subject to the following conditions: 1) any license granted to Adams pursuant to this waiver will have secondary status to the ultimate geographic area licensee for all Economic Areas (EAs) into which Adams's interference contour extends; and 2) upon receiving notice from a geographic area licensee that the geographic area licensee intends within 90 days to initiate operation of a facility, the interference contour of which will overlap with the interference contour of any transmitter licensed pursuant to this waiver, Adams shall within 90 days either cease operation of the transmitter in question or change its technical parameters to eliminate the overlapping interference contour.

8. Within 30 days of the effective date of this order, if the conditions set forth herein are acceptable to Adams, Adams shall refile the application that was previously dismissed by the Branch, together with an indication in writing that it will accept these conditions. Upon receipt of this submission, we will promptly place Adams's application on public notice as accepted for filing and will process the application in accordance with the Commission's rules and its customary procedures, notwithstanding the paging application freeze.

9. Accordingly, IT IS ORDERED that, pursuant to sections 4 (i) and 405 of the

¹³ *Division Order* at 2.

¹⁴ See former rule section 22.128, 47 C.F.R. § 22.128 (1997) and current rule section 1.934, 47 C.F.R. § 1.934.

¹⁵ 47 C.F.R. § 1.925.

¹⁶ See *Acadian Ambulance Services, Inc., Order*, 14 FCC Rcd 19310 (1999).

¹⁷ See *JSM Tele-page, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 19516 (WTB 1999).

Communications Act, as amended, 47 U.S.C. §§ 154(i), 405, and sections 0.331, 1.106, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, and 1.925, the Petition for Further Reconsideration filed by Adams Telephone Cooperative on November 19, 1999 IS DENIED.

10. IT IS FURTHER ORDERED that, pursuant to the authority of Section 4 (i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154 (i), and Sections 0.331 and 1.925 (b)(3) of the Commission's rules, 47 C.F.R. §§ 0.331 and 1.925 (b)(3), the request for waiver of the paging application freeze filed by Adams Telephone Cooperative is GRANTED to the extent stated herein.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey S. Steinberg
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau