

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

In the Matter of)
)
Interelectronics Corporation)
)
Request for Waiver of Section 22.655)
of the Commission's Rules)
)
)
)
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ORDER

Adopted: April 2, 2001

Released: April 4, 2001

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

1. This order addresses a petition for reconsideration filed by Interelectronics Corporation (Interelectronics) on December 8, 1999. Interelectronics seeks reconsideration of the decision of the Wireless Telecommunications Bureau, Commercial Wireless Division, Licensing and Technical Analysis Branch (Branch), which denied Interelectronics's request for a waiver of section 22.655 of the Commission's rules.¹ For the reasons discussed below, we grant Interelectronics's petition in part and grant a partial waiver of rule section 22. 655.²

2. **Background.** On August 19, 1989, the Commission reallocated all of the 470-512 MHz frequencies in the New York City area from two-way common carrier mobile use to common carrier control use.³ Interelectronics sought reconsideration of the Commission's reallocation plan, arguing that it was an incumbent licensee that provided mobile communications service on the 470-512 MHz band for a large number of users, and therefore should be able to retain channels on that band to service its existing and future customers. On July 20, 1992, the Commission granted Interelectronics's Petition for Partial Reconsideration and determined that Interelectronics would be permitted to operate on five channels for mobile communications use.⁴ However, Interelectronics was required to file quarterly traffic usage reports, which are used to determine

¹ See Letter from James H. Bennett, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, to George Petrutsas, Esq., Fletcher, Heald & Hildreth, dated November 26, 1999.

² 47 C.F.R. § 22.655.

³ In the Matter of Flexible Allocation of Frequencies in the Domestic Public Land Mobile Services for Paging and other Services, *Second Report and Order*, 4 FCC Rcd. 6415 (1989) (*Second R & O*).

⁴ In the Matter of Flexible Allocation of Frequencies in the Domestic Public Land Mobile Services for Paging and other Services, *Order on Reconsideration of the Second Report and Order*, 7 FCC Rcd. 1577 (1992) (*Reconsideration Order*).

if the number of frequency pairs needed to maintain a .25 blocking probability has decreased, so that excess pairs can be reallocated to control use.⁵

3. In March 1993, Interelectronics filed a request for a waiver of rule section 22.655, arguing that the quarterly traffic reports were unduly burdensome, and had no public benefit because it was the only licensee authorized to use the 470-512 MHz frequencies in New York City, and therefore no other licensee could receive the reallocated frequencies. On August 2, 1993, the Mobile Services Division denied Interelectronics's request and stated that the quarterly traffic usage reports were necessary to determine whether the number of frequency pairs needed to maintain a .25 blocking probability had decreased, so that excess pairs could be reallocated to control use, not for use by other licensees.⁶

4. On August 27, 1997, the Branch denied Interelectronics's second request for a waiver of Section 22.655 of the Rules,⁷ wherein Interelectronics argued that the quarterly traffic requirements were unnecessary. The Branch stated that Interelectronics presented no new arguments in support of its request.⁸ On March 18, 1999, Interelectronics submitted a third request for waiver of 22.655, arguing again that the traffic usage reports were unnecessary, and stating that 7 out of 24 channels in the 470-512 MHz band allocated in the New York City market were unassigned, while the demand for mobile service continued to grow.⁹ Interelectronics further stated that traffic usage studies conducted over the past six years demonstrated that the frequencies assigned to Interelectronics continue to be fully utilized and that the reports were costly and unduly burdensome.¹⁰ On November 26, 1999, the Branch denied Interelectronics's third waiver request and stated that Interelectronics failed to address the purpose of the channel use reports.¹¹ The Branch maintained that it expected a reduction in two-way service subscribership on conventional stations as competition increased and, therefore, Interelectronics failed to demonstrate that there was no longer a need for traffic usage reports.¹² On December 8, 1999, Interelectronics filed a petition for reconsideration, stating that the Commission "failed to consider" arguments advanced by Interelectronics in support of its waiver request.¹³

⁵ See Letter from John Cimko, Chief, Mobile Services Division, Common Carrier Bureau, to George Petrutsas, Esq., Fletcher, Heald & Hildreth, dated March 4, 1993.

⁶ See Letter from John Cimko, Chief, Mobile Services Division, Common Carrier Bureau, to George Petrutsas, Esq., Fletcher, Heald & Hildreth, dated August 3, 1993.

⁷ See Letter from James H. Bennett, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, to George Petrutsas, Esq., Fletcher, Heald & Hildreth, dated August 27, 1997.

⁸ *Id.*

⁹ See Interelectronics Corporation Request for Waiver dated March 18, 1999. We note that Commission records reflect that 6 out of the 24 channels on the 470-512 MHz frequency in New York City are not currently being used.

¹⁰ *Id.* Interelectronics's quarterly traffic reports reflect that it has maintained above a .25 blocking probability.

¹¹ See Letter from James H. Bennett, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, to George Petrutsas, Esq., Fletcher, Heald & Hildreth, dated November 26, 1999.

¹² *Id.*

¹³ See Interelectronics Corporation Petition for Reconsideration filed December 8, 1999.

5. **Discussion.** Interelectronics has presented no new arguments and we are not persuaded that quarterly traffic reports required under section 22.655 are no longer necessary. However, we recognize that the quarterly traffic report requirement is a substantial burden on Interelectronics and that Interelectronics's traffic reports demonstrate that its channels have maintained above a .25 blocking probability for the past six years. We therefore find that the grant of a partial waiver from the requirements of section 22.655 is appropriate, as discussed below.

6. We will continue to require Interelectronics to submit a quarterly report, which must include the number of mobile units in service during each of the days specified.¹⁴ However, Interelectronics will no longer be required to submit the number of calls completed each hour, as currently required under section 22.655 (a)(2).¹⁵ Under section 22.655 (a)(3),¹⁶ Interelectronics is required to provide the total number of minutes during each hour that the channels were utilized for communications by the mobile units. Measurements are currently required to be taken during the busiest 12-hour period on 3 days (within a 7-day period) having normal usage.¹⁷ We will require Interelectronics to provide the total number of minutes only *during the busiest hour* of each of 3 days (within a 7-day period) that the channels were utilized for communications by the mobile units. Also, Interelectronics will no longer be required to provide the average channel usage for the busiest hour during the 3-day period, as currently required under section 22.655 (a)(4).¹⁸

7. Interelectronics argues that a permanent waiver of rule section 22.655 is appropriate because there is no longer a need for additional frequencies in the 470-512 MHz bands for control station use, as satellite services have become available for controlling paging transmitters at comparatively low cost, which offer advantages control stations do not.¹⁹ While we grant Interelectronics a partial waiver to reduce its administrative burden, we find that a grant of a complete waiver of section 22.655 is inappropriate at this time. Interelectronics's statement that rule section 22.655 is no longer necessary given recent developments in the paging industry is better addressed in a rulemaking proceeding with the benefit of notice and comment from interested parties in the paging industry.

8. Accordingly, IT IS ORDERED that, pursuant to sections 4 (i) and 405 of the Communications Act of 1934, 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 Reconsideration filed by Interelectronics

¹⁴ 47 C.F.R. § 22.655 (a) (1).

¹⁵ 47 C.F.R. § 22.655 (a) (2).

¹⁶ 47 C.F.R. § 22.655 (a) (3).

¹⁷ 47 C.F.R. § 22.655 (a).

¹⁸ 47 C.F.R. § 22.655 (a) (4).

¹⁹ Interelectronics Corporation Petition for Reconsideration at 3-4.

Corporation on December 8, 1999 is granted in part, as set forth herein, and Interelectronics Corporation is granted a partial waiver of rule section 22. 655, as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau