

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

In the Matter of )
GENERAL COMMUNICATIONS, INC. ) File No. 0000720697
Request for Waiver of Section 90.35 of the )
Commission's Rules )

ORDER

Adopted: January 15, 2003

Released: January 17, 2003

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

1. Introduction. We have before us a request by General Communications Inc. (General Communications) for a waiver of Section 90.35(c) of the Commission's Rules. General Communications seeks a waiver in order to operate the mobile units associated with trunked Industrial/Business Pool Station WPMU237, Baraboo, Wisconsin, at a higher power level than the rules permit. For the reasons set forth below, we grant the waiver request.

2. Background. On December 23, 1998, General Communications was granted a license to operate Station WPMU237 on frequencies 451/456.700 MHz, 460/465.675 MHz, 461/466.050 MHz, 462/467.100 MHz, and 463/468.750 MHz. Although Section 90.35(c)(11) of the Commission's Rules limits mobile units operating on frequency 465.675 MHz to an output power of two watts, the license erroneously authorized General Communications to operate its mobile units with an output power of forty watts.

3. On April 23, 2002, General Communications filed an application to modify its license for Station WPMU237 by relocating the base station 0.19 miles, increasing the height of its antenna by 69 feet, and decreasing the effective radiated power of its transmitter from 87 to 80 watts. General Communications requested a waiver of Section 90.35(c) to permit it to continue to operate its mobile units with an output power of forty watts. In support of its waiver request, General Communications indicates that "there have been no complaints of interference by anyone in this area." Moreover, General

1 General Communications, Inc. Request for Waiver (filed Apr. 12, 2002) (Waiver Request).

2 See 47 C.F.R. § 90.35(c)(11). This limitation does not apply to Station WPMU237's other frequencies. In addition, we note that the Commission has proposed to remove this limitation from 465.675 MHz. See Amendment of the Commission's Rules Concerning Airport Terminal Use Frequencies in the 450-470 MHz Band of the Private Land Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 02-318, 17 FCC Red 19904, 19921 (2002).

3 Application File No. 0000720697.

4 Waiver Request at 1. We note that the new location is still more than fifty miles from the Milwaukee airport, so no waiver of Section 90.35(c)(61)(ii) is needed.

5 Waiver Request at 1.

Communications states that since the license to operate Station WPMU237 was granted, it has placed over 917 units on the system, and the cost of reprogramming the mobile units would be over \$43,000.<sup>6</sup>

4. *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>7</sup> We conclude that in view of the unique factual circumstances of this case, strict application of Section 90.35(c) would be unduly burdensome to General Communications.

5. In the instant case, in the four years since the license for Station WPMU237 was granted, the Commission has not received complaints from other licensees concerning interference from Station WPMU237. We further note that General Communications states that it has not received complaints of interference.<sup>8</sup> In addition, our technical analysis of the modification application indicates that the slight change in the location of the base station has almost no effect on General Communications's current service contour. Therefore, we conclude that no additional licensees would be affected by the proposed modifications to the license for Station WPMU237. We therefore grant General Communications's request for a waiver of Section 90.35(c) of the Rules to the extent that its operations on frequency 465.675 MHz do not cause interference to any existing licensee.<sup>9</sup> Consequently, we reserve the discretion to revisit the continuation of such authority should we receive complaints from other licensees in the future.

6. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925 and 90.35(c) of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.35(c), the Request for Waiver filed on April 23, 2002 by General Communications, Inc. IS GRANTED to the extent indicated, and the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch SHALL PROCESS application FCC File No. 0000720697 in accordance with this *Order*.

7. 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

---

<sup>6</sup> *Id.*

<sup>7</sup> 47 C.F.R. § 1.925(b)(3).

<sup>8</sup> Waiver Request at 1.

<sup>9</sup> *Cf.* County of Palm Beach, *Memorandum Opinion and Order*, DA 02-3359 (WTB PSPWD rel. Dec. 6, 2002) (granting waiver to permit modification of license to relocate base station because no other licensee would be adversely affected).