

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

In the Matter of Application of)	
)	
NORTH AMERICAN CATHOLIC)	File No. BPIFH-20000818DLA
EDUCATIONAL PROGRAMMING)	
FOUNDATION, INC.)	
)	
For Authority to Construct and Operate)	
Instructional Television Fixed Service)	
Two-Way Facilities on)	
Channels C2-C4(WHR919),)	
Phoenix, Arizona)	

MEMORANDUM OPINION AND ORDER

Adopted: July 2, 2003

Released: July 3, 2003

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

1. In this *Memorandum Opinion and Order*, we address the petition to deny¹ (Petition) filed by Sprint Corporation (Sprint) against the above-captioned application² (Application) of North American Catholic Educational Programming Foundation, Inc. (NACEPF). In the Application, NACEPF seeks an authorization to operate Instructional Television Fixed Service (ITFS) two-way stations on Channels C2 through C4 in Phoenix, Arizona.³ For the reasons stated herein, we deny Sprint's Petition.

2. *Background.* ITFS stations are intended primarily to provide a formal educational and cultural development in aural and visual form.⁴ The Commission's Rules envision that ITFS licensees will make extensive use of the spectrum to provide formal classroom instruction, distance learning, and videoconference capability to a wide variety of users. In 1998, the Commission adopted technical rule changes to provide ITFS licensees additional operational flexibility to employ digital technology in delivering two-way communications services including high-speed and high-capacity data transmission and Internet service on a regular basis.⁵ A two-way system typically consists of high-powered

¹ Petition to Deny filed by Sprint Corporation (filed Apr. 2, 2001).

² File No. BPIFH-20000818DLA.

³ Channels C2, C3, and C4 are located in the frequency bands 2560-2566 MHz, 2572-2578 MHz, and 2584-2590 MHz, respectively. See 47 C.F.R. § 74.902(a).

⁴ 47 C.F.R. § 74.931.

⁵ See Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97-217, *Report and Order*, 13 FCC Red 19112 (1998).

transmitters, one or more hub stations⁶, which include transmitting and receiving antennas, and multiple return-path transmitters called response stations.

3. In preparing and filing two-way applications, applicants are required to follow a Commission-prescribed methodology for predicting interference from response station transmitters and to response station hubs.⁷ The methodology requires applicants to conduct four major steps in conducting a response station interference analysis.⁸ First, the applicant must establish a grid of points that is statistically representative of the distribution of transmitters expected within the response service area, and determine the elevation of each point.⁹ Second, the applicant must define any regions or classes of response stations.¹⁰ Third, the applicant must analyze the system configuration to determine whether it can eliminate any grid points from the analysis due to terrain blockage and to determine how to analyze the power radiating from the system.¹¹ Finally, the applicant must calculate the aggregate power from response station transmitters and use those values in its interference analysis.¹² The Commission requires the applicant to submit its analysis in a specified format and to provide copies of its analysis to all parties that are entitled to receive notice of the filing of its application.¹³

4. On June 30, 2000, the former Mass Media Bureau announced that there would be an initial filing window from August 14-18, 2000 for the filing of applications for two-way high-power signal booster stations, response station hubs and I channel¹⁴ transmission licenses.¹⁵ In response to that announcement, NACEPF filed the captioned application on August 18, 2000. The Application appeared on public notice as tendered for filing on November 29, 2000¹⁶ and accepted for filing on February 1, 2001.¹⁷

5. Sprint, through wholly-owned subsidiary PCTV Gold, Inc., leases the excess capacity of ITFS Station WLX816, licensed to Instructional Telecommunications Foundation, Inc. (ITF), utilizing the

⁶ A hub station is a fixed facility that can emit signal transmissions, which are received by subscriber equipment, as well as receive transmissions from subscriber equipment. *See* 47 C.F.R. § 21.2.

⁷ *See* Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97-217, *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking*, Appendix D (“Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems”) 15 FCC Rcd 14566, 14510 (1998) (Appendix D).

⁸ *Id.* at 14611 ¶ 2.

⁹ *Id.* at 14611-15 ¶¶ 3-16.

¹⁰ *Id.* at 14615-17 ¶¶ 17-24.

¹¹ *Id.* at 14617-19 ¶¶ 25-31.

¹² *Id.* at 14619-21 ¶¶ 32-39.

¹³ *Id.* at 14630-48 ¶¶ 74-111.

¹⁴ 47 C.F.R. §§ 74.939(j).

¹⁵ Mass Media Bureau Provides Further Information on Application Filing Procedures and Announces Availability of Electronic Filing for Two-Way Multipoint Distribution Service and Instructional Television Fixed Service, *Public Notice*, 15 FCC Rcd 11466 (MMB 2000).

¹⁶ Mass Media Bureau Multipoint Distribution Service and Instructional Television Fixed Service Applications Tendered for Filing, *Public Notice*, Report No. 148 (rel. Nov. 29, 2000).

¹⁷ Mass Media Bureau Multipoint Distribution Service and Instructional Television Fixed Service Applications Accepted for Filing, *Public Notice*, Report No. 164 (rel. Feb. 1, 2001).

D Group channels¹⁸ in the greater Phoenix, Arizona area.¹⁹ Sprint filed its Petition on April 2, 2001.²⁰ Sprint provided an engineering statement that purports to show that NACEPF's proposed facility would cause harmful interference to existing ITFS Station WLX816, and thereby adversely affecting Sprint's use of ITF's excess capacity.²¹ On April 17, 2001, NACEPF filed an opposition to Sprint's Petition.²² On April 27, 2001, Sprint filed a reply to NACEPF's opposition.²³

6. *Discussion.* Sprint contends that as lessee, it has an independent right to interference protection regarding its use of the excess capacity of ITFS Station WLX816.²⁴ NACEPF argues that Sprint's argument is fundamentally inconsistent with the requirement in Section 310(d) of the Communications Act of 1934, as amended,²⁵ that a licensee maintain ultimate control over its station.²⁶ NACEPF also argues that Sprint's argument is also inconsistent with the primary educational purpose of ITFS.²⁷ Finally, NACEPF argues that Sprint lacks standing because it has not shown that any actual interference will result from its proposed operations.²⁸

7. Section 74.939(d)(2)(v) of the Commission's rules requires the applicant to engineer its two-way systems to provide at least 0 dB (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz) of adjacent-channel interference protection within the protected service areas (PSAs) of all other authorized or previously proposed stations.²⁹ Alternatively, an applicant may demonstrate "that the *licensee* of or applicant for such adjacent channel station or hub consents to such application."³⁰ In this case, NACEPF and Sprint agree that ITF, the licensee of Station WLX816, consented to the proposed overlap. Sprint's position that it has an independent right to object to NACEPF's application is inconsistent with the plain language of the rule, which only requires the licensee's consent.³¹ Because NACEPF obtained consent from ITF, we believe, under the circumstances presented, that its application fully complies with the Commission's rules regarding interference protection.

¹⁸ The D Group channels are located in the frequency bands 2554-2560 MHz, 2566-2572 MHz, 2578-2584 MHz, and 2590-2596 MHz, respectively. See 47 C.F.R. § 74.902(a).

¹⁹ Petition at 2.

²⁰ See Petition.

²¹ Petition at 2.

²² Opposition filed by North American Educational Programming Foundation, Inc. (filed Apr. 17, 2001) (Opposition).

²³ Reply filed by Sprint, Inc on April 27, 2001 (Reply).

²⁴ Petition at 4-5, Reply at 2-3.

²⁵ 47 U.S.C. § 310(d).

²⁶ Opposition at 3-4.

²⁷ *Id.* at 4-7.

²⁸ *Id.* at 7-8. In this regard, NACEPF asserts that it entered into an adjacent channel interference agreement with ITF and the terms of their agreement do not allow *actual* interference while acknowledging the existence of *theoretical* interference. Opposition at 1-2.

²⁹ 47 C.F.R. §§ 74.939(d)(2)(v)(C).

³⁰ *Id.* (emphasis added).

³¹ *Id.*

8. In support of its contention, Sprint cites the Commission's *Policy Statement on Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets*³² for the proposition that it is entitled to claim interference protection even when the actual licensee of record has consented to the proposed operation.³³ Specifically, Sprint appears to rely on the following footnote:

In this context, any transferees and lessees will have the same rights to protection against interference and incursions by other operators as the licensee from which they acquire the spectrum. For example, a transferee or lessee would have the same rights to protection against interference from operations under the experimental radio service (Part 5 of the rules, see 47 CFR 5) or from operation of unlicensed radio devices (Part 15 of the rules, see 47 CFR 15) as the primary licensee.³⁴

Based on the record before us, we do not believe that this language applies to or squarely addresses the situation presented – namely, when a lessee objects to a licensee's decision to consent to an operation that may cause interference. In light of the specific language of the rule, which grants the licensee the exclusive right to consent to an operation that may cause interference, we conclude that the *Policy Statement* did not impose an additional requirement that applicants also obtain consent from spectrum lessees or otherwise alter the requirements set forth in Section 74.939 of the Commission's Rules. Moreover, while Sprint argues that it will be discouraged from investing in systems if it is "denied interference protection rights,"³⁵ we do not believe that grant of the requested relief is warranted under the circumstances presented.³⁶ We therefore deny Sprint's petition.

9. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 74.912 of the Commission's rules, 47 C.F.R. § 74.912, that the Petition to Deny filed by Sprint Corporation April 2, 2001 against the above-captioned application IS DENIED.

10. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 74.912 and 74.939 of the Commission's rules, 47 C.F.R. §§ 74.912, 74.939, that the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, SHALL PROCESS application File No. BPIFH-2000818DLA filed by the North American Catholic Educational Programming Foundation, Inc. consistent with the applicable Commission rules and polices.

³² Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, *Policy Statement*, 15 FCC Rcd 24178 (2000) (*Policy Statement*).

³³ Petition at 4-5, Reply at 2-3.

³⁴ *Policy Statement*, 15 FCC Rcd at 24186 n.28.

³⁵ Reply at 4.

³⁶ Sprint also alleges that NACEPF's application and ITF's consent to that application violate the lease agreements it has with those entities. Reply at 2 n.5. As Sprint correctly notes, however, the resolution of those contractual issues is not within the Commission's purview. *Id.*; see *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987); *Banks Broadcasting Company, Inc., Memorandum Opinion and Order*, 60 Rad. Reg. 2d (P & F) 1454 (1986).

11. 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