

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

In the Matter of Application of)
BOYD GAMING CORPORATION) File No. 0000983470
To Modify the License for Business Conventional)
Station WNCE540 and Request for Waiver of)
Section 90.621(b) of the Commission's Rules)

ORDER

Adopted: September 15, 2003

Released: September 16, 2003

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

1. Introduction. On August 1, 2002, Boyd Gaming Corporation (Boyd) filed the above-captioned application seeking to modify its license for Business Conventional Station WNCE540, Las Vegas, Nevada, to relocate the transmitter. Boyd concurrently submitted a request for waiver of Section 90.261(b) of the Commission's Rules to permit it to locate the transmitter closer to certain co-channel stations than would otherwise be permitted. For the reasons stated below, we grant the waiver request.

2. Background. On May 24, 2000, the Commission granted applications for Southern Nevada First Aid & Rescue, TWC, Inc., and Daly Fencing to operate new stations at Pahrump, Nevada on, inter alia, frequency 855.5375 MHz. The stations were licensed under Call Signs WPQC775, WPQC777, and WPQC778, respectively. On January 3, 2001, the Personal Communications Industry Association (PCIA) notified the Commission that the applications had been coordinated in error. Specifically, PCIA explained that the applications initially were coordinated based on incorrect geographic coordinates. After the coordinates were corrected, PCIA failed to verify whether frequency 855.5375 MHz was available for assignment at the corrected location; in fact, the frequency was not available at the corrected location. PCIA requested that the applications be returned to pending status and returned to PCIA for new channel assignment recommendations.

3. On November 15, 2000, the license for Station WNCE540 was assigned from Fremont Hotel Security to Boyd. On May 15, 2002, Boyd filed an application to modify the license to relocate the transmitter 4.683 kilometers, from the Fremont Hotel and Casino in Las Vegas to the Stardust Hotel in Las Vegas. On July 16, 2002, the Public Safety and Private Wireless Division (Division), Licensing and Technical Analysis Branch dismissed the application as defective, on the grounds that the proposed location was closer to Stations WPQC775, WPQC777, and WPQC778 than permitted by the

1 Letter dated January 3, 2001 from Richard A. Edwards, Production Operations Manager, Personal Communications Industry Association to W. Riley Hollingsworth, Special Counsel, Technical and Public Safety Division, Enforcement Bureau.

2 Id.

3 Id.

4 File No. 0000888925 (filed May 15, 2002).

Commission's Rules, and Boyd had not requested a waiver in connection with the application.⁵ On August 1, 2002, Boyd refiled the application, and attached a waiver request.⁶

4. On September 9, 2002, the Division denied the waiver request.⁷ The Division noted that it had directed PCIA to propose license modifications to remedy its defective coordination, but the frequencies that PCIA proposed were not available for the proposed use.⁸ The Division concluded that modifying the licenses as proposed by PCIA would pose a greater potential for harmful interference than the status quo, and thus was not in the public interest.⁹

5. *Discussion.* The Commission will grant a waiver if (a) it is in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case, or (b) in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁰ Boyd argues that this matter presents unusual circumstances, in that the Division has concluded that Stations WPQC775, WPQC777, and WPQC778 were improperly coordinated on frequency 855.5375 MHz. It notes that, had the applications for those stations been properly coordinated, they would not have been granted and would pose no impediment to Boyd's proposed relocation.¹¹ In addition, we note that the proposed relocation will actually increase the distance between Station WNCE540 and Stations WPQC775, WPQC777, and WPQC778.¹² Consequently, upon further review, we now conclude that it would be inequitable to deny the waiver request, and that granting the request is in the public interest. We therefore grant the waiver request.

⁵ Dismissal Letter, Ref. No. 1503594 (July 16, 2002). Under Section 90.621(b)(4) of the Commission's Rules, 47 C.F.R. § 90.621(b)(4), given the power and height of Station WNCE540, it must be located at least eighty-eight kilometers from any co-channel station, absent concurrence of the co-channel licensee.

⁶ File No. 0000983470 (filed Aug. 1, 2002).

⁷ Letter dated September 9, 2002 from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Don Andrew, Personal Communications Industry Association.

⁸ *Id.* at 2.

⁹ *Id.* at 2-3.

¹⁰ *See* 47 C.F.R. § 1.925(b)(3).

¹¹ Waiver Request at 1. A review of our licensing database confirms that there are no other co-channel stations within 88 kilometers of Boyd's proposed location that are entitled to protection.

¹² From 69.306 kilometers to 71.786 kilometers.

6. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communication Act of 1934, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver of Section 90.621 filed by Boyd Gaming Corporation on August 1, 2002, IS GRANTED, and the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch SHALL PROCESS application file no. 0000983470 consistent with this *Order* and the Commission's Rules.

7. This action is taken under delegated authority pursuant to Section 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau