

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

In the Matter of Applications of	)	
	)	
ALDA WIRELESS HOLDINGS, INC.	)	File Nos. BLMPMD-9950340, BLMPMD-
	)	9951689, BLMPMD-9951690, BLMPMD-
For Authority to Modify Multipoint Distribution	)	9951691
Service Stations WLK238, WNTK656, WHJ878,	)	
and WNEK611, Detroit, Michigan	)	
	)	
And	)	
	)	
WAYNE STATE UNIVERSITY	)	File No. BLMPMD-99050344
	)	
For Authority to Modify Multipoint Distribution	)	
Service Station WLK367, Detroit, Michigan	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 20, 2003**

**Released: February 25, 2003**

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

1. In this *Memorandum Opinion and Order*, we address a consolidated Petition for Reconsideration filed on April 19, 2002 by Alda Wireless Holdings, Inc. (Alda) and Wayne State University (Wayne State) (collectively, Petitioners), seeking reconsideration of the dismissal of their above-captioned applications for authority to modify Multipoint Distribution Service (MDS) Stations WLK238, WNTK656, WHJ878, WNEK611, and WLK367, Detroit, Michigan.<sup>1</sup> For the reasons stated below, we grant the Petition in part and reinstate Petitioners' applications for further review and coordination with Industry Canada.

2. Petitioners filed the above-captioned applications on May 21, 1999. The applications appeared on public notice as accepted for filing on June 23, 1999.<sup>2</sup> On July 28, 2000, the applications were sent to Canada's Department of Industry (Industry Canada) for coordination. Industry Canada declined to coordinate the applications on September 1, 2000.<sup>3</sup> On March 15, 2002, the Video Services Division of the former Mass Media Bureau dismissed the captioned applications. Public notice of the

<sup>1</sup> Petition for Reconsideration (filed Apr. 19, 2002) (Petition). Effective March 25, 2002, the Commission transferred regulatory functions for the Instructional Television Fixed Service and the Multipoint Distribution Service/Multichannel Multipoint Distribution Service from the Mass Media Bureau to the Wireless Telecommunications Bureau (Bureau). Radio Services Are Transferred From Mass Media Bureau to Wireless Telecommunications Bureau, *Public Notice*, 17 FCC Rcd 5077 (2002). Accordingly, the Bureau's Public Safety and Private Wireless Division assumed all regulatory duties associated with these services effective March 25, 2002. *Id.*

<sup>2</sup> See MMB MDS Public Notice Report No. D-1050 (rel. Jun. 23, 1999).

<sup>3</sup> Industry Canada responded with an electronic message "HIA"- harmful interference anticipated.

dismissal was given on March 20, 2002.<sup>4</sup> The Petitioners, however, were never given a written explanation of the reasons why their applications were dismissed. They nonetheless filed the Petition on April 19, 2002.

3. Petitioners argue that the dismissal of their applications violated the Administrative Procedure Act because the Video Services Division did not provide a statement of the grounds for dismissal.<sup>5</sup> Based upon informal contacts with Commission staff, Petitioners understand that the applications were dismissed due to non-compliance with the General FCC/Industry Canada Understanding and the results of coordination with Canada.<sup>6</sup> However, the Petitioners proffer two reasons why the applications in fact comply with the FCC/Industry Canada Understanding. First, they contend that the agreement contemplated the modifications proposed in the subject applications.<sup>7</sup> Second, the Petitioners contend that there is no line of sight between their proposed transmitter site and any Canadian station entitled to interference protection.<sup>8</sup> Petitioners argue that their proposed facilities would utilize the same technical parameters as the existing Instructional Television Fixed Service (ITFS) stations in the vicinity<sup>9</sup> and that it would not cause harmful interference to Canadian facilities.<sup>10</sup> Therefore, they request that their applications be reinstated and that we coordinate them further with Canada. Finally, Petitioners state that the Commission is in the process of negotiating a new agreement with Canada and that we should allow coordination of their applications under the new agreement.<sup>11</sup>

4. Subsequent to the filing of the Petition, on June 25, 2002, the Commission and Industry Canada entered into an interim sharing arrangement concerning the use of the frequency bands 2150 – 2162 MHz and 2500 – 2690 MHz near the Canada/United States of America border.<sup>12</sup> That interim sharing arrangement replaced the General FCC/Industry Canada Understanding. The interim sharing arrangement requires licensees to coordinate their operations with each other for their respective service areas on both sides of the border.<sup>13</sup>

5. We concur with Petitioners that it was an error to dismiss their applications without providing a written explanation of the reasons for dismissal.<sup>14</sup> Against this backdrop, to the extent that such dismissal was premised on Canadian coordination issues, we conclude, based upon the current

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<sup>4</sup> See MMB MDS Public Notice Report No. 698 (rel. Mar. 20, 2002). The public notice incorrectly identified the applicant to modify station WLK238 as Brigham Young University.

<sup>5</sup> Petition at 3-4, *citing* 5 U.S.C. § 555(e).

<sup>6</sup> Petition at 4-5.

<sup>7</sup> See Petition, Exhibit A, Annex D, n.2.

<sup>8</sup> *Id.* at 4-5 and Exhibit B (Engineering Statement of Darryl K. DeLawder).

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 6. In fact, our analysis shows that Petitioners would operate with different technical parameters than the ITFS stations.

<sup>11</sup> *Id.* at 5-6.

<sup>12</sup> Interim Arrangement Concerning the Use of the Frequency Bands 2150 – 2162 MHz and 2500 – 2690 MHz by MCS and MDS Stations Near the Canada/United States of America Border (dated Jun. 25, 2002) (Interim Sharing Arrangement).

<sup>13</sup> Interim Sharing Arrangement, ¶ 2.2.

<sup>14</sup> See 5 U.S.C. § 555(e) (“Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with an agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.”); *Gardner v. FCC*, 530 F.2d 1086, 1089 (D.C. Cir. 1976).

record, that the applications should be reinstated.<sup>15</sup> Accordingly, we will reinstate the applications. We will then return the applications to allow Petitioners to make a showing that they comply with the provisions of the new interim sharing arrangement.<sup>16</sup>

6. ACORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Alda Wireless Holdings, Inc, and Wayne State University on April 19, 2002 IS GRANTED to the extent indicated herein.

7. 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 Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the Licensing and Technical Analysis Branch SHALL REINSTATE the applications filed on May 21, 1999, by Alda (File Nos. BLMPMD-9950340, BLMPMD-9950340, BLMPMD-9951689, BLMPMD-9951690, BLMPMD-9951691) and by Wayne State University (File No. BLMPMD-99050344).

8. 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

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<sup>15</sup> See LMR Systems, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 1900, 1908 ¶ 13 (2002).

<sup>16</sup> In light of our decision to reinstate the applications, we need not address at this time Alda's additional arguments concerning the applications to modify Stations WNTK656 and WHJ878. See Petition at 7-8.