

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

In the matter of	)	
	)	
Access Spectrum, LLC Request for	)	FCC File No. 0001669196
Waiver of Section 27.60	)	

**MEMORANDUM OPINION & ORDER**

**Adopted: August 12, 2004**

**Released: August 12, 2004**

By the Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. This order addresses a request for waiver (Waiver Request) of section 27.60 of the Commission's rules,<sup>1</sup> filed on March 24, 2004 by Access Spectrum, LLC (Access Spectrum) in association with FCC Form 601, file no. 0001669196.<sup>2</sup> Section 27.60 sets forth the protection criteria for base, fixed, control and mobile transmitters operating in the 698-764 MHz and 776-794 MHz frequency bands, in order to reduce the potential for interference to public reception of the signals of existing TV and DTV broadcast stations transmitting on TV Channels 51 through 68. For the reasons described below, Access Spectrum's Waiver Request is granted, subject to the conditions set forth herein.

**II. BACKGROUND**

2. Access Spectrum holds a license for the MEA031 (Houston, Texas) service area in the 700 MHz Guard Band "A-Block" at 746-747 MHz and 776-777 MHz. Access Spectrum proposes a ten-channel trunked land mobile base station, at 50 watts ERP per channel, within its licensed service area.<sup>3</sup> Although adjacent to channel 61, currently occupied by broadcast station KZJL, the proposed station's operating frequencies are roughly 5 MHz removed from the lower end of KZJL's 6 MHz of channel space.<sup>4</sup> However, Access Spectrum's proposed station is located too close to KZJL, pursuant to the Commission's TV/DTV protection criteria.<sup>5</sup> In fact,

---

<sup>1</sup> 47 C.F.R. § 27.60.

<sup>2</sup> Access Spectrum, LLC Request for Waiver of Section 27.60(a)(2) of the Commission's Rules Relating to TV/DTV Interference Protection Criteria at 1 (filed Mar. 24, 2004).

<sup>3</sup> *Id.* The proposed station is located on the JP Morgan Chase Tower in downtown Houston, Texas at the following coordinates: 29-45-37.82 N and 95-21-50.78 W (NAD83).

<sup>4</sup> *Id.* at 7, Figure 1.

<sup>5</sup> *Id.* at 1. See 47 C.F.R. § 27.60(b).

the proposed station is located inside the hypothetical Grade B contour of KZJL.<sup>6</sup> Section 27.60(b) of the Commission's rules references specific, minimum geographic separations that must be maintained between a 700 MHz licensee's transmitter and an incumbent broadcast station.<sup>7</sup> In addition, section 27.60(a) requires a minimum desired-to-undesired (D/U) ratio of 0 dB at the hypothetical Grade B contour of an adjacent channel analog TV station such as KZJL. As a matter of engineering principle, compliance with section 27.60(a) requires that the minimum D/U ratio be maintained everywhere within the hypothetical Grade B contour of an adjacent channel analog TV station.

### III. DISCUSSION

3. Access Spectrum argues that its base station will meet the TV/DTV protection criteria set forth in section 27.60 of the Commission's rules.<sup>8</sup> Specifically, Access Spectrum argues that its associated engineering study, pursuant to section 27.60(b)(1)(iii), justifies the station's proposed geographic "short-spacing" to KZJL that otherwise would violate the required minimum distance separation.<sup>9</sup> Additionally, Access Spectrum argues that no waiver is necessary because it submitted an engineering study pursuant to section 27.60(b)(1)(iii).<sup>10</sup> Every commenter concurs, with the exception of KZJL, that no waiver is necessary and that Access Spectrum's engineering study is sufficient.<sup>11</sup> Also, Access Spectrum, together with several commenters, argue that any such Guard Band Manager need not apply for a specific station on FCC Form 601, so long as it sufficiently demonstrates that the proposed operations will not interfere with any TV/DTV station.<sup>12</sup> Nonetheless, as a precautionary measure, Access Spectrum filed the Waiver Request, together with an application on FCC Form 601, while maintaining its position that circumstances do not require an application.<sup>13</sup>

#### A. Necessity for Application and Waiver

4. Access Spectrum argues that Guard Band Managers like itself should not have to file on FCC Form 601 for a specific station authorization, together with a request for waiver of

---

<sup>6</sup> *Id.* at 2. The hypothetical Grade B contour encircles the incumbent broadcast station at a distance of 88.5 km (55 miles). See 47 C.F.R. § 27.60(a).

<sup>7</sup> 47 C.F.R. § 27.60(b).

<sup>8</sup> Waiver Request at 2, citing 47 C.F.R. § 27.60.

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

<sup>10</sup> *Id.*

<sup>11</sup> See Aloha Partners, Reply Comments in Support of Access Spectrum Proposal at 2 (filed May 28, 2004) (Aloha Reply Comments); Comments of the Association of Public Safety Communications Officials-International, Inc. (APCO) at 2 (filed May 17, 2004) (APCO Comments); Comments of Industrial Telecommunications Association, Inc. (ITA) at 2 (filed May 17, 2004) (ITA Comments); Comments of Motorola, Inc. at 5 (filed May 17, 2004) (Motorola Comments); Comments of the United Telecom Council (UTC) at 2 (filed May 14, 2004) (UTC Comments); Reply Comments of the 700 MHz Advancement Coalition (Coalition) at 4 (filed May 27, 2004) (Coalition Reply Comments); *cf.* Comments of KZJL License Corp. on Access Spectrum, LLC Request for Waiver of Section 27.60 (filed May 17, 2004) (KZJL Comments).

<sup>12</sup> Waiver Request at 4; Motorola Comments at 5; UTC Comments at 4; Coalition Reply Comments at 4.

<sup>13</sup> Waiver Request at 4.

section 27.60, because the filing of an engineering study is sufficient.<sup>14</sup> Access Spectrum notes that the Commission created the Guard Band Manager licensing rules to stimulate innovation and to streamline the Commission's spectrum management responsibilities.<sup>15</sup> According to Access Spectrum, the Commission's rules support its position that an engineering study alone is sufficient, pursuant to section 27.60(b)(1).<sup>16</sup>

5. Section 27.60(b)(1) establishes four methods to demonstrate compliance with the Commission's TV/DTV protection requirements.<sup>17</sup> The licensee must select one method and accordingly must obtain Commission approval.<sup>18</sup> In general, these methods are: (1) meet established geographic separations; (2) when station parameters are greater than those indicated in the tables, calculate geographic separation in accordance with the required D/U ratio; (3) submit an engineering study justifying a proposed geographic separation based on the actual parameters of the proposed station and the actual parameters of the TV/DTV station requiring protection; or (4) obtain written concurrence from the TV/DTV station.<sup>19</sup>

6. Every commenter, with the exception of KZJL, concurs with Access Spectrum that a request for waiver should not be necessary when an engineering study is filed pursuant to the third method referred to above, section 27.60(b)(1)(iii).<sup>20</sup> Furthermore, several commenters support Access Spectrum's position that an associated application on Form 601 need not be filed.<sup>21</sup> Motorola argues that such a waiver and application process is overly burdensome, and could delay the deployment of public safety and commercial operations.<sup>22</sup> UTC asserts that the Guard Band Manager licensing framework was established to permit the construction and operation of systems without the need for individual licensing through the Commission.<sup>23</sup> The Coalition adds that as Guard Band Managers increasingly submit engineering studies with applications and waiver requests, the approval process could be overwhelmed, thus forestalling the deployment of valuable services.<sup>24</sup> The Coalition therefore proposes that an engineering

---

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, citing *Service Rules for the 746-764 and 776-794 MHz Bands and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000) ("*Second Report and Order*"). According to the *Second Report and Order*, a Guard Band Manager may use its license to "allow others to construct and operate stations at any available site within the licensed area and on any channel for which the Guard Band Manager is licensed." *Id.* at 5314 para. 33; 47 C.F.R. § 27.601(a). However, this approach is limited to stations that require neither an environmental assessment nor international coordination, and do not affect the radio frequency quiet zones. 47 C.F.R. § 27.601(c)(1).

<sup>16</sup> Waiver Request at 4.

<sup>17</sup> 47 C.F.R. § 27.60(b)(1).

<sup>18</sup> *Id.*

<sup>19</sup> 47 C.F.R. § 27.60(b)(1)(i)-(iv).

<sup>20</sup> *See supra* note 11.

<sup>21</sup> *See supra* note 12.

<sup>22</sup> Motorola Comments at 5.

<sup>23</sup> UTC Comments at 4.

<sup>24</sup> Coalition Reply Comments at 4.

study pursuant to section 27.60(b)(1)(iii), absent an associated application and waiver request, should be presumed valid unless objected to within 30 days of filing, after which deployment could occur without prior approval.<sup>25</sup>

7. KZJL argues that Access Spectrum's proposed station should be considered solely through the application and waiver process.<sup>26</sup> KZJL asserts that an engineering study pursuant to section 27.60(b)(1)(iii) must meet the criteria set forth in section 27.60(b)(2)(i), which only conceives of a section 27.60(b)(1)(iii) showing when the proposed station is located outside the hypothetical Grade B contour of the TV/DTV station.<sup>27</sup> Accordingly, KZJL argues, Access Spectrum must request a waiver of section 27.60 because its proposed station is located inside the hypothetical Grade B contour of KZJL's transmitter.<sup>28</sup> Additionally, KZJL argues that an application on Form 601 is necessary at all times, because it is the most efficient way to assure enforcement of the Commission's rules protecting incumbent broadcasters.<sup>29</sup>

8. In its reply comments, Access Spectrum notes that the limitation on engineering studies in section 27.60(b)(2)(i), to locations outside the Grade B contour, does not apply.<sup>30</sup> That limitation, Access Spectrum notes, specifically refers to co-channel stations, and not to adjacent channel stations like the one at issue.<sup>31</sup> Access Spectrum also argues that the Commission, when enumerating the four methods in section 27.60(b)(1) to meet its TV/DTV protection requirements, would have explicitly established a waiver requirement if it meant to.<sup>32</sup>

9. We agree with KZJL that the application and waiver process is necessary for Access Spectrum's proposed operation. The option provided in section 27.60(b)(1)(iii), to submit an engineering study subject to Commission approval, assumes that the study will demonstrate compliance with the required D/U protection ratios specified in section 27.60. We believe that a waiver is required in this instance because Access Spectrum, which proposes to locate its transmitter inside the hypothetical Grade B contour of KZJL, does not comply with the interference protection specified in section 27.60(a). By its own admission, Access Spectrum does not provide full protection against interference to KZJL. Specifically, Access Spectrum

---

<sup>25</sup> *Id.* at 4-5.

<sup>26</sup> KZJL Comments at 2.

<sup>27</sup> KZJL Comments at 3, citing 47 C.F.R. § 27.60(b)(2)(i) ("If the distance so determined equals or exceeds the distance to the hypothetical or equivalent Grade B contour of a co-channel TV/DTV station...an authorization will not be granted unless it is shown in an engineering study (see paragraph (b)(1)(iii) of this section) that actual terrain considerations are such as to provide the desired protection at the actual Grade B contour...or unless the effective radiated power will be further reduced so that...the desired protection at the actual Grade B contour...will be achieved").

<sup>28</sup> KZJL Comments at 2-3.

<sup>29</sup> Reply Comments of KZJL License Corp. on Access Spectrum, LLC Request for Waiver of Section 27.60 at 3 (filed Jun. 2, 2004) (KZJL Reply Comments).

<sup>30</sup> Reply Comments of Access Spectrum, LLC at 4-5 (filed May 27, 2004) (Access Spectrum Reply Comments).

<sup>31</sup> *Id.* at 5.

<sup>32</sup> *Id.* at 6. Access Spectrum notes that section 27.60(b)(1) qualifies the four methods as being subject to Commission approval, while the rule part does not specify the manner of Commission approval. *Id.*

acknowledges that television receivers within a radius of as much as 169.3 meters from its proposed transmitter could experience interference.<sup>33</sup>

10. We agree with the commenters' argument that an engineering study under section 27.60(b)(i)(iii) is required. However, we disagree with commenters that argue that an FCC Form 601 application should not be necessary. While the rules do not specifically require that the engineering study be submitted with an accompanying FCC Form 601, we clarify that, for administrative efficiency, the engineering study must be submitted electronically via FCC Form 601. Furthermore, as discussed above, we have determined that Access Spectrum's proposed operation requires a waiver of section 27.60 of the Commission's rules. Where a waiver is necessary, section 1.925(b)(1) requires that the request be filed on FCC Form 601.<sup>34</sup> We disagree with the Coalition that the Engineering study should be presumed valid unless the Commission objects to the showing within thirty days, as Section 27.60(b)(1)(iii) requires prior Commission approval.

### **B. Access Spectrum's Engineering Study and Waiver Request**

11. Access Spectrum acknowledges that some interference is possible, given its proposed location of a facility inside the Grade B contour of incumbent broadcaster KZJL. However, according to Access Spectrum, its engineering study demonstrates that the possibility of interference to off-air reception of KZJL is virtually non-existent.<sup>35</sup> The base station is proposed for a fixed location atop the 75-story JP Morgan Chase tower in downtown Houston, Texas, at 305 meters above ground.<sup>36</sup> Access Spectrum estimates that at most, its base station could interfere with off-air reception of KZJL at distances of up to 169.3 meters. Thus, the potential zone of interference does not reach ground level, and is "negligible at best."<sup>37</sup> Access Spectrum asserts that there are no known residences within the zone of interference.<sup>38</sup> Access

<sup>33</sup> See Access Spectrum Reply Comments, Engineering Showing and Analysis at 3.

<sup>34</sup> 47 C.F.R. § 1.925(b)(1). We note that licensees proposing to demonstrate interference-free operations by locating facilities outside the Grade B contour of an incumbent broadcaster (although located at separations closer than those provided in 27.60(a)) are only required to submit an FCC Form 601 and engineering study for Commission approval under 27.60(b)(1)(iii), and are not required to seek a waiver of the Commission's rules.

<sup>35</sup> Waiver Request at 6.

<sup>36</sup> Access Spectrum Reply Comments, Engineering Showing and Analysis at 3. KZJL raised several concerns that were resolved during the pleading cycle. In its initial comments, KZJL noted that Access Spectrum's application did not specify the elevation of the proposed facility, but merely the elevation of the JP Morgan Chase tower. *Id.* at 6. Additionally, KZJL noted that Access Spectrum's application and engineering study did not address KZJL's construction permit for new facilities, at a different physical location from its existing facilities, with construction to begin July 2004 and approximately to end in August 2004. *Id.* at 4. Finally, KZJL asserted that mobile radios could operate in a "talk-around" mode, not only receiving from Access Spectrum's proposed facility, but also transmitting to one another from indeterminate locations within KZJL's coverage area. *Id.* at 5-6. In its reply comments, Access Spectrum specified that the radiating portion of its antenna would be 305 meters above ground level. Access Spectrum Reply Comments at 4. Access Spectrum also conducted an additional engineering study to account for the proposed facility authorized pursuant to KZJL's construction permit, finding that the admitted zone of interference would increase by 50.8 meters, from 118.5 meters to 169.3 meters. *Id.* at 2. Finally, Access Spectrum certified that it simply will not allow "talk-around" operations. *Id.* at 3.

<sup>37</sup> Access Spectrum Reply Comments at 2.

<sup>38</sup> Access Spectrum Reply Comments, Engineering Showing and Analysis at 4.

Spectrum also assures that after construction it will do extensive testing with KZJL within the identified interference zone, and commits to alleviate any interference as well as bear financial responsibility.<sup>39</sup> KZJL notes that many office workers in the JP Morgan Chase tower and surrounding office buildings will be subject to interference from Access Spectrum's proposed station.<sup>40</sup> KZJL argues that it would be difficult to ascertain the impact of interference, because these viewers would more likely turn to alternative programming than complain about the interference to KZJL or to the Commission.<sup>41</sup> Furthermore, KZJL argues that master antennas, and cable and DBS head-ends, could exist within the zone of interference, for distribution well outside the zone, thus involving a potentially larger area of impact.<sup>42</sup> Finally, KZJL argues that Access Spectrum failed to account for possible interference to licensed operation of wireless microphones and other auxiliary broadcast facilities under Part 74 of the Commission's rules.<sup>43</sup>

12. Having determined that Access Spectrum requires a waiver of section 27.60 of our rules in order to deploy its base station, we must apply the waiver standard set forth in section 1.925(b)(3). The Commission may grant a waiver if it is shown that: "(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."<sup>44</sup>

13. Access Spectrum requests a waiver pursuant to the first of the two waiver standards described above.<sup>45</sup> It asserts that a waiver would be in the public interest because the Guard Band Manager licensing approach is meant to streamline the Commission's spectrum management responsibilities, as well as to diversify use of the 746-806 MHz band, thereby promoting development and rapid deployment.<sup>46</sup> KZJL argues that the Waiver Request fails under the first of the two waiver standards in section 1.925 because the purpose of section 27.60 is to protect incumbent broadcasters from interference, and denying the Waiver Request would actually uphold the purpose of the rule rather than frustrate it.<sup>47</sup> With respect to the second waiver standard, KZJL argues that Access Spectrum has not alleged any circumstances that would result in the application of section 27.60 being inequitable, unduly burdensome or contrary to the public interest.<sup>48</sup> KZJL notes that Access Spectrum purchased its spectrum with

---

<sup>39</sup> Access Spectrum Reply Comments at 7, Engineering Showing and Analysis at 4.

<sup>40</sup> KZJL Comments at 5.

<sup>41</sup> *Id.*

<sup>42</sup> Letter from Todd D. Rosenberg and Michael J. Walsh, Jr., Counsel to KZJL License Corp., to Marlene Dortch, Secretary, Federal Communications Commission at 2 (filed July 8, 2004) (*KZJL Ex Parte*).

<sup>43</sup> *Id.* at 2.

<sup>44</sup> 47 C.F.R. § 1.925(b)(3).

<sup>45</sup> Waiver Request at 5, citing 47 C.F.R. § 1.925(b)(3)(i).

<sup>46</sup> *Id.* at 5-6.

<sup>47</sup> KZJL Comments at 5-6.

<sup>48</sup> KZJL Comments at 7.

full knowledge of KZJL's rights, therefore the "significant funds" spent by Access Spectrum do not demonstrate inequity or undue burden.<sup>49</sup> Finally, KZJL argues that it would defy the public interest to approve Access Spectrum's request, because the proposed service is not "new" and would exist alongside alternative radio operators in the Houston area.<sup>50</sup>

14. Under section 1.925, the Commission may grant a waiver if it is shown that the standards of either section 1.925(b)(3)(i) or (ii) are met. In this case, we find that Access Spectrum has satisfied the first waiver standard of section 1.925, and that circumstances warrant a conditional grant of waiver. We agree with Access Spectrum that it is in the public interest to encourage the deployment of alternative land mobile services in the Houston area. We also believe that the underlying purpose of section 27.60 is to permit 700 MHz operations where it is demonstrated that co-channel or adjacent channel interference to TV/DTV stations will be prevented.

15. We find that Access Spectrum has adequately demonstrated through its engineering showing that the zone of possible interference to television receivers is located in a business district, is limited to a very small area within a radius of 169.3 meters from Access Spectrum's base station antenna, and does not even reach ground level. Additionally, there is nothing in the record to indicate that over-the-air TV receivers exist within the zone of interference.<sup>51</sup> Although KZJL argues that there could be master antennas, and cable and DBS head-ends, within the zone of interference, it fails to provide any evidence to support this speculative claim. Similarly, we agree with Access Spectrum that KZJL failed to provide

---

<sup>49</sup> *Id.*, citing Waiver Request at 8.

<sup>50</sup> KZJL Comments at 8, Affidavit of Chris Buchanan in Support of the Comments of KZJL License Corp. at 2. KZJL also contends that according to judicial precedent, the public interest requirement for waiver refers to "new services." KZJL Comments at 8, citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C.Cir. 1969) ("a general rule...may not be in the 'public interest' if extended to an applicant who proposes a new service"). Access Spectrum argues that the court was not limiting the circumstances for waiver to "new services," but rather was including "new services" as an example of any factor that could not be considered when the original rule was adopted. Access Spectrum Reply Comments at 8.

<sup>51</sup> Commission precedent demonstrates a measured concern over the likelihood of interference to residential areas. The Automated Maritime Telecommunications System (AMTS) is similar to the Guard Band Manager regime in that it is bound by service rules to protect incumbent TV/DTV broadcasters. In one case, there were an undisputed 2,053,657 people within a broadcaster's Grade B contour and also within the AMTS licensee's predicted interference contour. *Application of Fred Daniel d/b/a Orion Telecom*, 14 FCC Rcd 3909, 3910 para. 3 (1999) ("*Orion Telecom – Chicago*"). A related case had established that when 100 or more residences exist within a Grade B contour and predicted interference contour, authorization must be solely under exceptional circumstances, and the "stringency of the plan to control interference...[must] be commensurate with the number of potentially affected residences." *Id.* at 3911-12 para. 7, citing *Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, Maritime Mobile Radio Services: Improvement in Service Through Provision for Automated VHF Common Carrier Systems, VHF Frequency Assignments to the Maritime Radio Services in the New Orleans and Lower Mississippi Rivers Areas and on the Coastlines of the Contiguous States*, Report and Order, 84 FCC.2d 875, 897 (1981). Orion's application failed because the licensee's plan to control interference was inadequate for the large number of affected residences. *Orion Telecom – Chicago*, 14 FCC Rcd at 3911-12 para. 7. However, in another case the same licensee at a different location prevailed, subject to a power limitation of 10 watts ERP in order to reduce the number of affected residences. See *Application of Fred Daniel d/b/a Orion Telecom*, 14 FCC Rcd 3837 (1999) ("*Orion Telecom – Corona*").

technical support for the allegation that Part 74 devices would experience impermissible interference,<sup>52</sup> and we note that such licensees are authorized on a secondary, non-interfering basis.<sup>53</sup> Although the Part 27 Guard Band Manager allocation occurred after the Part 74 rules were established, the secondary status of the broadcast auxiliary services extends to the Part 27 allocation at issue here. The Commission has not revised Part 74 to afford such licensees primary status in any regard, and did not afford such licensees interference protection under section 27.60. Further, the record demonstrates that the likelihood of over-the-air TV receivers existing within the zone of interference is negligible and, as previously noted, Access Spectrum commits to resolve any interference at its expense.<sup>54</sup> Access Spectrum also offers to conduct tests with KZJL after the construction of its facilities, if authorized.<sup>55</sup> For the foregoing reasons, we find that the underlying purpose of the rule would not be served by strict application to the instant case. As we find that a conditional waiver is warranted under section 1.925(b)(3)(i), we need not address KZJL's argument that Access Spectrum's Waiver Request fails the standard set forth in section 1.925(b)(3)(ii).

16. We grant Access Spectrum a waiver to operate, conditioned on the following: (1) Access Spectrum must operate in accordance with technical parameters set forth in its FCC Form 601 and accompanying engineering showing;<sup>56</sup> (2) Access Spectrum shall provide KZJL, before commencing any operations, with a contact number to receive reports of any interference; (3) Access Spectrum shall remedy or report to the FCC any and all cases of reported interference within five business days; (4) Access Spectrum shall remedy any and all interference at its sole

---

<sup>52</sup> See Letter from Mark E. Crosby, President, Access Spectrum, LLC to Marlene Dortch, Secretary, Federal Communications Commission (filed July 26, 2004) (Access Spectrum *Ex Parte*).

<sup>53</sup> See 47 C.F.R. § 2.106 NG 115 ("...wireless microphones and wireless assist video devices may be authorized on a non-interference basis..."). Part 74 licenses consistently have held a secondary status to land mobile operations. For example, when establishing Part 74 rules for Studio to Transmitter Links (STL) and Intercity Relay (ICR), we stated, "STL/ICR licenses will also be secondary to current land mobile allocations..." *Review of Technical and Operational Requirements: Part 74-E Aural Broadcast STL and ICR Stations and Part 74-F TV Auxiliary Broadcast Stations*, Report and Order, 102 FCC.2d 940, para. 17 (1985) (citations omitted). In a subsequent Report and Order concerning additional changes to Part 74, we restated this principle by noting that STLs/ICRs are secondary "to land mobile stations authorized under Parts 22 and 90 in areas where land mobile sharing is permitted." *Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules*, Report and Order, 17 FCC Rcd. 22979, 23015 para. 93 (2002) (citations omitted). The Low Power Auxiliary Station bands in Part 74 also are "secondary to TV broadcasting and land mobile stations operating in the UHF-TV spectrum and must not cause harmful interference. If such interference occurs, low power auxiliary station operation must immediately cease and may not be resumed until the interference problem has been resolved." 47 C.F.R. § 74.803(b). Additionally, "Low power TV and TV translator stations are being authorized on a secondary basis to existing land mobile uses and must correct whatever interference they cause to land mobile stations or cease operation." 47 C.F.R. § 74.703(e).

<sup>54</sup> See Access Spectrum Reply Comments at 7, Engineering Showing and Analysis at 4.

<sup>55</sup> *Id.*

<sup>56</sup> As reflected in Access Spectrum's application (FCC File No. 0001669196), the proposed trunked base station will be located at 29-45-37.82 N, 095-21-50.78 W (NAD 83), from an overall height above ground level of 305 meters. Each of the 10 channels will operate at up to 50 watts ERP.

expense;<sup>57</sup> (5) mobile-to-mobile operations on Channel 60 are prohibited; and (6) Access Spectrum shall be required to protect KZJL's facilities as set forth in KZJL's current construction permit (BMPCT-20021107AAA).<sup>58</sup> We note that Access Spectrum has offered to conduct tests in the presence of KZJL staff, prior to commencing operations. We encourage Access Spectrum to conduct such tests before commencing operations, which will help to identify and resolve possible interference, and will promote a more coordinated approach among the parties in this proceeding.

#### IV. CONCLUSION

17. For the reasons set forth above, we find that a conditional grant of Access Spectrum's Waiver Request is in the public interest.

#### V. ORDERING CLAUSE

18. Accordingly, IT IS ORDERED that, pursuant to the authority in sections 1, 2, 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i) and 154(j), and section 1.925(b)(3)(i) of the Commission's rules, 47 C.F.R. § 1.925(b)(3)(i), the request for waiver by Access Spectrum, LLC IS GRANTED, subject to the conditions set forth herein, and the Mobility Division is directed to process file no. 0001669196 consistent with this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

John B. Muleta, Chief  
Wireless Telecommunications Bureau

---

<sup>57</sup> Compare with *Orion Telecom – Corona*, 14 FCC Red at 3840 para. 6, citing 47 C.F.R. § 80.215(h)(3) (AMTS applicant must make necessary adjustments to television receivers to eliminate interference if 100 residences exist within interference zone). Access Spectrum could also ensure reception of KZJL through provision of an alternative to over-the-air broadcasting such as closed circuit or cable television.

<sup>58</sup> In the event that KZJL further modifies its facilities, Access Spectrum shall not be required to cease operation or modify facilities authorized pursuant to this conditional grant of waiver.