

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

In the Matter of Application of)
PROGRESS ENERGY SERVICE) FCC File No. 0001030390
COMPANY LLC)
For a 900 MHz Trunked Industrial/Land)
Transportation Station License in North Carolina)

ORDER ON RECONSIDERATION

Adopted: February 27, 2004

Released: March 4, 2004

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

1. Introduction. On January 7, 2003, UTC Spectrum Services (UTC) filed a request for reconsideration (Request)1 of the December 12, 2002 action by the former Public Safety and Private Wireless Division,2 Licensing and Technical Analysis Branch (Branch) dismissing the above-captioned application submitted by Progress Energy Service Company LLC (Progress).3 UTC, which was the frequency coordinator for this application, asked that the dismissal be reversed and the application reinstated.4 For the reasons set forth below, we grant the Request in part and deny it in part. Specifically, we grant the Request and reinstate the application, except with respect to frequency pair 900/939.950 MHz. With respect to that frequency, we affirm the Branch's action, because the proposed use set forth in the application does not comply with Section 90.621(b)(4) of the Commission's Rules.5

2. Background. On September 17, 2002, Progress filed an application to operate a new station in the 900 MHz band at various locations in North Carolina for the purpose of coordinating power company activities.6 On December 13, 2002, the Branch dismissed the application because operations on one of the requested frequency pairs (900/939.950 MHz) would be less than fifty-five miles (88 km) from the transmitter site of co-channel Stations WPJT468, WPJT477, WPJT541, WPJT542, WPJT550, WPJT555, WPJT934, WPJT935, WPJU352, WPJW454, WPJW680, and WPJK272.7 The Branch stated that Section 90.621(b)(4) of the Rules requires stations desiring to operate at distances less than fifty-five

1 UTC Spectrum Services Request for Reconsideration (filed Jan. 7, 2003) (Request).

2 The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, Order, 18 FCC Red 25414, 25414 ¶ 2 (2003).

3 See Automated Dismissal Letter, Reference Number 1654121, effective Dec. 12, 2002, generated Dec. 13, 2002. (Dismissal).

4 Request at 1.

5 47 C.F.R. § 90.621.

6 FCC File No. 0001030390 (filed Sept. 17, 2002, amended Dec. 10, 2002).

7 Dismissal at 1.

miles from co-channel facilities to submit a waiver request of the minimum separation requirement.⁸ Because the application did not include such a request, the Branch dismissed it as defective.⁹ UTC then filed its Request seeking reconsideration of that decision.

3. *Discussion.* In the Request, UTC submits that the twelve stations to which the proposed facility would be short spaced on frequency pair 900/939.950 MHz are all licensed to Carolina Power and Light Company (Carolina), a subsidiary of Progress.¹⁰ In UTC's opinion, the parent-subsidiary relationship between Progress and Carolina negates any necessity for a waiver of Section 90.621 of the Rules. We disagree. Whether Progress is the parent or the subsidiary, both it and Carolina are two different licensing entities with two separate communications systems each required to meet the criteria of Section 90.621(b)(4). This rule does not authorize exceptions to the separation requirements for a subsidiary or parent company if their facilities are short-spaced to one another.¹¹ Thus, as an applicant seeking to operate on 900/939.950 MHz at a distance less than prescribed in Section 90.621(b)(4), Progress must request a waiver with its application.¹² In the alternative, under Section 90.621(b)(5) of the Commission's Rules,¹³ the applicant may submit with its application letters of concurrence from each co-channel licensee within the specified separation between their systems.¹⁴ Each co-channel licensee must certify that its system has been constructed and fully operational and indicate that it will accept (as will the applicant) any interference caused by the reduced separation of the two stations. Progress did not submit either a waiver request or a letter of concurrence from Carolina for operations on 900/939.950 MHz. Accordingly, we find that the Branch properly dismissed Progress' application with respect to this frequency. Based on the information presented therein in this regard, we note that nothing in the application indicated the corporate relationship between Progress and Carolina; thus, even if UTC's interpretation of the rule were correct, we believe the Branch still acted correctly based on the information then before it.¹⁵ Consequently, we deny the Request with respect to frequency pair 900/939.950 MHz.

4. On the other hand, we find that the other 900 MHz frequencies that Progress requested in the application satisfy the distance requirements of Section 90.621.¹⁶ Accordingly, we believe that the Branch's dismissal of the application was premature with respect to the requested frequencies other than frequency pair 900/939.950 MHz. Therefore, we will grant the Request with respect to the frequencies listed in the application, with the exception of 900/939.950 MHz, and will return in turn, reinstate the application and return it to pending status and process it with respect to such other frequencies.¹⁷

⁸ Applicants that seek a waiver must serve their request on all co-channel licensees within the applicable area. See *Park City Mountain Resort*, 14 FCC Rcd 17178, 17178-79 ¶¶ 2-3 (WTB PSPWD 1999) (*Park City*). Applicant must also file an analysis of interference potential from mobile transmitters to existing co-channel base station receivers. 47 C.F.R. § 90.621(b)(4).

⁹ Dismissal at 1.

¹⁰ Request at 1.

¹¹ Nor does 47 C.F.R. § 90.621 authorize exceptions to the separation requirements for secondary stations. See *White Eagle Concrete, Inc.*, 18 FCC Rcd 15172, 15173 ¶ 4 (WTB PSPWD 2003) (*White Eagle*).

¹² See *Northwest Airlines, Inc., Order on Reconsideration*, 16 FCC Rcd 2525, 2526-27 ¶ 5 (WTB PSPWD 2001); *Park City*, 14 FCC Rcd 17178 ¶ 2.

¹³ 47 C.F.R. § 90.621(b)(5).

¹⁴ *21st Century Wireless Group, Inc., Order on Reconsideration*, 17 FCC Rcd 8260, 8261 ¶ 4 (WTB PSPWD 2002).

¹⁵ Nor did the Branch have any other information at its disposal indicating the relationship, because the two entities use separate FCC Registration Numbers.

¹⁶ FCC Application File No. 0001030390, Frequency Information, at 16-17.

¹⁷ *White Eagle*, 18 FCC Rcd at 15173 ¶¶ 4-5.

5. IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 90.621 of the Commission's Rules, 47 C.F.R. § 1.106, 90.621, the Request for Reconsideration filed by UTC Spectrum Services on January 7, 2003, IS GRANTED IN PART AND DENIED IN PART, as indicated herein.

6. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, that application FCC File No. 0001030390 SHALL BE PROCESSED consistent with this *Order on Reconsideration* and the Commission's Rules.

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 Critical Infrastructure Division
Wireless Telecommunications Bureau