

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

In the Matter of Application of)	
)	
DIRECT CONNECT USA, INC.)	FCC File No. 0000837712
)	
And Request for Waiver of Sections 90.305,)	
90.307, and 90.309 of the Commission's)	
Rules for Use of Channel 19 Frequencies)	
Outside a 50-Mile Radius of Philadelphia, PA)	

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: November 29, 2005

Released: December 1, 2005

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

I. INTRODUCTION

1. In this *Memorandum Opinion and Order on Reconsideration*, we address a petition for reconsideration filed on November 3, 2003 by Mountain Broadcasting Corporation (Mountain).¹ Mountain seeks reconsideration of an October 3, 2003 action by the Wireless Telecommunications Bureau's (Bureau) former Public Safety and Private Wireless Division (Division)² granting a petition for reconsideration filed by Direct Connect USA, Inc. (Direct Connect).³ For the reasons stated below, we grant the Mountain petition in part and deny it in part.

II. BACKGROUND

2. On April 4, 2002, Direct Connect applied for authorization to add to its existing 470-512 MHz communications network a station in Mineola, New York, operating on frequencies within Television (TV) Channel 19 (500-506 MHz).⁴ In conjunction with its application, Direct Connect requested a waiver of Sections 90.305, 90.307, and 90.309 of the Commission's Rules.⁵ Waiver of Section 90.305 was required because the rule provides that land mobile radio base stations must be located not more than fifty miles from the geographic center coordinates of the nearest urban area in which the relevant TV channel is designated for land mobile radio use,⁶ but the proposed site was 97.33 miles from the Philadelphia, Pennsylvania reference coordinates.⁷ Waiver of Sections 90.307 and 90.309

¹ Mountain Broadcasting Corporation Petition for Reconsideration (filed Nov. 3, 2003) (Petition).

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 Rcd 25414, 25414 ¶ 2 (2003).

³ Direct Connect USA, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 19843 (WTB PSPWD 2003) (*MO&O*).

⁴ See FCC File No. 0000837712 (filed Apr. 4, 2002, amended May 2, 2002).

⁵ 47 C.F.R. §§ 90.305, 90.307, 90.309; see Request for Waiver, FCC Form 601 File No. 0000837712 (filed Apr. 4, 2002).

⁶ See 47 C.F.R. § 90.305(a).

⁷ Philadelphia is the nearest urban area in which TV Channel 19 is designated for land mobile radio use. See 47 C.F.R. § 90.303.

was needed because the rules provide that land mobile radio base stations with associated mobile units must be located at least ninety miles from adjacent channel TV stations,⁸ but the proposed site was closer than that to Stations WMBC-DT (Channel 18), WTXN-TV (Channel 20), and WUVN-TV (Channel 18). On July 1, 2002, Mountain, the permittee of Station WMBC-DT, filed informal comments stating that the application should not be granted without specific conditions to ensure the protection of adjacent channel television operations from harmful interference.⁹

3. On July 2, 2002, the Licensing and Technical Analysis Branch of the Bureau's former Commercial Wireless Division on its own motion denied Direct Connect's waiver request and dismissed the application.¹⁰ Subsequently, the Policy and Rules Branch of the Commercial Wireless Division dismissed Mountain's informal comments as moot.¹¹ On August 2, 2002, Direct Connect filed a petition for reconsideration of the denial of its waiver and dismissal of its application.¹² Mountain did not file an opposition to the petition for reconsideration.¹³

4. On October 3, 2003, the Division released its decision granting Direct Connect's petition for reconsideration. Specifically, the Division concluded that Direct Connect had satisfied the standard for waiver of Section 90.305 that the Commission adopted in its *Goosetown* decision,¹⁴ and that grant of the waiver request would be in the public interest. Under *Goosetown*, an applicant seeking a waiver in order to operate outside the eighty-mile area delineated in Section 90.305¹⁵ must demonstrate that it would provide full protection to any existing TV station, including allotments and pending applications for such stations, at the time the waiver request is filed.¹⁶ The applicant also must state that it is willing to accept a license on the basis of not interfering with existing and future TV stations.¹⁷ The Division reviewed Direct Connect's engineering, and conducted its own engineering analysis, and concluded that the proposed operations would provide full protection to existing TV stations.¹⁸ It also noted that Direct

⁸ See 47 C.F.R. §§ 90.307(d), 90.309(a) Table E note 3.

⁹ See Letter dated July 1, 2002 from Christopher G. Wood, counsel for Mountain Broadcasting Corporation, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC (received July 5, 2002). Entravision, licensee of Station WUVN-TV, also filed comments. Entravision Holdings, LLC Informal Objection to Application of Direct Connect USA, Inc. (filed May 23, 2002).

¹⁰ Dismissal Letter, Reference No. 1491658 (July 3, 2002).

¹¹ See Direct Connect USA, Inc., *Order*, 17 FCC Rcd 19579 (WTB CWD PRB 2002).

¹² Direct Connect USA, Inc. Petition for Reconsideration (filed Aug. 2, 2002). Direct Connect supplemented its petition on April 11, 2003. Direct Connect USA, Supplement to Petition for Reconsideration (filed Apr. 11, 2003).

¹³ It appears that Direct Connect did not serve the petition on Mountain. On September 25, 2002, Mountain requested that the Bureau not act on the petition without considering the matters raised in Mountain's informal comments to the application. See Letter dated Sept. 25, 2002 from Christopher G. Wood, counsel for Mountain Broadcasting Corporation, to John B. Muleta, Chief, Wireless Telecommunications Bureau, FCC. By this time, however, the Division had already adopted the *MO&O*.

¹⁴ *Goosetown Enterprises, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 12792 (2001) (*Goosetown*).

¹⁵ As noted above, Section 90.305 provides that land mobile radio base stations must be located not more than fifty miles (eighty kilometers) from the geographic center coordinates of the nearest urban area in which the relevant TV channel is designated for land mobile radio use. See 47 C.F.R. § 90.305(a). The rule also requires that mobile units operate within thirty miles (forty-eight kilometers) of their associated base station(s). See 47 C.F.R. § 90.305(b). Thus, the rule permits land mobile operations within eighty miles of the geographic center coordinates.

¹⁶ *Goosetown*, 16 FCC Rcd at 12797 ¶ 13.

¹⁷ *Id.* at 12798 n.46.

¹⁸ See *MO&O*, 18 FCC Rcd at 19845-46 ¶¶ 8-9.

Connect had satisfied the requirement that it agree not to interfere with existing and future TV stations.¹⁹ The Division also determined, based on these engineering analyses, that Direct Connect's proposed base station would satisfy all the protection criteria of Section 90.307.²⁰ This conclusion was based in part on Direct Connect's representation that it would limit the mobile operating range in the direction of WMBC-DT to 3.75 miles (5.95 kilometers) from the base station.²¹ Lastly, the Division noted that grant of the application and waiver request would be consistent with the public interest by increasing the availability and delivery of communications services – including the provision of non-switched, wide area network capabilities for public safety entities – throughout the greater New York metropolitan area.²²

5. Consequently, the Division granted Direct Connect's application on October 10, 2003, under Call Sign WPYR980. The license contains the following special condition: "Waiver of Rule Sections 90.305, 90.307 and 90.309, to permit use of Channel 19 frequencies outside a 50-mile radius of Philadelphia, is granted subject to the condition that the proposed operations will provide full interference protection to any existing full-power or low power TV station that is caused by the operation of the proposed system." The authorized service area for the mobile units is thirty miles (forty-eight kilometers) from the base station.

6. On November 3, 2003, Mountain filed a petition for reconsideration of the Division's action.²³ Mountain contends that the Division evaluated the application under the wrong standard, and incorrectly concluded that the proposed operations would satisfy the protection criteria of Section 90.307.²⁴ It also argues that Direct Connect did not meet the standard for a waiver of the Commission's rules, because the grant undermined the purpose of the rules, and Direct Connect did not demonstrate that a grant was in the public interest.²⁵ Finally, Mountain states that, in the event the grant is upheld, the license should contain more detailed conditions to ensure that Direct Connect does not cause interference to TV operations.²⁶

III. DISCUSSION

7. *Television protection criteria.* The engineering analysis supporting Direct Connect's waiver request concluded that the proposed operations would protect television operations because it met the technical parameters in Section 74.706(d)(2) of the Commission's Rules.²⁷ Mountain contends that this is not the proper standard, because Section 74.706(d)(2) addresses protection of digital TV (DTV) stations by low-power TV stations, rather than by land mobile radio stations.²⁸ Mountain argues that the

¹⁹ See *id.* at 19846 ¶ 10.

²⁰ See *id.* at 19846 ¶ 9.

²¹ See *id.* at 19846 n.28.

²² *Id.* at 19846-47 ¶ 11.

²³ Direct Connect filed an opposition on November 18, 2003. Opposition to Petition for Reconsideration (filed Nov. 18, 2003) (Opposition). Mountain filed a reply on December 1, 2003.

²⁴ Petition at 5-11.

²⁵ *Id.* at 11-16.

²⁶ *Id.* at 17-19.

²⁷ 47 C.F.R. § 74.706(d)(2) (low power TV, TV translator, or TV booster station application will not be accepted if the ratio of its field strength to that of an adjacent channel DTV station exceeds +48 dB).

²⁸ See Petition at 8. The *MO&O* does not indicate what standard the Division used in its engineering analysis, but Mountain believes that the Division also used the Section 74.706(d)(2) criteria. *Id.*

stricter standard set forth in Section 90.545,²⁹ which governs protection of DTV stations by 700 MHz public safety land mobile radio operations, is more appropriate.³⁰

8. We agree with Mountain that the Division should have evaluated the application pursuant to Section 90.545.³¹ Direct Connect submitted a revised engineering analysis in opposition to Mountain's petition to demonstrate that its proposed system satisfies the Section 90.545 criteria.³² In addition, we have performed our own analysis, which confirms that Direct Connect's base station satisfies the minimum desired signal to undesired signal ratios outlined in Section 90.545(a)(2). The rule provides that the minimum desired signal to undesired (D/U) signal ratio for adjacent channel stations is -23 dB at the DTV station's Grade B (41 dB μ V/m) contour. The engineering studies confirm that, given Station WPYR980's authorized technical parameters, the 64 dB μ V/m contour of Direct Connect's mobile units will not overlap Station WMBT-DT's 41 dB μ V/m contour, provided that the operating range in the direction of Station WMBC-DT is limited to 3.75 miles (5.95 kilometers) from the base station (which is approximately 4.4 miles outside the nearest point of WMBC-DT's 41 dB μ V/m DTV service contour).³³ Thus, we find that Direct Connect's authorized operation affords Mountain the requisite -23 dB D/U ratio.

9. *Waiver Standard.* We may grant a request for waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.³⁴ Mountain argues that grant of Direct Connect's waiver request frustrated the underlying purpose of the rules, which is to ensure that land mobile stations do not interfere with television stations operating on assigned TV frequencies.³⁵ We agree that the purpose of the restrictions on land mobile stations operating in the 470-512 MHz band is to protect over-the-air broadcast operations from harmful interference.³⁶ Here, because Direct Connect's revised engineering analysis demonstrates that its proposed operations will protect DTV reception from interference pursuant to Section 90.545(a)(2), we conclude that the underlying purpose of Sections 90.305, 90.307, and 90.309 would not be served by application of the rules in the instant case.

²⁹ 47 C.F.R. § 90.545(a)(2) (the minimum desired signal to undesired (D/U) signal ratio for adjacent channel stations is -23 dB at the DTV station's Grade B (41 dB μ V/m) contour (55 miles or 88.5 kilometers)).

³⁰ See Petition at 8-11.

³¹ Section 90.545(a)(2) was promulgated to protect UHF DTV stations from interference by land mobile radio stations operating on the 700 MHz band. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010; Establishment of Rules and Requirements For Priority Access Service, *First Report and Order and Third Notice of Proposed Rulemaking*, WT Docket No. 96-86, 14 FCC Rcd 152, 221-23 ¶¶ 153-55 (1998) (*Public Safety First Report and Order*). We previously concluded, however, that the minimum D/U ratios specified for the 700 MHz band in Section 90.545(a)(2) are also appropriate for land mobile operations on Channel 19. See Nassau County Police Department, 17 FCC Rcd 14252, 14259 n.67 (WTB PSPWD 2002). We find no reason to deviate from that precedent here.

³² See Opposition at Engineering Exhibit.

³³ Direct Connect reaffirms its commitment to this limitation. See Opposition at 7.

³⁴ 47 C.F.R. §§ 1.925(b)(3)(i)-(ii).

³⁵ See Petition at 16.

³⁶ See Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, *Notice of Proposed Rulemaking*, Gen. Docket No. 85-172, 101 F.C.C. 2d 852 (1985). The purpose of this rule is applicable to DTV because in 1998, in allocating DTV channels to replicate existing TV stations service areas, the Commission decided to allow public safety stations to provide the same field strength at the equivalent Grade B contour of the DTV station as they do for an analog TV station. See *Public Safety First Report and Order*, 14 FCC Rcd at 222 ¶ 155.

10. Mountain also contests the Division's conclusion that grant of the waiver was in the public interest. As Mountain points out, Direct Connect's waiver request made contradictory assertions: it stated that the operating range in the direction of Station WMBC-DT would be limited to 3.75 miles (5.95 kilometers) from the base station in order to prevent interference, but it also stated that grant of the waiver would be in the public interest because it would enhance its ability to serve mobiles in lower Manhattan, which is more than 3.75 miles from Mineola and lies between Mineola and the site of Station WMBC-DT.³⁷ Mountain states that the Division's decision is flawed, because it relied on both contradictory assertions.³⁸ We disagree, because the Division did not rely on the prospect of enhanced service in Manhattan when it granted the waiver request. Rather, it stated that grant was in the public interest because it would enhance communications in "the greater New York metropolitan area."³⁹

11. *Condition language.* Finally, Mountain states that the Division should impose a "more detailed condition" on Direct Connect's proposed operations to ensure that the applicant will not "interfer[e] with existing and future full power and low power TV stations."⁴⁰ Mountain speculates that the Division deemed itself limited to the condition it imposed because that was the language used in *Goosetown*.⁴¹ On the contrary, we are aware that the language of *Goosetown* does not limit the conditions that can be placed on a license granted pursuant to a waiver of Section 90.305.⁴² The condition "that the proposed operations will provide full interference protection to any existing full-power or low power TV station that is caused by the operation of the proposed system" simply was deemed sufficient under the circumstances. Because Direct Connect's proposal demonstrated that it would provide full protection to WMBC-DT, and given Direct Connect's acceptance of an authorization conditioned on non-interference, we are neither compelled out of necessity nor required by precedent to impose more detailed operating conditions on Direct Connect's existing authorization, as Mountain now asserts. However, we will modify the condition to clarify our intention that Direct Connect accept interference from TV stations, as well as not cause interference. In addition, in order to eliminate any possible uncertainty regarding Direct Connect's permitted operations, we will add the following condition to the license for Station WPYR9890 to reflect the limitation on the mobile operating range: "Licensee must take steps to prevent its mobile units from operating more than 3.75 miles (5.95 kilometers) from Location 1 in the direction of TV Station WMBC-DT." In all other respects, we continue to believe that the existing condition language is proper and sufficient.⁴³

³⁷ See Petition at 11-12.

³⁸ *Id.* at 12-13.

³⁹ See *MO&O*, 18 FCC Rcd at 19847 ¶ 11. Mountain also argues that Direct Connect did not demonstrate that a waiver was in the public interest because it only expressed an interest in providing service to public safety entities, but is not required to provide such service. See Petition at 15. We note, however, that Direct Connect's assertions were similar to those of the petitioner in *Goosetown*, which the Commission deemed sufficient to conclude that a waiver would be in the public interest. See *Goosetown*, 16 FCC Rcd at 12795 ¶ 11.

⁴⁰ See Petition at 18.

⁴¹ *Id.*

⁴² See County of York, Pennsylvania, *Order*, 19 FCC Rcd 24425, 24429 ¶ 12 (WTB PSCID 2004) (imposing additional conditions).

⁴³ Mountain states that the scope of the condition imposed on Direct Connect is ambiguous with regard to whether Direct Connect must be clarified in order to protect (1) not only analog TV stations, but also DTV stations; (2) facilities authorized by DTV construction permits that are either built or not yet operating at maximum reach; and (3) DTV facilities that are later modified. Petition at 18-19. We do not believe that any modification of the current language in this regard is needed.

IV. CONCLUSION AND ORDERING CLAUSES

12. In consideration of the totality of the record, we decline to disturb the Division's decision granting Direct Connect's request for waiver of the Commission's Rules associated with its application for authorization of Station WPYR980, Mineola, New York. Specifically, we find that, as supplemented by its revised engineering analysis, Direct Connect has demonstrated that its proposed operations will not cause harmful interference to Station WMBC-DT, and therefore a waiver of the relevant Commission Rules would not frustrate the underlying purpose of the Commission's Rules. We will, however, modify the condition on Direct Connect's license to reflect its proposed limitation on its mobile operating range.

13. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 309, 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 337(c), and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Mountain Broadcasting Corporation, on August 22, 2002, IS GRANTED IN PART AND DENIED IN PART to the extent indicated herein.

14. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the license for Station WPYR980, Mineola, New York, SHALL BE MODIFIED to include the following special conditions:

--"Waiver of Rule Sections 90.305, 90.307 and 90.309, to permit use of Channel 19 frequencies outside a 50-mile radius of Philadelphia, is granted subject to the condition that the licensee must accept interference from full-power or low power TV stations."

--"Licensee must take steps to prevent its mobile units from operating more than 3.75 miles (5.95 kilometers) from Location 1 in the direction of TV Station WMBC-DT."

15. 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

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