

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

In the Matter of)
)
LONG BEACH UNIFIED SCHOOL DISTRICT)
Licensee of Industrial/Business Private Land)
Mobile Radio Station WNIT941, Signal Hill,)
California)
)
and)
)
FCI 900, INC.)
Licensee of Industrial/Business Private Land)
Mobile Radio Stations WPKX764 and WPSL997,)
Nob Hill, California)

ORDER PROPOSING MODIFICATION

Adopted: June 2, 2006

Released: June 5, 2006

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

1. *Introduction.* On August 21, 2003, the Long Beach Unified School District (Long Beach)¹ requested that the Commission rescind the grant of the license for 800 MHz Industrial/Business Private Land Mobile Radio Station WPSL997, Nob Hill, California. For the reasons set forth below, we initiate a proceeding to modify the licenses for Station WPSL997 and Station WPKX764, Nob Hill, California, to delete frequency pair 935/896.225 MHz.

2. *Background.* Under the Commission's Rules, co-channel stations in the 935-940 MHz band must be separated by at least seventy miles unless the prior licensee concurs or the applicant provides an analysis demonstrating that the proposed station meets certain transmitter power and antenna criteria for short spacing.² Long Beach has been authorized to operate conventional Industrial/Business Station WNIT941 at Signal Hill, California on frequency pair 935/896.225 MHz since at least 1987. On August 1, 1995, Jack Aguilar (Aguilar) was authorized to operate trunked Industrial/Business Station WPHN783 at a site on Nob Hill, California, on, *inter alia*, the same frequency pair.³ On September 11, 1997, Radiowave Communications (Radiowave) was authorized to operate trunked Industrial/Business Station WPKX764 at the same site on, *inter alia*, the same frequency pair.⁴ On June 18, 2001, RF Pocketcomm

¹ Letter dated August 19, 2003 from Frederick J. Day, counsel for Long Beach Unified School District to Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (Long Beach Request). 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).

² *See* 47 C.F.R. § 90.621(b).

³ *See* FCC File No. 696328.

⁴ *See* FCC File No. D065398.

was authorized to operate trunked Industrial/Business Station WPSL997 at the same site on, *inter alia*, the same frequency pair.⁵ The Nob Hill stations appear to be part of a trunked community repeater. Although the Signal Hill and Nob Hill sites are approximately sixty-six miles apart, Aguilar, Radiowave, and RF Pocketcomm did not obtain Long Beach's concurrence or submit a short-spacing analysis.

3. On February 1, 2002, Long Beach's license for Station WNIT941 was modified to add a transmitter operating on frequency pair 935/896.225 MHz on a secondary basis at the Long Beach Water Department Tank Farm (Tank Farm), approximately sixty-eight miles from Nob Hill.⁶ The Long Beach application included a letter from RF Pocketcomm agreeing to Long Beach being licensed on a non-interfering basis, but did not include concurrence from Radiowave.⁷ Long Beach indicates that it was not aware of any co-channel stations on Nob Hill until it sought to add the Tank Farm site, and was informed by its frequency coordinator that it needed RF Pocketcomm's concurrence.⁸

4. On August 21, 2003, Long Beach requested that the Commission rescind the grant of RF Pocketcomm's license for Station WPSL997, on the grounds that the station violates the co-channel separation requirements of Section 90.621(b) of the Commission's Rules, and neither the applicant nor PCIA performed the requisite short-spacing analysis or obtained Long Beach's concurrence.⁹ RF Pocketcomm responded that Long Beach should not have been authorized to operate on frequency pair 935/896.225 MHz at Signal Hill because the co-channel Nob Hill community repeater was licensed first, and that Long Beach should not have been authorized to operate at the Tank Farm without Radiowave's concurrence.¹⁰ RF Pocketcomm also pointed out that Long Beach did not claim to have received any interference from the Nob Hill community repeater.¹¹ Long Beach replied that it is nonetheless harmed by the existence of the co-channel Nob Hill licenses because it has to obtain concurrence in order to expand or modify its system.¹²

5. On April 6, 2005, the Wireless Telecommunications Bureau's Public Safety and Critical Infrastructure Division (Division) sent a letter to the Personal Communications Industry Association

⁵ See FCC File No. 0000414489.

⁶ See FCC File No. 0000654029.

⁷ Aguilar's license for Station WPHN783 had expired by this time.

⁸ See Long Beach Request at 2; *see also* Reply to Opposition filed by Long Beach Unified School District at 4 (dated Sept. 16, 2003).

⁹ Long Beach Request at 1-2.

¹⁰ See Opposition filed by James L. Crawford d/b/a RF Pocketcomm at 3-5 (filed Sept. 4, 2003). RF Pocketcomm's assertion that the Nob Hill community repeater was licensed before Station WNIT941 appears to be based on the fact that the license for Long Beach's current Signal Hill location was granted on February 16, 2000. We note, however, that Long Beach was previously authorized to operate on Signal Hill, and modified its license in 2000 to relocate the transmitter approximately two hundred feet. See FCC File No. A040430 (filed Nov. 30, 1999). Even before the relocation, Station WNIT941 was within seventy miles of the Nob Hill community repeater.

¹¹ Further Opposition filed by James L. Crawford d/b/a RF Pocketcomm at 2 (filed Oct. 8, 2003).

¹² Reply to Further Opposition filed by Long Beach Unified School District (filed Oct. 21, 2003).

(PCIA),¹³ with copies to RF Pocketcomm and its counsel, regarding Long Beach's request.¹⁴ The Division concluded, based on the record before it, that PCIA's coordination of RF Pocketcomm's application to use frequency pair 935/896.225 MHz at Nob Hill did not comply with the Commission's co-channel separation requirements.¹⁵ PCIA was instructed to respond within thirty days with a recommended solution to the short-spacing situation created by the grant of these applications.¹⁶ RF Pocketcomm was requested to then indicate whether it would voluntarily file an application to modify its license in accordance with PCIA's recommendation.¹⁷ The Division stated that if the situation could not be resolved by voluntary license modification, license modification under Section 316(a) of the Communications Act of 1934, as amended,¹⁸ might provide the appropriate vehicle for resolving this matter.¹⁹

6. On May 3, 2005, PCIA recommended modifying the license for Station WPSL997 by deleting frequency pair 935/896.225 MHz.²⁰ In support of its recommendation, PCIA stated there were no assignable replacement frequencies available, and attempts to short space pursuant Section 90.621 of the Commission's Rules²¹ were not successful.²² The Division received no response from RF Pocketcomm indicating whether it would voluntarily file an application to modify its license in accordance with PCIA's recommendation.

7. On October 19, 2005, Radiowave filed an application to assign the license for Station WPKX764 to FCI 900, Inc. (FCI 900).²³ On October 20, 2005, RF Pocketcomm filed an application to assign the license for Station WPSL997 to FCI 900.²⁴ The Division consented to the WPSL997

¹³ PCIA coordinated the Aguilar, Radiowave, and RF Pocketcomm applications. PCIA Coordination Nos. 942900905, 963300081, 210470516. PCIA also coordinated Long Beach's modification application. PCIA Coordination No. 20012270010.

¹⁴ Letter dated April 6, 2005 from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, to Don Andrew, Personal Communications Industry Association, Frequency Coordination Department (Division Letter).

¹⁵ *Id.* at 2-3.

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 3.

¹⁸ 47 U.S.C. § 316(a).

¹⁹ Division Letter at 3.

²⁰ *See* Letter dated May 3, 2005 from Don Andrew, Manager, PCIA Frequency Coordination Services to Melvin Spann and Tracy Simmons, Federal Communications Commission at 2 (PCIA Letter).

²¹ 47 C.F.R. §90.621(d).

²² *See* PCIA Letter at 2.

²³ FCC File No. 0002352370.

²⁴ FCC File No. 0002349509.

assignment on October 21, 2005, and it was consummated on January 18, 2006.²⁵ The Division consented to the WPKX764 assignment on November 3, 2005, and it was consummated on February 13, 2006.²⁶

8. *Discussion.* We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.²⁷ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.²⁸ In this connection, we note that deleting frequency pair 935/896.225 MHz from FCI 900's licenses for Stations WPSL997 and WPKX764 should not unduly disrupt FCI 900's operations, because operations could continue on the other frequency pairs authorized to those stations. Thus, we believe that a modification of the FCI licenses to delete the subject frequency pair without authorizing a replacement frequency pair is appropriate.

9. Consequently, we propose to modify FCI's licenses for Stations WPSL997 and WPKX764 to delete frequency pair 935/896.225 MHz. Trunked operation requires at least two frequency pairs and removal of this frequency pair from FCI's licenses would leave four frequency pairs on the licenses. In accordance with Section 1.87(a) of the Commission's Rules,²⁹ we will not issue a modification order until FCI 900 has received notice of our proposed action and has had an opportunity to file a protest. To protest the modification, FCI 900 must, within thirty days of the release date of this *Order Proposing Modification*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, DC 20554.³⁰ If no protest is filed, FCI 900 will waive its right to protest the modification, and will be deemed to have consented to the modification.

10. *Conclusion and Ordering Clauses.* For the reasons stated above, we conclude that the coordination of the applications resulting in the grant of licenses for Stations WPSL997 and WPKX764, Nob Hill, California, to operate on frequency pair 935/896.225 MHz was defective. Accordingly, we propose to modify FCI 900's licenses for Station WPSL997 and WPKX764 to delete authority for frequencies 896.225 MHz and 935.225 MHz.

11. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R.

²⁵ FCC File No. 0002452244.

²⁶ FCC File No. 0002481738.

²⁷ 47 U.S.C. § 316(a)(1).

²⁸ *Id.*

²⁹ 47 C.F.R. § 1.87(a).

³⁰ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

§ 1.41, that the informal request submitted by the Long Beach Unified School District on August 19, 2003 IS GRANTED to the extent indicated above.

12. IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the licenses of FCI 900 Inc. for Private Land Mobile Radio Service Stations WPSL997 and WPKX764, Nob Hill, California, BE MODIFIED by deleting frequency pair 935/896.225 MHz.

13. IT IS FURTHER ORDERED that this *Order Proposing Modification* shall be sent by certified mail, return receipt requested, to FCI 900, Inc., 2001 Edmund Halley Dr., Reston, VA 20191, Attn: Robin J. Cohen.

14. 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

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau