

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

In the Matter of	)
	)
NORTHERN INDIANA PUBLIC SERVICE COMPANY	)
	)
Petition for Revocation of the License of ESP Leasing Corp. for Private Land Mobile Radio Station WPRM224, Chicago, Illinois	)
	)
and	)
	)
ESP LEASING CORP.	)
	)
Licensee of Station WPRM224, Chicago, Illinois	)

**ORDER**

**Adopted: June 2, 2006**

**Released: June 5, 2006**

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

1. *Introduction.* In this *Order*, we direct ESP Leasing Corp. (ESP) to file an application to modify its license for private land mobile radio (PLMR) Industrial/Business Pool Station WPRM224, Chicago, Illinois. Specifically, ESP must revise the technical parameters of ESP's authorization on frequency pair 936/897.7500 MHz by changing the authorized location, or the frequency pair will be deleted from the license as proposed in the *Order Proposing Modification* in this proceeding.

2. *Background.* Section 316(a)(1) of the Communications Act of 1934, as amended, permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.<sup>1</sup> In an *Order Proposing Modification* released February 10, 2005, the Public Safety and Critical Infrastructure Division (Division) of the Wireless Telecommunications Bureau proposed to delete frequency pair 936/897.7500 MHz from ESP's license for Station WPRM224.<sup>2</sup> The Division proposed this action in response to a request filed by Northern Indiana Public Service Company (NIPSCO), licensee of PLMR Industrial/Business Pool Station WNVR291, Crown Point, Indiana.<sup>3</sup> After examining the matter, the Division concluded that ESP's application<sup>4</sup> for authorization to operate on frequency pair 936/897.7500 MHz at the Sears Tower in Chicago should not have been granted because such action authorized operation within 113 kilometers of NIPSCO's co-channel station, in violation of Section

<sup>1</sup> 47 U.S.C. § 316(a)(1).

<sup>2</sup> See Northern Indiana Public Service Company and ESP Leasing Corp., *Memorandum Opinion and Order*, 20 FCC Rcd 2398 (WTB PSCID 2005) (*Order*).

<sup>3</sup> See Petition for Revocation, filed by Northern Indiana Public Service Company on February 17, 2004.

<sup>4</sup> FCC File No. A061624.

90.621(b)(4) of the Commission's Rules.<sup>5</sup> The Division noted that the application apparently was approved because other community repeater users already were authorized to operate on frequency pair 936/897.7500 MHz at the Sears Tower.<sup>6</sup> The Division noted, however, that those licensees should not have been permitted to relocate those operations to that site (from their original location in Gilberts, Illinois) because they were short-spaced to NIPSCO's co-channel Station WNVR291.<sup>7</sup> As NIPSCO requested, the Division proposed to modify ESP's license pursuant to Section 316 by deleting frequency pair 936/897.7500 MHz. In this connection, the Division noted its belief that a frequency pair deletion is appropriate to preserve the existing coverage areas of affected parties and prevent harmful interference.<sup>8</sup>

3. *Discussion.* In accordance with Section 1.87(a) of the Commission's Rules, the Division afforded ESP the opportunity to file a protest within thirty days of the release of the *Order Proposing Modification*.<sup>9</sup> On March 14, 2005, ESP filed an opposition to the proposed modification.<sup>10</sup> ESP contends that deletion of its frequency pair would be unduly disruptive to its operations, and that such modification is not in the public interest because ESP would suffer irreparable harm.<sup>11</sup> It asserts that NIPSCO can be protected from co-channel interference by less drastic means. Specifically, ESP proposes that its license be modified with respect to its authorization on base frequency 936.7500 MHz to either require a directional antenna pattern facing away from NIPSCO's co-channel facility, or to relocate the base station to Gilberts, Illinois.<sup>12</sup>

4. ESP is currently authorized to operate omnidirectionally.<sup>13</sup> It operates three antennas on the Sears Tower, facing north, south, and west.<sup>14</sup> ESP proposes to cease operation on the south-facing antenna, and reorient its west-facing antenna from 270° to 300°.<sup>15</sup> ESP provides an engineering analysis indicating that the resulting 22 dBμ interference contour would not overlap NIPSCO's 40 dBμ service contour.<sup>16</sup> ESP states that it is willing to accept an express condition that its continued operation of frequency 936.7500 MHz is subject to its continued prevention of harmful interference to NIPSCO as currently licensed.<sup>17</sup>

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<sup>5</sup> See *Order*, 20 FCC Rcd at 2398-99 ¶ 3 (citing 47 C.F.R. § 90.621(b)(4)). The rule provides that a spacing of at least 113 kilometers be maintained between co-channel stations, but the NIPSCO and ESP base stations are separated by only 56.3 kilometers.

<sup>6</sup> *Id.* at 2400 ¶ 6.

<sup>7</sup> *Id.* at 2401 ¶ 7.

<sup>8</sup> See *id.* at 2401 ¶ 8.

<sup>9</sup> *Id.* at 2401 ¶ 9.

<sup>10</sup> See *Opposition to Proposed Modification*, filed by ESP Leasing Corp. on March 14, 2005 (Protest).

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

<sup>12</sup> *Id.* at 1-2.

<sup>13</sup> See *id.* at 2.

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

<sup>15</sup> *Id.*

<sup>16</sup> See *Protest*, attached Statement of Klaus Bender, P.E.

<sup>17</sup> See *Protest* at 3-4.

5. On March 29, 2005, NIPSCO filed comments.<sup>18</sup> NIPSCO maintains that the Commission should delete frequency pair 936/897.7500 MHz from ESP's license as proposed in the *Order Proposing Modification*.<sup>19</sup> NIPSCO casts doubt on whether ESP could modify its Sears Tower operations as it proposes, because it is generally the case that multiple parties share antennas at the Sears Tower.<sup>20</sup> In its April 13, 2005 reply comments,<sup>21</sup> ESP reaffirms its request to modify its license to specify the directional antenna pattern as discussed in its March 14, 2005 filing,<sup>22</sup> but does not respond to NIPSCO's concerns regarding obstacles to reorienting the west-facing antenna. If it is not possible to modify ESP's license in this fashion, ESP requests to relocate its base transmitter back to the coordinates where the channel was originally licensed to ESP's predecessors.<sup>23</sup>

6. After reviewing the record in this proceeding, we conclude that modifying ESP's authorization to operate at the Sears Tower as proposed by ESP is not likely to resolve this matter. First, we are not persuaded that ESP can reorient the west-facing antenna as it proposes. Further, as both parties acknowledge, such a solution would require joint testing to confirm that the interference had been eliminated. Given that joint tests between the parties in 2002 did not resolve the interference,<sup>24</sup> and the parties disagree regarding how such testing should be performed,<sup>25</sup> we are not encouraged to believe that testing could be conducted to the satisfaction of all parties.

7. On the other hand, we do not wish to disrupt ESP's operations by deleting frequency pair 936/897.7500 MHz from the license for Station WPRM224 if a less drastic means is available. Therefore, we believe that ESP's alternate proposal best serves the interests of both parties. Specifically, relocating ESP's base transmitter operations on frequency 936.7500 MHz to the coordinates where the channel was originally licensed to ESP's predecessors would resolve the short-spacing issue<sup>26</sup> and preserve ESP's use of the frequency. We will afford ESP ninety days to file an appropriate modification application. If no such application is filed within that time, we will modify the license to delete frequency pair 936/897.7500 MHz from the license, as proposed in the *Order Proposing Modification*.

8. ACCORDINGLY, IT IS ORDERED that, 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, ESP Leasing Corp. shall, within ninety (90) days of the release date of this *Order*, file an

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<sup>18</sup> Comments to Opposition to Proposed Modification, filed by NIPSCO on March 29, 2005 (NIPSCO Comments).

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 5.

<sup>21</sup> Reply to Comments, filed by ESP Leasing Corp. on April 13, 2005 (ESP Reply).

<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.*

<sup>24</sup> NIPSCO Comments at 6; *see also* Protest at 3 n.4. During the testing in 2002, apparently ESP represented to NIPSCO that the south-facing antenna was shut off, while the west-facing antenna was oriented at 270°. Now ESP is unable to verify whether the south-facing antenna was shut off, or simply reduced in power. In any event, NIPSCO received interference.

<sup>25</sup> *Compare* NIPSCO Comments at 5 (ESP must complete joint tests prior to any further operations on frequency 936.7500 MHz) *with* ESP Reply at 4 (joint testing should be conducted after commencement of modified operations, in order to reflect a real world environment).

<sup>26</sup> The Gilberts, Illinois site is located 114.5 kilometers from NIPSCO's Crown Point, Indiana site.

application to modify its license for Station WPRM224 to relocate its operations on frequency 936.7500 MHz to coordinates 42-06-20 N/88-22-46 W. If no such application is filed within that time, the license for Station WPRM224 SHALL BE MODIFIED to delete frequency pair 936/897.7500 MHz from the authorization.

9. IT IS FURTHER ORDERED that this *Order of Modification* shall be sent by certified mail, return receipt requested, to ESP Leasing Corp., 9126 Ogden Ave., Brookfield, Illinois 60513.

10. 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