

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

In re Matter of)
WGN COTINENTAL) File Nos. 0002302206; 0002302188
BROADCASTING COMPANY)
Applications To Modify Television Intercity Relay)
Stations WMV472 and WMV474, Washington,)
DC)

MEMORANDUM OPINION AND ORDER

Adopted: December 14, 2006

Released: December 15, 2006

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On September 6, 2005, WGN Continental Broadcasting Company (WGN) filed applications to modify TV Intercity Relay Stations WMV472 and WMV474, Washington, DC. WGN requested waivers of Sections 1.924 and 1.929 of the Commission's Rules to permit the Commission to process the applications because the applications proposed modifications to stations licensed for fixed microwave operations in the 17.8-19.7 GHz band (18 GHz band) within a protected coordination area in and around Washington, DC. For the reasons discussed below, we grant a waiver of Section 1.924 of the Commission's Rules.

II. BACKGROUND

2. WGN is an indirect, wholly owned subsidiary of the Tribune Company and licensee of Station WGN-TV, Chicago, Illinois. Since 1995, WGN has operated two collocated, 18 GHz microwave relay stations - Stations WMV472 and WMV474 - at 1325 G Street, NW, Washington, D.C. to relay video and related data from the Hart Senate Office Building to Tribune's Washington D.C. News Bureau (D.C. News Bureau). The broadcast news operation in the D.C. News Bureau provides up-to-the-minute

1 See File Nos. 0002302206; 0002302188 (Sept. 6, 2005). WGN amended its applications for both stations on September 16, 2005. See File Nos. 0002302206; 0002302188 (Sep. 16, 2005). We herein refer to the amended applications, collectively, as Applications.

2 See FCC File 0002302206, Request for Waiver (Sept. 6, 2005); FCC File 0002302188, Request for Waiver (Sept. 6, 2005). WGN filed amended waiver requests on September 16, 2005. See FCC File 0002302206, Amended Request for Waiver (Sept. 16, 2005); FCC File 0002302188, Amended Request for Waiver (Sept. 16, 2005). We herein refer to the waiver requests, as amended, as Waiver Requests.

3 47 C.F.R. §§ 1.924, 1.929.

4 Waiver Requests at 1.

5 See Waiver Requests at 1-2.

news reports 24 hours a day to Tribune's television stations.⁶ According to WGN, Stations WMV472 and WMV474 play a vital role in the production of over 200 television news stories each week at the D.C. News Bureau for distribution to over 20 Tribune television stations across the country that originate local news broadcasts.⁷ In order to do so, WGN explains that reporters utilize "the vast network of cable and fiber drops Tribune has installed around Capitol Hill and the two microwave relays at issue here to transmit this news footage back to the D.C. News Bureau."⁸

3. Tribune is relocating its D.C. News Bureau from its current location at 1325 G Street, NW to a larger facility at 1025 F Street, NW.⁹ In conjunction with the move of its D.C. News Bureau, WGN filed applications to modify Stations WMV472 and WMV474.¹⁰ In preparing these applications, WGN discovered that the coordinates of the receive sites specified in the licenses for Stations WMV472 and WMV474 were incorrect.¹¹ Specifically, rather than showing the receive sites at the current location of the D.C. News Bureau on 1325 G Street, NW (NAD 83 coordinates 38-53-54 N; 77-01-50.3 W),¹² the receive sites specified in the licenses are located at 17th and Independence Avenue, NW (NAD 83 coordinates 38-53-15.4 N; 77-02-27.9 W).¹³

4. Section 1.924(e) of the Commission's Rules¹⁴ creates quiet zones, or permanent exclusion and coordination zones, for fixed microwave operations in the 18 GHz band in and around Washington, D.C. and Denver, Colorado to protect sensitive government satellite operations.¹⁵ In accordance with Section 1.924(e)(3) of the Commission's Rules,¹⁶ no application seeking authority to operate a microwave facility in the 18 GHz band will be accepted for filing if the proposed station will operate within 20 kilometers of the coordinates specified in the rule.¹⁷ In the Washington area, the specified coordinates (NAD 83 coordinates 38-48-00 N; 76-52-00 W)¹⁸ are located inside Andrews Air Force Base (AFB) in Maryland.¹⁹ The Hart Building is less than 16 km from the specified site at Andrews AFB.²⁰

⁶ See Waiver Requests at 1-2.

⁷ See Waiver Requests at 2.

⁸ Waiver Requests at 3.

⁹ See Waiver Requests at 1.

¹⁰ See File Nos. 0002302206; 0002302188 (Sept. 6, 2005). WGN amended its applications for both stations on September 16, 2005. See FCC Files 0002302206; 0002302188 (Sept. 16, 2005). We herein refer to the amended applications, collectively, as applications.

¹¹ See Waiver Requests at 6. WGN concedes that the original applications incorrectly identified the coordinates of the receive sites. See Waiver Requests at 6.

¹² See Waiver Requests at 6.

¹³ See License for Station WMV472 (issued Mar. 14, 1995); License for Station WMV474 (issued Mar. 14, 1995).

¹⁴ 47 C.F.R. § 1.924(e).

¹⁵ See 47 C.F.R. § 1.924(e); Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service from the 18 GHz Band to the 24 GHz Band and to Allocate the 24 GHz Band for Fixed Service, ET Docket No. 97-99, *Order*, 13 FCC Rcd 3581 (1997) (*18 GHz Order*).

¹⁶ 47 C.F.R. § 1.924(e)(3).

¹⁷ See 47 C.F.R. § 1.924(e)(3).

¹⁸ See 47 C.F.R. § 1.924(e)(3).

¹⁹ We may herein reference the distance between the proposed relocation site for the subject stations and the coordinates specified in 47 C.F.R. § 1.924(e)(3) in terms of the distance from Andrews AFB.

5. On September 6, 2005, WGN requested a waiver of Sections 1.924 of the Commission's Rules to permit the processing of the applications to modify Stations WMV472 and WMV474.²¹ WGN amended the applications and the waiver requests on September 16, 2005.²²

6. WGN contends that Section 1.924(e)(3) of the Commission's Rules²³ is inapplicable to the subject applications or, in the alternative, that the Commission should grant WGN's requests for waivers of the rule.²⁴ First, WGN argues that that the rule does not apply to the underlying modification applications because the subject stations pre-date the Commission's adoption of Section 1.924(e)(3) of the Commission's Rules in 1997.²⁵ According to WGN, the Commission's purpose in adopting the rule was to minimize potential interference to Government operations.²⁶ WGN contends, "there was and is no 'potential interference' to minimize because these microwaves were already in operation and have remained in operation without complaint since the rule was adopted."²⁷ WGN further contends that the subject applications "will not alter the interference characteristics of these microwave operations in any material way" because the applications propose only one modification to the technical parameters of Stations WMV472 and WMV474 – a 0.8 degree change in transmitter antenna azimuth from the Hart Building.²⁸

(...continued from previous page)

²⁰ See Waiver Requests at 4.

²¹ WGN also requested waivers of 47 C.F.R. § 1.929(d)(1)(ix). See Waiver Requests at 6-7. Pursuant to 47 C.F.R. § 1.929(d)(1)(ix), any change in transmit antenna azimuth greater than 1 degree is considered a major modification to an existing microwave facility. We find it unnecessary to address WGN's arguments for waivers of 47 C.F.R. § 1.929(d)(1)(ix). Our action in the instant *Memorandum Opinion and Order* is sufficient to permit the Commission to process the subject applications.

²² WGN amended the applications to correct an error in the reported height above ground level (AGL) of the transmit antenna. Specifically, WGN explained that the "transmit antenna is and will remain at the same 30.5 meters AGL as shown on the current licenses for WMV472 and WMV474. Accordingly, the response to Question Number 7 in Schedule I, Supplement 2 has been corrected to 30.6 meters from 43.6 meters." File No. 0002302206, Explanation Regarding Amendment (Sept. 16, 2005); File No. 0002302188, Explanation Regarding Amendment (Sept. 16, 2005). The Waiver Requests were also amended to note, for example, that the applications underwent more stringent interference coordination than otherwise necessary because Comsearch coordinated the applications at the higher transmit antenna AGL of 43.6 meters. See *id.*

²³ 47 C.F.R. § 1.924(e)(3).

²⁴ See Waiver Requests at 4.

²⁵ See Waiver Requests at 4.

²⁶ See Waiver Requests at 5. WGN further notes that the text of 47 C.F.R. § 1.924(e)(3) suggests that the Commission's purpose was directed at applications for "new authority within the restricted 20 kilometer zone rather than applications proposing to modify previously-approved microwave relays already in operation." Waiver Requests at 5.

²⁷ Waiver Requests at 5.

²⁸ Waiver Requests at 5. The use of the coordinates of the receive sites at the current location of the D.C. News Bureau on 1325 G Street, NW (NAD 83 coordinates 38-53-54 N; 77-01-50.3 W) results in the calculation of a 0.8 degree change in transmitter antenna azimuth from the Hart Building. However, if the coordinates of the receive sites specified in the licenses are used, the proposed change in the transmit antenna azimuth from the Hart Building is 24.6 degrees.

7. Alternatively, WGN contends that the Commission should grant its requests for waivers of Section 1.924(e)(3) of the Commission's Rules.²⁹ Specifically, WGN argues that the strict application of the rule in this instance will not advance the Commission's underlying "purpose to prevent sensitive government satellite operations from potential interference because the microwave facilities at issue were already in use when the rule was adopted in 1997 and have remained in use since without any known interference complaints."³⁰ WGN notes that Stations WMV472 and WMV474 remain useful only as a short haul system in part because they operate with very low power and that the radiation from both microwave operations, as modified, will continue to be directed away from the Andrews AFB.³¹ WGN therefore concludes that, "[t]hese technical parameters, combined with 10 years of uninterrupted operation without any interference complaints, clearly demonstrate that strict application of the rule here is not necessary to protect the Andrews AFB earth station/satellite operation from interference and that a waiver of the rule should accordingly be granted."³²

III. DISCUSSION

8. Section 1.925(b)(3) of the Commission's Rules³³ provides that a waiver of the Commission's Rules may be granted if it is shown that either (1) 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 (2) in view of the unique or unusual 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.³⁴ For the reasons discussed below, we conclude that a waiver of Section 1.924(e)(3) of the Commission's Rules³⁵ is warranted.

9. Initially, we reject WGN's argument that Section 1.924(e)(3) of the Commission's Rules does not apply to the Applications. The rule states, "no application seeking authority to operate in the 17.8-19.7 GHz band will be accepted for filing if the proposed station is located within 20 km . . . of the following coordinate[s]: . . . Washington, DC area: 38°48'00" N. Lat./76°52'00" W. Long."³⁶ The Applications clearly seek authority to operate in that band and within the area prescribed by that rule. Moreover, WGN fails to cite to any order language or case precedent that supports its interpretation that the rule does not cover modifications to existing facilities. Accordingly, we conclude that a waiver of Section 1.924(e)(3) of the Commission's Rules is required.

²⁹ See Waiver Requests at 5-6.

³⁰ See Waiver Requests at 5.

³¹ See Waiver Requests at 5-6.

³² Waiver Requests at 6.

³³ 47 C.F.R. § 1.925(b)(3).

³⁴ *Id.*; see also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 409 U.S. 1027 (1972).

³⁵ 47 C.F.R. § 1.924(e)(3).

³⁶ 47 C.F.R. § 1.924(e)(3). The language of the rule was adopted by the Commission in the *18 GHz Order* as part of a proceeding initiated pursuant to a request from the NTIA, on behalf of the Department of Defense, to protect Government Earth stations in the 18 GHz band in the Washington, DC, and Denver, CO, areas in the interest of national security. See *18 GHz Order*, 13 FCC Rcd at 3581 ¶ 2. Specifically, the Commission established coordination and *permanent exclusion zones* for the 18 GHz band. See *18 GHz Order*, 13 FCC Rcd at 3582 ¶ 4. Whereas the coordination zones in those areas are set-forth in 47 C.F.R. § 1.924(e)(1)-(2), the permanent exclusion zones for the 18 GHz band are set-forth in 47 C.F.R. § 1.924(e)(3). See 47 C.F.R. § 1.924(e); see also *18 GHz Order*, 13 FCC Rcd at 3584, Appendix.

10. We find that WGN has justified a waiver of Section 1.924(e)(3) of the Commission's Rules³⁷ under the first prong of the waiver standard. The underlying purpose of the rule would not be served by application to the instant case.³⁸ Section 1.924(e) of the Commission's Rules³⁹ creates quiet zones, or permanent exclusion and coordination zones, for fixed microwave operations in the 18 GHz band in and around Washington, D.C. and Denver, Colorado to protect sensitive government satellite operations.⁴⁰ The instant Applications fall within the 20-kilometer quiet zone created by Section 1.924(e)(3) of the Commission's Rules to protect sensitive Government satellite Earth stations in the Washington D.C. area.⁴¹ However, Stations WMV472 and WMV474 commenced operation at their current location at 1325 G Street, NW in 1995⁴² – two years prior to the Commission's adoption of Section 1.924(e) of the Commission's Rules in 1997.⁴³ Moreover, Stations WMV472 and WMV474 have operated at that location for more than ten years without reported instances of interference. In addition, the subject Applications only propose to relocate the receive sites of these two collocated, 18 GHz microwave relays a total of four blocks – from 1325 G Street, NW to 1025 F Street, NW.⁴⁴ The subject applications therefore only propose one change to the technical parameters of the Stations WMV472 and WMV474 – a 0.8 degree change in transmitter antenna azimuth from the Hart Building. Moreover, the subject applications were coordinated through the Interdepartment Radio Advisory Committee (IRAC) of the National Telecommunications and Information Administration (NTIA). Under such circumstances, we find that application of Section 1.924(e) of the Commission's Rules⁴⁵ is not necessary to ensure that Government satellite Earth stations important to national security will operate without harmful interference being caused by non-Government operations.⁴⁶

11. We find that the public interest would be served by granting WGN a waiver of Section 1.924(e)(3) of the Commission's Rules.⁴⁷ WGN and Tribune rely on the use of the Stations WMV472 and WMV474 to gather and report the news as well as to produce original news programming. Specifically, WGN has operated Stations WMV472 and WMV474 at their current location since 1995 to relay video and data from the Hart Senate Office Building to Tribune's D.C. News Bureau.⁴⁸ The D.C.

³⁷ 47 C.F.R. § 1.924(e)(3).

³⁸ We also find, below, that a waiver of 47 C.F.R. § 1.924(e)(3) is in the public interest.

³⁹ 47 C.F.R. § 1.924(e).

⁴⁰ See 47 C.F.R. § 1.924(e); *18 GHz Order*, 13 FCC Rcd at 3581 ¶ 4 (explaining that the Commission's adoption of the quiet zones will ensure that Government satellite Earth stations important to national security will operate without harmful interference being caused by non-Government operations).

⁴¹ See 47 C.F.R. 1.924(e)(3). Specifically, the transmission antenna for Stations WMV472 and WMV474 at the Hart Building is less than 16 km from the specified site (NAD 83 coordinates 38-48-00 N; 76-52-00 W) at Andrews AFB.

⁴² See License for Station WMV472 (issued Mar. 14, 1995); License for Station WMV474 (issued Mar. 14, 1995); Waiver Requests at 6.

⁴³ See *18 GHz Order*, 13 FCC Rcd at 3581 ¶ 1.

⁴⁴ See Waiver Requests at 1-2.

⁴⁵ 47 C.F.R. § 1.924(e).

⁴⁶ See 47 C.F.R. § 1.924(e); *18 GHz Order*, 13 FCC Rcd at 3581 ¶ 4 (explaining that the Commission's adoption of the quiet zones will ensure that Government satellite Earth stations important to national security will operate without harmful interference being caused by non-Government operations).

⁴⁷ 47 C.F.R. § 1.924(e)(3).

⁴⁸ See Waiver Requests at 1-2.

News Bureau assumes responsibility for both news publishing and broadcasting.⁴⁹ For example, at the D.C. News Bureau, Tribune's broadcast news operations provide up-to-the-minute news reports 24 hours a day to Tribune's television stations.⁵⁰ According to WGN, Stations WMV472 and WMV474 play a vital role in the production of over 200 television news stories each week at the D.C. News Bureau for distribution to over 20 Tribune television stations across the country that originate local news broadcasts.⁵¹ In order to do so, WGN explains that reporters utilize "the vast network of cable and fiber drops Tribune has installed around Capitol Hill and the two microwave relays at issue here to transmit this news footage back to the D.C. News Bureau."⁵² WGN notes that, once the relocation to 1025 F Street, NW is complete, the DC News Bureau will house more than 100 journalists making it the largest multi-media bureau in the nation's capital.⁵³ Accordingly, we find that the public interest would be served by granting WGN a waiver of Section 1.924(e)(3) of the Commission's Rules,⁵⁴ thereby permitting the public to continue to benefit from WGN's use of the subject stations for news gathering and reporting and for original program production.

IV. CONCLUSION AND ORDERING CLAUSES

12. We find, for the reasons explained in this *Memorandum Opinion and Order*, that WGN has demonstrated that a waiver of Section 1.924(e)(3) of the Commission's Rules is warranted. We therefore direct processing of the Applications.

13. 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 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the Request for Waiver filed by WGN Continental Broadcasting Company on September 16, 2005 IS GRANTED.

14. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.924 of the Commission's Rules, 47 C.F.R. § 1.924, that the licensing staff of the Broadband Division SHALL PROCESS, WGN's pending applications, file numbers 0002302206 and 0002302188, in accordance with this *Memorandum Opinion and Order* and the applicable Commission Rules.

15. These actions are 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

John J. Schauble
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⁴⁹ See Waiver Requests at 1-2.

⁵⁰ See Waiver Requests at 1-2.

⁵¹ See Waiver Requests at 2.

⁵² Waiver Requests at 3.

⁵³ See Waiver Requests at 3.

⁵⁴ 47 C.F.R. § 1.924(e)(3).