

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

In the Matter of	)	
	)	
NEPTUNO MEDIA	)	File Nos. 0002742591, 0002742592
	)	
Applications For Modification to Stations	)	
WQEQ829, San Juan, Puerto Rico, and Station	)	
WQEQ829, Bayamon, Puerto Rico	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 20, 2007**

**Released: April 23, 2007**

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

**I. INTRODUCTION**

1. On September 7, 2006, Neptuno Media (“Neptuno”) filed applications seeking to make modifications to common carrier fixed point-to-point microwave Stations WQEQ829, San Juan, Puerto Rico<sup>1</sup> and WQEQ829, Bayamon, Puerto Rico.<sup>2</sup> On September 18, 2006, Islandet, Inc. (“Islandet”) filed a petition to deny the applications.<sup>3</sup> For the reasons discussed below, we deny the PTD.

**II. BACKGROUND**

2. Neptuno holds licenses to operate common carrier fixed point-to-point microwave Stations WQEQ829 in San Juan, Puerto Rico<sup>4</sup> and WQEQ829 in Bayamon, Puerto Rico, on the following frequencies: 6.0638 GHz, 10.835 GHz, 11.075 GHz, 11.565 GHz, and 23.235 GHz.<sup>5</sup> In addition, Neptuno operates Unlicensed National Information Infrastructure (U-NII) devices on various frequencies in the 5 GHz band.

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<sup>1</sup> File No. 0002742591 (filed Sep. 7, 2006). On September 26, 2006, Neptuno filed an amendment to this application.

<sup>2</sup> File No. 0002742592 (filed Sep. 7, 2006). On September 26, 2006, October 10, 2006 and October 11, 2006, Neptuno filed amendments to this application. The two applications, together, will be referred to as the Applications.

<sup>3</sup> Islandet, Inc., Petition to Deny (filed Sep. 18, 2006) (PTD).

<sup>4</sup> File No. 0002392128 (granted Feb. 15, 2006).

<sup>5</sup> File No. 0002392129 (granted Mar. 28, 2006).

3. On May 11, 2006, Islanet filed a complaint<sup>6</sup> with the Commission's Enforcement Bureau alleging that Neptuno was operating U-NII devices in a manner inconsistent with the Communications Act of 1934, as amended (the "Act"),<sup>7</sup> and Part 15 of the Commission's Rules.<sup>8</sup> In response, resident agents from the Commission's San Juan Office conducted inspections of Neptuno's operations and warned the Vice President of Operations that Neptuno's U-NII operations at the inspected locations were operating on frequencies not authorized under the Commission's rules governing U-NII devices or the Act.<sup>9</sup> In subsequent written communications, Neptuno informed the San Juan Office that it had changed the transmit frequencies at the inspected locations to be in full compliance with the Commission's rules.<sup>10</sup> Thereafter, at a meeting with the agents from the San Juan Office, the Vice President of Operations for Neptuno detailed an action plan whereby all of the company's 68 U-NII sites would come into compliance with the Rules by August 4, 2006.<sup>11</sup>

4. On September 7, 2006, Neptuno filed its Applications to modify Stations WQJ917 and WQEQ829.<sup>12</sup> On September 18, 2006, Islanet filed its PTD against the applications,<sup>13</sup> which is unopposed. Islanet contends that in light of the Enforcement Bureau investigation, the grant of Neptuno's applications is not in the public interest, convenience and necessity.<sup>14</sup> Islanet further asserts that it is a direct competitor to Neptuno for the delivery of broadband services in Puerto Rico and that Neptuno's actions have caused direct economic injury to Islanet.<sup>15</sup> Islanet therefore asks that Neptuno's applications be denied.<sup>16</sup>

5. On January 23, 2007, the Enforcement Bureau issued a Notice of Apparent Liability for Forfeiture, finding that Neptuno had apparently willfully and repeatedly violated Section 301 of the Act by operating unlicensed radio transmitters.<sup>17</sup> The Enforcement Bureau concluded, pursuant to Section 503(b)

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<sup>6</sup> Letter from Frank R. Jazzo Esq. and Lee C. Petro, Esq. to Joseph Casey, Chief, Spectrum Division, Enforcement Bureau (filed May 11, 2006).

<sup>7</sup> Section 301 of the Communications Act of 1934, as amended ("Act"), requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. 47 U.S.C. § 301.

<sup>8</sup> 47 C.F.R. Part 15. Part 15, Subpart E of the Commission's Rules sets forth specific conditions under which U-NII devices may operate in the 5.15-5.35 GHz, 5.47-5.725 GHz, and 5.725-5.825 GHz bands. 47 C.F.R. §§ 15.401-15.407.

<sup>9</sup> See Neptuno Networks, Inc., *Notice of Apparent Liability for Forfeiture*, File No. EB-06-SJ-022 (Jan. 23, 2007) (*NAL*) at ¶ 5, and generally for additional details regarding the Enforcement Bureau's investigation.

<sup>10</sup> *Id.* at ¶ 7.

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

<sup>12</sup> See *supra* notes 1, 2. Public notice that the Applications had been accepted for filing was given on October 4, 2006. Wireless Telecommunications Bureau Site-By-Site Accepted for Filing, Report No. 2870, *Public Notice* (rel. Oct. 4, 2006) at 5-6.

<sup>13</sup> See *supra* note 3.

<sup>14</sup> PTD at 1-2.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.*

<sup>17</sup> *NAL* at ¶ 14. See 47 U.S.C. § 301; see also 47 C.F.R. §§ 15.1(b), 15.407.

of the Act,<sup>18</sup> that Neptuno was apparently liable for forfeiture in the amount of twenty thousand dollars (\$20,000). Neptuno paid the \$20,000 forfeiture on February 12, 2007.

### III. DISCUSSION

6. Section 1.939(d) of the Commission's Rules requires that a petition to deny contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity.<sup>19</sup> The PTD alleges that, due to Neptuno's misconduct, it would not be in the public interest to grant the modification applications.<sup>20</sup>

7. In determining whether Neptuno has the requisite character to hold the point-to-point microwave licenses at issue, we look to the Commission's character policy, which was initially developed in the field of broadcast licensing.<sup>21</sup> The Commission has stated "that all violations of provisions of the Act, or of the Commission's rules or policies, are predictive of an applicant's future truthfulness and reliability and, thus, have a bearing on an applicant's character qualifications."<sup>22</sup> While violations of the Commission's rules are relevant, we must inquire whether the applicant has been truthful with the Commission and whether the Commission can rely on the applicant to comply with the Commission's rules in the future. "A necessary element of misrepresentation and lack of candor is an intent to deceive the Commission."<sup>23</sup>

8. After reviewing the record and Islanet's arguments, we find that there is insufficient evidence to conclude that Neptuno will fail to comply with the Commission's Rules in the future with respect to Stations WQEJ917 and WQEQ829. As an initial matter, we note that, by paying the forfeiture proposed by the Enforcement Bureau, Neptuno has declined to contest the fact that the rule violations described above took place. While we believe that these rule violations in question are serious, the violations in and of themselves are not sufficient for us to conclude that Neptuno will not comply with our rules in the future. In particular, we note that Neptuno eventually took steps to come into compliance with the Commission's Rules. While it is true that Neptuno has been found to have violated Commission rules, there is no evidence in the record that Neptuno has been untruthful with the Commission. In addition, we note that there is no allegation of any rule violations with respect to the microwave stations

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<sup>18</sup> 47 U.S.C. § 503(b).

<sup>19</sup> 47 C.F.R. § 1.939(d).

<sup>20</sup> PTD at 2.

<sup>21</sup> See *In the Matter of Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket No. 04-70; *Applications of Subsidiaries of T-Mobile USA, Inc. and Subsidiaries of Cingular Wireless Corporation*, WT Docket No. 04-254; *Applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC*, WT Docket No. 04-323, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21549 ¶ 4 (*Cingular-AT&T Wireless Order*); *Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*, Gen. Docket No. 81-500, *Report and Order and Policy Statement*, 100 F.C.C. 2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

<sup>22</sup> *Cingular--AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

<sup>23</sup> *Fox River Broadcasting, Inc., Memorandum Opinion and Order*, 93 FCC 2d 127, 129 ¶ 6 (1983).

(WQEJ917 and WQEQ829) that Neptuno is seeking to modify. We therefore do not agree with Islanet that Neptuno's misconduct with respect to its U-NII devices in the 5 GHz band provides a basis for denying the instant applications to modify common carrier fixed point-to-point microwave stations.

9. For all these reasons, we conclude that Neptuno's conduct does not justify a conclusion that Neptuno lacks the requisite character to hold Commission licenses.<sup>24</sup> We therefore deny the PTD.<sup>25</sup>

#### IV. CONCLUSION AND ORDERING CLAUSES

10. For the reasons discussed above, we conclude that Islanet has failed to demonstrate how denial of the instant application would serve the public interest.

11. ACCORDINGLY, IT IS 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 1.939 of the Commission's Rules, 47 C.F.R. § 1.939, that the Petition to Deny filed by Islanet, Inc. on September 18, 2006 IS DENIED.

12. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.948 of the Commission's Rules, 47 C.F.R. § 1.948, that the licensing staff of the Broadband Division SHALL PROCESS the applications filed by Neptuno Media (File Nos. 0002742591 and 0002742592) in accordance with this *Memorandum Opinion and Order* and the applicable Commission's Rules.

13. 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

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

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<sup>24</sup> We reserve the right to revisit this conclusion in the future in the appropriate context if additional evidence of rule violations comes to our attention.

<sup>25</sup> See 47 C.F.R. § 1.41.