

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

In the Matter of)
)
TELEX COMMUNICATIONS, INC.)
)
Petition For Reconsideration of Request For)
Waiver To Allow The Use Of Certificated)
Wireless Intercom Equipment At Nuclear Power)
Facilities For Security Operations Near Reactors)

ORDER ON RECONSIDERATION

Adopted: January 26, 2007

Released: January 29, 2007

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. We have before us a petition filed by Telex Communications, Inc. (Telex)¹ seeking reconsideration of an *Order*² by the Public Safety and Critical Infrastructure Division (Division)³ denying Telex's request for a blanket waiver of the Commission's Rules to permit operation of its wireless intercom equipment⁴ at certain nuclear power generating facilities on spectrum reserved for over-the-air television broadcasting.⁵ For the reasons discussed herein, we deny the petition.

2. *Background.* On May 6, 2003, Telex filed a request seeking permanent authority for blanket licensing under Part 90 of the Commission's Rules permitting the use at nuclear facilities of wireless headsets and intercom devices that are authorized to operate under Part 74 of the Commission's Rules.⁶ On November 29, 2004, the Division denied the waiver request because Telex had not demonstrated that: 1) Part 90 frequencies, for which nuclear power facilities are eligible to hold authorizations, would not suffice to provide the communications services asserted to be necessary in such facilities; 2) no currently available equipment that operates on Part 90 frequencies would satisfy the communications requirements of workers in nuclear power facilities; 3) Telex could not adapt the equipment at issue, or obtain new equipment, to provide the required communications services on Part 90 frequencies.⁷ Finally, the *Order* indicated that, given differences among nuclear power plants in design and procedures, proximity to

¹ Petition for Reconsideration filed on December 29, 2004 by Telex Communications, Inc. (Petition).

² See Telex Communications, Inc., *Order*, 19 FCC Rcd 23169 (WTB PSCID 2004) (*Order*).

³ Pursuant to a Commission reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

⁴ The specific Telex model numbers listed in the waiver request are BTR300, BTR500, BTR600, BTR700, BTR800, TR300, TR500, TR600, TR700, TR800, and TR825. See Petition at 3-4.

⁵ The requested frequency bands of operation are the 174-216 MHz, 470-608 MHz and 614-806 MHz bands, which correspond to television channels 7-13, 14-36, and 38-69, respectively. See 47 C.F.R. § 73.603(a). The Table of Frequency Allocations indicate that the 174-216 MHz, 470-608 MHz, and 614-806 MHz bands are reserved for primary use of over-the-air television broadcasting entities regulated under Parts 73 and 74 of the Commission's rules. See 47 C.F.R. § 2.106. See generally 47 C.F.R. §§ 73.1-73.7005, 74.1-74.1290.

⁶ See Request for Special Waiver filed on May 6, 2003 by Telex Communications, Inc.

⁷ See *Order*, 18 FCC Rcd at 23171 ¶ 7.

urban areas and over-the-air broadcasters, and frequencies used at each facility vis-à-vis the channels being used by local broadcasters, a detailed technical analysis of each facility would be required before any waiver could be granted.⁸

3. In its petition, Telex asserts that the Division need not review waiver requests on a case-by-case basis because “such a complex and cumbersome procedure is not required at all in this particular case”⁹ In an attempt to alleviate concerns about the potential for interference to over-the-air broadcasting, Telex again proposes that the Division grant the waiver request on a non-interference basis and require the operators to coordinate licensing with Part 74 Broadcast Auxiliary frequency coordinators.¹⁰ In the alternative, Telex suggests that its equipment be treated as a tunnel radio system under Section 15.211 of the Commission’s Rules,¹¹ and condition grant of the waiver on RF emissions at the boundary of the nuclear power facilities not exceeding the limits in Section 15.209 of the Commission’s Rules.¹²

4. *Discussion.* As set forth below, Telex has presented no new evidence or specific, factual support to justify a blanket or conditional waiver of the Commission’s rules. We therefore affirm the *Order* and deny the petition.¹³

5. The *Order* correctly concluded that Telex did not meet the Commission’s standards for a waiver. The Commission will waive a rule if the requesting party shows that (1) the underlying purpose of the rule 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 unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁴ In its petition, Telex provides no new information to support its waiver request and asserts that it need not do so. At its core, the Petition merely rehashes arguments previously addressed and dismissed by the Division in the *Order*.¹⁵ Given the record, we reaffirm that Telex has not met the requirements for a waiver.

⁸ See *id.* at 23171-72 ¶ 8.

⁹ See Petition at 10; see also *id.* at 14 (“the suggestion that individual measurements are required on case-by-case basis is clearly regulatory overkill[.]”).

¹⁰ See *id.* at 3-4; 15.

¹¹ See 47 C.F.R. § 15.211.

¹² See 47 C.F.R. § 15.209.

¹³ We note, however, that use of Part 74 equipment at nuclear power plants currently is authorized pursuant to special temporary authority (STA) granted on March 7, 2005 by the Commission’s Office of Engineering and Technology (OET) under Call Sign WC9XCR. OET also sought comment on a request for waiver to permit nuclear power plants to continue to utilize this equipment for a longer period while they pursue the implementation of other telecommunications options. See Office of Engineering and Technology Seeks Comment on Nuclear Energy Institute and United Telecom Council Request for Waiver of Section 74.832(h), *Public Notice*, ET Docket No. 05-235, 20 FCC Rcd 20035 (OET 2005). The instant *Order* is without prejudice to operations conducted pursuant to the STA, or the waiver request pending in OET.

¹⁴ See 47 C.F.R. § 1.925(b)(3); see also *See WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (a waiver of the Commission’s rules may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question).

¹⁵ See, e.g., Petition at 8 (“[a]n example of the strong public interest justification for permitting use of this equipment . . . was provided in correspondence to Commission staff . . . in June [2004]”).

6. Second, we decline to adopt Telex's renewed request that the waiver be granted on the condition that operators of Telex equipment located in nuclear power facilities coordinate licensing with Part 74 Broadcast Auxiliary frequency coordinators. Telex asserts that this condition would be "more than adequate to prevent interference from arising."¹⁶ We cannot be confident that the operating conditions proposed by Telex would sufficiently ameliorate our concerns that its equipment could cause interference to over-the-air television transmissions. While the proposal implies that Telex would ensure that operators of its equipment would seek and obtain prior coordination, Telex expressly acknowledges that it neither represents nor controls the actions of employees of nuclear power facilities.¹⁷ Given these facts, we cannot reasonably conclude that Telex would adequately ensure that operators of its equipment would cooperate with, let alone seek authorization from, Part 74 Broadcast Auxiliary frequency coordinators.

7. Likewise, we decline to adopt Telex's proposal that its equipment be treated as a tunnel radio system with RF emissions at the boundary of the nuclear power facilities not to exceed the limits in Part 15. First, Section 15.211, governing tunnel radio systems, is not applicable, for it requires systems to meet a number of conditions, the first of which is that the system must be "contained solely within a tunnel, mine or other structure that provides attenuation to the radiated signal due to the presence of naturally surrounding earth and/or water."¹⁸ In addition, the Part 15 emission limits apply to unlicensed devices, whereas operation of the Telex equipment expressly requires a Commission authorization.¹⁹ Moreover, as noted above, Telex reports that it neither represents nor controls the actions of employees of nuclear power facilities. Given this representation, Telex would not be in a position to ensure that use of the equipment by these workers complied with radiated emissions limits at the boundary of the nuclear power facilities.

8. Accordingly, 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 petition for reconsideration filed by Telex Communications, Inc. on December 29, 2004 IS HEREBY DENIED.

9. 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

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁶ *Id.* at 16.

¹⁷ *See id.* at 6.

¹⁸ *See* 47 C.F.R. § 15.211(a).

¹⁹ Indeed, the petition fails to acknowledge the eligibility requirements in Section 74.832 of the Commission's Rules for obtaining a license to operate the Telex equipment. *See* 47 C.F.R. § 74.832.