



Federal Communications Commission
Washington, D.C. 20554

January 29, 2007

DA 07-283

Wireless US LLC
2471 Cedar Meadows St
Henderson, NV 89052
Attn: Jay Francis

RE: FCC File No. 0002457284
Request for Waiver of Section 90.35(c)(61)(i) and (68)(i) of the Commission's Rules

Dear Mr. Francis:

This letter addresses the waiver request filed on January 24, 2006 by Wireless US LLC (WUL) in connection with the above-referenced application for a new trunked Industrial/Business Pool Station at Las Vegas, Nevada.¹ Specifically, WUL requests a waiver of Section 90.35(c)(61)(i) and (68)(i) of the Commission's Rules, which permits primary use of Airport Terminal Use (ATU) frequencies within ten miles of the airports listed in Section 90.35(c)(61)(iv).² WUL proposes to use a transmitter facility approximately eleven miles from McCarran International Airport in Las Vegas, Nevada. For the reasons discussed below, we deny the waiver request, and will dismiss the application.

The waiver request states, "Because of the terrain surrounding McCarran International Airport, the ideal location for the transmitter is on a mountain side located approximately 11 miles from the airport."³ It also states that WUL intends to use of the frequencies to furnish radio communications services -- specifically, ground support communications for servicing and supplying aircraft, including coordinating ramp operations, food and beverage delivery, and aircraft cleaning and refueling -- to a commercial airline.⁴ On April 12, 2006, the application was returned to WUL for additional information, including a letter from the air carrier verifying that it intends to use WUL's system and explaining why the carrier cannot license the operation for itself.⁵ On June 5, 2006, WUL submitted a letter from Delta Air Lines verifying that WUL is its radio service provider and stating that it wishes WUL to maintain the repeater because the mountain site is difficult to reach.⁶

Section 1.925(b)(3) of the Commission's Rules provides that the Commission may grant a request for waiver "if it is shown that (i) [t]he 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 (ii) [i]n view of unique or unusual factual circumstances of the instant case, application

¹ FCC File No. 0002457284 (filed Jan. 24, 2006, amended June 5, 2006), Waiver Request (Request).

² 47 C.F.R. § 90.35(c)(61)(i), (68)(i).

³ See Request at 1.

⁴ *Id.*

⁵ See Return Letter 4025623 (Apr. 12, 2006).

⁶ Letter dated May 25, 2006 from Randy Hagblom, Station Manager, Delta Air Lines, Inc.

of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”⁷ Primary ATU use of these frequencies is limited to ten miles from the listed airports because the frequencies are intended to be used on a primary basis at the airport in connection with commercial air transportation service.⁸ The Commission did not authorize primary use away from the airport, but did permit secondary industrial/business use that would not interfere with primary ATU use.⁹ WUL asserts that Sunrise Mountain is the “ideal” location for its transmitter, but it has not demonstrated that there is no suitable location for ATU operations within ten miles of McCarran International Airport that will provide the necessary coverage. Moreover, authorizing primary ATU use at a high site more than ten miles from the airport reduces the availability of these frequencies for secondary industrial/business users, which is contrary to the Commission’s intent. Consequently, we deny the waiver request, and will dismiss WUL’s application.¹⁰

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 Sections 1.3, 1.925, and 1.934 of the Commission’s Rules, 47 C.F.R. §§ 1.3, 1.925, 1.934, the request for waiver filed on January 24, 2006, by Wireless US LLC, Inc. IS DENIED, and FCC File No. 0002457284 SHALL BE DISMISSED.

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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁷ 47 C.F.R. § 1.925(b)(3).

⁸ See Amendment of the Commission’s Rules Concerning Airport Terminal Use Frequencies in the 450-470 MHz Band of the Private Land Mobile Services, *Report and Order*, WT Docket No. 02-318, 20 FCC Rcd 1966, 1969 ¶ 9 (2005).

⁹ See *id.* at 2008 ¶ 22; 47 C.F.R. § 90.35(c)(61)(iii).

¹⁰ See 47 C.F.R. § 1.934(d)(2) (providing for dismissal of application that contains a waiver request that is denied, and does not contain an alternate proposal that complies with the Commission’s rules).