

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

In the Matter of Application of	)	
	)	
LICENSE COMMUNICATIONS SERVICES, INC.	)	File No. 0002919008
	)	
	)	
For Modification of License for	)	
Industrial/Business Pool Station WPMP213	)	

**ORDER ON RECONSIDERATION**

**Adopted: August 18, 2009**

**Released: August 19, 2009**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On April 1, 2009, Comm Enterprises, LLC; James A. Kay, Jr.; MS Airwaves, Inc.; and Marc D. Sobel (Petitioners) filed a petition for reconsideration of the grant of the above-captioned application of to modify the license of License Communications Services, Inc. (LCS) for Industrial/Business Pool Station WPMP213.<sup>1</sup> For the reasons set for the below, we deny the petition for reconsideration.

2. *Background.* On February 20, 2007, LCS filed an application to modify its license for Station WPMP213 by adding nine 12.5 kHz “offset” channels in the 470-512 MHz band. Some of LCS’s requested center frequencies were separated by 12.5 kilohertz from the center frequencies of nearby stations licensed to Comm Enterprises, LLC (Comm Enterprises). On June 27, 2008, Comm Enterprises filed a petition to dismiss or deny the application,<sup>2</sup> on the grounds that LCS’s proposed operations on some of the requested frequencies did not provide Comm Enterprises sufficient interference protection, as required by the Land Mobile Communications Council (LMCC) procedures for evaluating adjacent channel interference in the 470-512 MHz band using the interference criteria of TIA/EIA/TSB-88 (TSB-88).<sup>3</sup> The petition was supported by TSB-88 studies demonstrating that LCS’s proposed operations on five of the nine requested frequencies did not conform to the TSB-88 interference criteria.

<sup>1</sup> Petition for Reconsideration (filed Apr. 1, 2009) (Petition). LCS filed an opposition on Apr. 13, 2009. *See* Opposition of License Communications Services, Inc. (LCS) to Petition for Reconsideration (filed Apr. 13, 2009) (Opposition). Petitioners filed a reply on May 1, 2009. Reply to Opposition (filed May 1, 2009).

<sup>2</sup> *See* Petition to Dismiss or Deny Application (filed June 27, 2008).

<sup>3</sup> *See* Filing Freeze to be Lifted for Applications under Part 90 for 12.5 kHz Offset Channels in the 421-430 and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942, 5942 (WTB 1997) (citing Letter from Larry A. Miller, President, LMCC, to Daniel B. Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau (Sept. 10, 1997) (LMCC Consensus)). In 1997, the Commission directed the certified frequency coordinators for the private land mobile radio services to reach a consensus on the applicable coordination procedures for the 12.5 kilohertz “offset” channels in the 470-512 MHz frequency band. *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14330-31 ¶ 43 (1997). The LMCC Consensus provides that an application shall not be certified if an incumbent or the applicant has unacceptable interference of more than five percent reduction of the calculated service area reliability. *See* LMCC Consensus, Attachment at 2.

3. LCS's application was returned on December 3, 2008 to allow LSC's frequency coordinator to confirm its frequency coordination.<sup>4</sup> On December 10, 2008, LCS amended the application to reduce the emission designator bandwidth on all but one of the requested frequencies (including all five challenged by Comm Enterprises) from 11.2 kilohertz to 4 kilohertz, and LCS's frequency coordinator stated that the proposed operations would thus comply with TSB-88.<sup>5</sup> Because the Comm Enterprises petition objected to operations that LCS no longer proposed, the Wireless Telecommunications Bureau's Mobility Division dismissed the petition as moot on February 17, 2009,<sup>6</sup> and granted LCS's application on March 2, 2009.

4. On April 1, 2009, Petitioners filed a petition for reconsideration of the grant of LCS's application. They argue that the amendment was insufficient to resolve the potential interference demonstrated by the Comm Enterprises petition, and the application should have been dismissed or returned to allow the frequency coordinator to demonstrate compliance with TSB-88.<sup>7</sup>

5. *Discussion.* Petitioners present no studies or other evidence that the LCS application, as amended, did not comply with TSB-88. The studies submitted with the Comm Enterprises petition pertained to the original application proposing a wider bandwidth, and thus do not demonstrate that the amended application did not provide interference protection. LCS's frequency coordinator specifically represented to the Commission that the amended application complied with TSB-88, and Petitioners have not refuted this representation. Consequently, we find the petition for reconsideration unpersuasive.<sup>8</sup>

6. Petitioners argue that the dismissal of the Comm Enterprises petition conflicts with the Mobility Division's subsequent decision in *National Science and Technology Network, Inc. (NSTN)*.<sup>9</sup> In that case, the Mobility Division concluded that an application that proposed to operate on 12.5 kilohertz offset channels on center frequencies 12.5 kilohertz removed from existing 25 kilohertz stations was required to satisfy TSB-88, because of spectral overlap between the incumbent and proposed stations.<sup>10</sup> The Mobility Division also stated that the matter could not be resolved by amending the application to propose 6.25 kilohertz channels rather than 12.5 kilohertz channels.<sup>11</sup> Petitioners contend that this demonstrates that amending the LCS application to reduce the emission designator bandwidth did not satisfy TSB-88. We disagree. The *NSTN* decision stated only that the proffered amendment would not eliminate the spectral overlap, so the application would still need to demonstrate compliance with TSB-88; it did not conclude that the application would not comply with TSB-88 even if it were amended to request 6.25 kilohertz channels. The dismissal of the Comm Enterprises petition therefore was consistent with *NSTN* decision, because the dismissal was based not on a determination that the amendment

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<sup>4</sup> See Return Letter Ref. No. 4809484.

<sup>5</sup> See Letter dated Dec. 10, 2008 from Andrew Barbour, PCIA Coordination Services, to FCC.

<sup>6</sup> See Letter dated Feb. 17, 2009 from Scot Stone, Deputy Chief, Mobility Division, to Robert J. Keller, counsel for Comm Enterprises, Inc.

<sup>7</sup> See Petition at 3.

<sup>8</sup> In addition, as LCS points out, the Petition is defective because it is based on a claim of electrical interference, but is not accompanied by an affidavit of a qualified radio engineer showing that interference will be caused, as required by Section 1.106(e) of the Commission's Rules. See Opposition at 2-3 (citing 47 C.F.R. § 1.106(e)).

<sup>9</sup> See Petition at 4 (citing *National Science and Technology Network, Inc., Order on Further Reconsideration*, 24 FCC Rcd 3577 (WTB MD 2009) (*NSTN*), review pending).

<sup>10</sup> See *NSTN*, 24 FCC Rcd at 3578 ¶ 5.

<sup>11</sup> *Id.* at 3578-79 ¶ 5.

eliminated any spectral overlap, but on the representation of LCS's frequency coordinator that the amended application satisfied TSB-88.<sup>12</sup>

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition For Reconsideration filed on April 1, 2009 by Comm Enterprises, LLC; James A. Kay, Jr.; MS Airwaves, Inc.; and Marc D. Sobel IS DENIED.

8. 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

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<sup>12</sup> In addition, the *NSTN* decision assumed that the proffered amendment would reduce the emission designator bandwidth from 11.2 kilohertz to 6 kilohertz, rather than to 4 kilohertz as in the instant matter. *See id.*