



Federal Communications Commission
Washington, D.C. 20554

April 8, 2009

DA 09-797

Mr. William K. Keane, Esq.
Duane Morris LLP
505 9th St., N.W., Suite 1000
Washington, D.C. 20004-2166

Re: **Spectrum Tracking Systems, Inc. – Request for Extension of Time**
Industrial/Business Pool, Conventional Station WPNV955

Dear Mr. Keane:

In your letter dated December 22, 2008, you requested an additional extension of time on behalf of Spectrum Tracking Systems, Inc. dba Electronic Tracking Systems (STS) to complete the conversion of its law enforcement tracking system (LETS) operations in Puerto Rico from 217/219 MHz spectrum to designated LETS channels in the 216 MHz band.¹ For the reasons stated below, we deny the request, but provide STS a period of sixty days from the date of this letter to terminate its Puerto Rico operations or make other arrangements.

STS provides maintenance, repair and training support for law enforcement tracking systems deployed with over two hundred local, state and regional law enforcement agencies throughout the United States. STS's sub-miniature radiofrequency (RF) transmitters are designed to be hidden in currency, jewelry and other valuable property. If stolen property is equipped with these transmitters, the broadcast of RF signals from the stolen item can enable law enforcement authorities to track the property. The STS infrastructure utilizes a network of fixed, mobile and portable receivers located throughout a municipality. Fixed receivers, which are located on the top of buildings or other structures, are connected to police department computer dispatch systems.²

By way of additional background, in March 1999, Metrocall USA, Inc. (Metrocall) sought a waiver of Section 90.259 of the Commission's Rules,³ which authorizes private land mobile radio use of 216-220 MHz only on a secondary basis, and only for telemetering purposes; and waiver of the station identification requirements in Section 90.425(a) of the Commission's Rules.⁴ The waivers were requested to allow Metrocall's thirty-two systems that were transmitting on 217/219 MHz spectrum⁵ to

¹ Letter dated Dec. 22, 2008 from William K. Keane, counsel for STS, to Marlene H. Dortch, Secretary, Federal Communications Commission; Letter dated Dec. 22, 2008 from Jon Gergen, President, STS, to Marlene H. Dortch, Secretary, Federal Communications Commission (Puerto Rico Extension Request).

² See generally Amendment of the Commission's Rules Concerning Low Power Radio and Automated Maritime Telecommunications System Operations in the 216-217 MHz Band, *Report and Order*, WT Docket No. 95-56, 11 FCC Rcd 18517, 18519-20 ¶ 6 (1996); Amendment of the Commission's Rules Concerning Low Power Radio and Automated Maritime Telecommunications System Operations in the 216-217 MHz Band, *Notice of Proposed Rule Making*, WT Docket No. 95-56, 10 FCC Rcd 5438, 5429 ¶ 4 (1995).

³ 47 C.F.R. § 90.259.

⁴ 47 C.F.R. § 90.425(a).

⁵ We treat the specific technical parameters of STS's operations, including frequency information, as confidential because disclosure could reasonably be expected to interfere with enforcement proceedings by disclosing techniques

continue to operate on a primary basis while it transitioned these systems to the Low Power Radio Service (LPRS) LETS channels in the 216 MHz band.⁶ Metrocall sought waivers for a period of seven years with a limited conditional right to request a two-year extension if it was unable to convert all of its stations within seven years; in the alternative, Metrocall suggested granting the waivers for a five-year term and allowing up to two additional two-year terms. STS acquired the LETS business from Metrocall later in 1999, and the waiver request was amended to substitute STS as the applicant.

The Wireless Telecommunications Bureau's Public Safety and Private Wireless Division (PSPWD) concluded that the public interest would be served by allowing additional time to convert Metrocall's LETS operations to LPRS frequencies.⁷ PSPWD declined, however, to grant the waivers for a period of nine years as requested. Rather, PSPWD determined that five years (the license term at the time for Part 90 licensees under our Rules⁸) would allow sufficient time to transition to LPRS channels.⁹ PSPWD also indicated that, if additional time were needed, it would be amenable to granting a limited extension upon a showing that "substantial progress" had been made toward total system conversion to the LPRS LETS channels.

In April 2004, STS requested a three-year extension. The Public Safety and Critical Infrastructure Division (PSCID)¹⁰ granted the request, and extended the waiver term to June 22, 2007.¹¹ PSCID concluded that STS's conversion of fifteen (nearly fifty percent) of the thirty-two metropolitan areas operating on 217/219 MHz spectrum during the initial five-year waiver term demonstrated the requisite "substantial progress" toward total system conversion to the LPRS LETS channels to justify an extension.¹²

The 217/219 MHz bands are designated for the Automated Maritime Telecommunications Systems (AMTS).¹³ The Commission conducted auctions for AMTS geographic licenses in 2004 and

and procedures for law enforcement investigations or prosecutions, *see* 5 U.S.C. § 552(b)(7)(A), (E), and STS has not routinely made this information available to the public, *see* 47 C.F.R. § 0.459(d)(2).

⁶ The LPRS LETS channels are listed in 47 C.F.R. § 95.629(a).

⁷ Letter dated June 22, 1999 from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, to Jerome K. Blask, Esq., counsel for Metrocall (*Letter Ruling*).

⁸ The Commission subsequently changed the license term for Part 90 services to ten years. *See* 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 98-182, 15 FCC Rcd 16673 (2000).

⁹ *Letter Ruling* at 3.

¹⁰ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the Public Safety and Critical Infrastructure Division (PSCID) assumed the relevant duties of PSPWD. *See* Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003). Pursuant to a reorganization effective September 25, 2006, certain duties of PSCID were assumed by the Mobility Division. *See* Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

¹¹ Letter dated May 26, 2004 from D'wana R. Terry, Chief, Public Safety and Critical Infrastructure Division, to William K. Keane, Esq., counsel for STS.

¹² *Id.* at 3.

¹³ *See* 47 C.F.R. § 80.385(a)(2).

2005, and informed prospective bidders that LETS operations were authorized on AMTS spectrum on a primary basis until 2007.¹⁴

In May 2007, STS requested an additional three-year extension. The Mobility Division (MD) granted the request in part, and extended the waiver term to January 1, 2009.¹⁵ MD noted that STS converted fifteen systems from 217/219 MHz spectrum to LPRS channels, or three per year, during the initial five-year waiver term, but that the rate of transition slowed by half during the three-year extension.¹⁶ MD also noted that STS put fifteen new systems into operation (on LPRS channels) during the three-year extension, and concluded that STS had chosen to devote its resources to expanding into new markets, rather than to bringing its existing operations into compliance with the Commission's rules.¹⁷ MD concluded that STS's performance during the three-year extension did not meet the "substantial progress" standard on which the 2004 extension was granted.¹⁸ Consequently, it declined to grant another three-year extension.

In light of the significant efforts required to accomplish this undertaking, and given the valuable public safety benefits that STS's LETS network provides, however, MD concluded that good cause existed to grant an eighteen-month further extension, to January 1, 2009. MD noted that this in effect afforded STS more than the nine years that Metrocall originally requested to complete the conversion.¹⁹ MD also made it clear that it was unlikely to grant any further extensions:

We do not anticipate granting any further extensions. Requests for further extensions will not be looked upon favorably. In the event that STS does find it necessary to seek additional time, any such request should be accompanied by evidence of consent by the AMTS geographic licensees for the areas containing the systems requiring an extension.²⁰

STS now requests a limited further extension. Specifically, it requests an extension until September 30, 2009 for its Puerto Rico operations.²¹ It states that Puerto Rico is undergoing serious economic hardship, and the lending institutions that rely on STS's services are unable at present to commit to the long-term contracts necessary for funding the conversion to LETS channels.²² Rather than suspend service, STS requests an extension to September 30, 2009, in the hopes that economic conditions

¹⁴ See Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, *Public Notice*, 19 FCC Rcd 9518, 9528 (WTB 2004); Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, *Public Notice*, 20 FCC Rcd 7811, 7821 (WTB 2005).

¹⁵ Letter dated June 19, 2007 from Scot Stone, Deputy Chief, Mobility Division, to William K. Keane, Esq., counsel for STS.

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 4.

²¹ STS has entered into a spectrum leasing agreement regarding its other operations in the 217/219 MHz bands. See FCC File No. 0003726755 (filed Feb. 4, 2009).

²² Puerto Rico Extension Request at 1.

will have improved sufficiently to allow the banks to clarify their long-term intentions.²³ STS's extension request is supported by the Policia de Puerto Rico²⁴ and the Puerto Rico Bankers Association.²⁵

The AMTS geographic licensee for the spectrum in Puerto Rico on which STS currently operates opposes the extension request.²⁶ It argues that allowing STS to further encumber its AMTS spectrum would result in interference to its planned operations,²⁷ and would constitute a taking of its spectrum rights.²⁸

We conclude that the extension request should be denied. STS (and its predecessor) has had ten years to bring its Puerto Rico operations into compliance with the Commission's rules. We warned STS in 2007 that further extensions would not be granted absent unusual circumstances and the consent of the affected AMTS geographic licensee. STS has demonstrated neither. We do not believe that economic conditions in Puerto Rico constitute a reason to extend STS's authorization to operate on AMTS spectrum. Moreover, given its past conduct, we are not convinced that STS would determine and implement long-term plans in Puerto Rico within the requested extension period without requiring still more time to operate on AMTS spectrum.

Given the valuable public safety benefits that STS's LETS network provides, however, we will not require an immediate shutdown of its Puerto Rico operations. Instead, we will allow STS sixty days from the date of this letter to bring itself into compliance with the Commission's rules. Operation during this sixty-day period is subject to the same technical conditions that applied to the 1999 waiver and subsequent extensions.

We will entertain no further extension requests regarding these operations. Within sixty days of the date of this letter, STS must terminate its Puerto Rico operations, convert them to LPRS LETS frequencies, or enter into a satisfactory arrangement with the AMTS geographic licensee. Failure to do so will result in unauthorized operations, and will subject STS to enforcement action.

Therefore, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 C.F.R. §§ 154(i), 303(r), and Section 1.925 of the Commission's Rules, 47 C.F.R.

²³ *Id.*

²⁴ See Letter dated Dec. 5, 2008 from Joseph Molina Cabrera, Director, División de Investigaciones de Robo y Fraude a Instituciones Financieras, to Norberto Torres, Gerente General, Región de Puerto Rico, Electronic Tracking Systems; Letter dated Feb. 19, 2009 from José E. Figueroa Sancha, Superintendent, to Marlene H. Dortch, Secretary, Federal Communications Commission.

²⁵ See Letter dated Nov. 20, 2008 from Arturo L. Carrión, Executive Vice President, to Marlene H. Dortch, Secretary, Federal Communications Commission.

²⁶ Request, Suggestion, and Opposition to "Waiver" Extension Request and Petition to Deny, filed Jan. 12, 2009 by Warren Havens (Havens) on behalf of Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, Telesaurus VPC LLC, and Skybridge Spectrum Foundation (Opposition). STS filed a reply. Opposition to "Request, Suggestion and Opposition to 'Waiver' Extension Request and Petition to Deny," filed Feb. 4, 2009 by STS. Havens filed a surreply. Reply to Opposition to Request, Suggestion and Opposition to "Waiver" Extension Request and Petition to Deny, filed Feb. 26, 2009 by Havens.

²⁷ Opposition at 2. Havens notes that the Commission's rules do not require the AMTS geographic licensee to disclose those plans or otherwise coordinate them with STS. *Id.*

²⁸ *Id.* at 1.

§ 1.925, that the Request for Extension of Time filed by Spectrum Tracking Systems, Inc., IS DENIED to the extent set forth above.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Communication's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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Wireless Telecommunications Bureau