

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

In the Matter of)
)
CGG VERITAS LAND, INC.) File No. 0003313571
)
Request for Waiver of Section 90.259(a) of the)
Commission’s Rules)

ORDER

Adopted: April 15, 2009

Released: April 16, 2009

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

1. *Introduction.* We have before us the above-captioned application and associated request for waiver filed by CGG Veritas Land, Inc. (“Veritas”), on February 4, 2008 and supplemented on March 17, 2008.¹ Veritas seeks a waiver of the technical rules in Section 90.259 of the Commission’s Rules in order to permit certain proposed secondary telemetry operations. For the reasons set forth below, we grant the waiver request, and will grant the application.

2. *Background.* Automated Maritime Telecommunications System (“AMTS”) stations have primary status in the 217/219 MHz portion of the 217-220 MHz band.² Section 90.259 of the Commission’s Rules authorizes telemetry use of the 217-220 MHz band on a secondary basis,³ but limits the maximum transmitter output power to two watts, and provides that channel bandwidth exceeding fifty kilohertz may be assigned only upon a showing of adequate justification.⁴

3. Veritas, a provider of seismic geophysical information for oil and gas exploration, seeks a waiver of these technical requirements. Specifically, it requests authorization to operate in an area of Alaska’s North Slope on 217/219 MHz frequencies with six watts output power on 200-kilohertz and 800-kilohertz channels. Veritas requests this waiver in order to utilize a network of seismic acquisition transmitters manufactured by SERCEL, Inc. (SERCEL).⁵

4. Intelligent Transportation & Monitoring Wireless LLC and Environmental LLC, the geographic licensees in Alaska for AMTS Blocks A and B, respectively⁶; Telesaurus VPC LLC; and

¹ FCC File No. 0003313571, Exhibit A – Request for Limited Waiver of Power and Bandwidth Requirements of 47 C.F.R. § 90.259(a) (filed February 4, 2008) (“Waiver Request”); Supplemental Exhibit – Spectral Density and Human Safety Advantages Provided by SERCEL Transmitters (filed March 17, 2008) (“Waiver Supplement”).

² See Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Notice of Proposed Rule Making*, ET Docket No. 00-221, 15 FCC Rcd 22657, 22662 ¶ 11 (2000).

³ See 47 C.F.R. § 90.259(a).

⁴ 47 C.F.R. § 90.259(a)(4), (8).

⁵ See Waiver Request at 1.

⁶ See licenses for Station WQGF312 and WQCP813. AMTS geographic licenses were assigned pursuant to auctions conducted in 2004 and 2005. See Auction of Automated Maritime Telecommunications System Licenses Closes: Winning Bidders Announced for Auction No. 61, *Public Notice*, 20 FCC Rcd 13747 (WTB 2005); Automated Maritime Telecommunications System Spectrum Auction Closes, *Public Notice*, 19 FCC Rcd 18252 (WTB 2004). When this proceeding began, Environmental LLC was known as AMTS Consortium LLC. See, e.g., FCC File No. 0003649429 (filed November 14, 2008).

Skybridge Spectrum Foundation (collectively, “Petitioners”) filed an objection to Veritas’s application and waiver request on March 5, 2008.⁷ Veritas and PCIA—The Wireless Infrastructure Association (PCIA) filed separate oppositions on March 17, 2008.⁸ Petitioners filed a reply to the oppositions on April 15, 2008.⁹

5. *Discussion.* As a preliminary matter, Petitioners assert that the application should be dismissed because they were not given notice or served before it was filed.¹⁰ We disagree, for nothing in the Commission’s rules requires secondary telemetry applicants to notify AMTS licensees prior to filing an application.¹¹ Petitioners also argue that the application should have gone on public notice.¹² We note, however, that private land mobile radio (PLMR) applications are not placed on public notice.¹³ There is no exception for PLMR applications seeking secondary status on primary AMTS spectrum.¹⁴ Finally, Petitioners argue that an amendment changing the applicant name from Veritas Geophysical Services to CGG Veritas Land, Inc., constituted a major amendment requiring dismissal of the application.¹⁵ We

⁷ Petition to Deny (filed March 5, 2008); Petition to Deny – Errata Copy (filed March 6, 2008) (“Petition”). Citations herein to the Petition refer to the Petition to Deny – Errata Copy. Petitioners captioned their pleading a petition to deny, but petitions to deny do not lie against private land mobile radio applications. Consequently, we shall treat the Petition as an informal objection pursuant to Section 1.41 of the Commission’s Rules, 47 C.F.R. § 1.41. *See, e.g.,* National Science and Technology Network, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 19870, 19872 n.18 (2003).

⁸ Opposition to Petition to Deny (filed March 17, 2008) (“Veritas Opposition”). Opposition to AMTS Consortium LLC, et al. Petition to Deny (filed March 17, 2008) (“PCIA Opposition”). PCIA performed the frequency coordination for Veritas’s application. *See* Frequency Coordination No. PC20080080507.

⁹ Reply to Oppositions to Petition to Deny (filed April 15, 2008); Erratum – Reply to Oppositions to Petition to Deny (filed April 23, 2008) (“Reply”). Petitioners also filed a motion to dismiss the application and for sanctions. Motion to Dismiss and for Sanctions (filed April 15, 2008); Erratum – Motion to Dismiss and for Sanctions (filed April 23, 2008) (“Motion”). Veritas filed an opposition to the Motion. Opposition to Motion to Dismiss and for Sanctions (filed April 30, 2008). Petitioners filed a reply. Reply to Opposition to Motion to Dismiss and for Sanctions (filed May 12, 2008). Petitioners subsequently filed a supplement to the Petition and Motion. Supplement to Motion to Dismiss and for Sanctions, Supplement to Petition to Deny, and Request to Accept Supplement (filed May 31, 2008) (“Supplemental Pleading”). Veritas filed an opposition to the Supplemental Pleading. Opposition to Supplemental Pleading (filed June 13, 2008). Petitioners filed a reply. Reply to Opposition to Supplement to Motion to Dismiss and for Sanctions, Supplement to Petition to Deny, and Request to Accept Supplement (filed June 25, 2008). The Motion and Supplemental Pleading set forth arguments that were or could have been presented in the Petition and Reply. Parties are not permitted to enlarge the pleading cycle whenever they wish to reiterate or expand upon their arguments in a pending proceeding. Because Petitioners have not explained why the matters presented in the Motion and Supplemental Pleading could not have been presented in the Petition and Reply, we dismiss the Motion and Supplemental Pleading. *See* Chesapeake and Potomac Telephone Company, *Order and Authorization*, 10 FCC Rcd 2975, 3005 ¶ 61 (1995) (summarily denying a motion to dismiss that reiterated arguments in the movant’s petition to deny).

¹⁰ *See* Petition at 8.

¹¹ *See* Veritas Opposition at 5; PCIA Opposition at 2. Moreover, we note that Petitioners received notice of the filing of the application because Commission staff advised Veritas to afford the relevant AMTS geographic licensees an opportunity to consent to or comment on the waiver request.

¹² *See* Reply at 3.

¹³ *See, e.g.,* Brookfield Development, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 14385, 14388 ¶ 8 (2004).

¹⁴ *Cf. Telesaurus VPC, LLC v. Power*, No. CV-07-1311-PHX-NVW, slip op. at 5-6 (D. Ariz. Feb. 5, 2009) (PLMR station that was erroneously licensed on commercial spectrum was not a common carrier).

¹⁵ *See* Reply at 2-3.

conclude that the amendment was a permissible correction of the applicant's name.¹⁶

6. Next, Petitioners argue categorically that entities wishing to conduct telemetry operations on AMTS spectrum cannot "obtain rights granted to primary-rights AMTS licensees" other than by negotiating for such spectrum rights with the relevant AMTS licensees.¹⁷ The Commission has already settled this issue. In 2002, after it had proposed to utilize geographic licensing and competitive bidding to license AMTS spectrum¹⁸ and shortly before it adopted those proposals,¹⁹ the Commission affirmed the continued licensing of telemetry operations in this band on a secondary basis.²⁰ Consequently, we reject Petitioners' suggestion that authorizing secondary telemetry operations on AMTS spectrum is improper.²¹

7. We may grant a request for waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²² We conclude that Veritas has justified a waiver under the first prong of this standard.

8. The underlying purpose of the technical limits in Section 90.259(a) is to ensure that secondary telemetry licensees do not cause interference to primary licensees.²³ Veritas argues that the proposed wider bandwidth results in the spectral density being no greater than that associated with telemetry equipment that complies with the technical requirements in Section 90.259, despite the

¹⁶ Public information indicates that Veritas Geophysical Services was a division of Veritas DGC Inc., which in 2007 merged with a subsidiary of Compagnie Générale de Géophysique to form Compagnie Générale de Géophysique – Veritas (CGG Veritas). See, e.g., CGG Veritas Securities and Exchange Commission Form 20-F (filed April 23, 2008), viewable at <http://www.secinfo.com/dsvr4.t4df.htm>. It thus appears that CGG Veritas Land, Inc., a division of CGG Veritas, is the same entity as Veritas Geophysical Services. (It also appears that SERCEL is a subsidiary of CGG Veritas. See *id.*) Consequently, we conclude based on the information before us that the amendment merely corrected the name of the applicant. Veritas is hereby reminded to make the appropriate filings with respect to Commission licenses still held in the name of Veritas Geophysical Services.

¹⁷ See Petition at 2; see also *id.* at 7 (arguing that grant of the application would amount to a taking of Petitioners' spectrum rights).

¹⁸ See Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22601-02 ¶ 30 (2000).

¹⁹ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6696 ¶ 24 (2002).

²⁰ See Reallocation of the 216-220 MHz, 1390-1392 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Report and Order and Memorandum Opinion and Order*, ET Docket No. 00-221, 17 FCC Rcd 368, 383 ¶ 33 (2002).

²¹ See Amendments to Parts 1, 2, 27, and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Report and Order*, WT Docket No. 02-8, 17 FCC Rcd 9980, 10048 ¶¶ 185-186 (2002) (*27 MHz Service Rules Report and Order*) (denying request to limit secondary telemetry to the 218-219 MHz portion of the 217-220 MHz band); see also Exelon Generation Company, LLC, *Order*, 19 FCC Rcd 18078, 18081 ¶ 6 (WTB PSCID 2004) (denying request to afford primary status to telemetry operations on AMTS frequencies, but noting that frequencies would continue to be available on a secondary basis).

²² 47 C.F.R. § 1.925(b)(3).

²³ See *27 MHz Service Rules Report and Order*, 17 FCC Rcd at 10034-35 ¶ 141.

proposed higher power.²⁴ Thus, Veritas contends, the proposed SERCEL transmitters operating at full power do not present a heightened risk of interference to other users because their light spectral footprint restricts propagation.²⁵ Based on the record before us, we conclude that the underlying purpose of the rules would not be served by application to the instant case.

9. Petitioners dispute Veritas's assertion²⁶ that Veritas's proposed operations present no risk of interference to other operators in the 217-220 MHz band. They state that Veritas has not adequately considered all the technical factors needed to determine whether interference will result.²⁷ We note, however, that Petitioners have no current operations in Alaska,²⁸ and have not finished planning their Alaska operations.²⁹ Consequently, their concerns regarding interference are speculative. Moreover, Veritas recognizes that it would be a secondary user in the 217/219 MHz band, and as such must accept interference from and may not cause interference to AMTS operations.³⁰

10. Veritas also states that, unlike telemetry equipment operating with lower power and narrower bandwidth, the SERCEL devices acquire, record, and transmit large amounts of measurement data in real time, which makes possible the collection of data without dispatching a field crew to manually interface with the device.³¹ Veritas contends that it is impractical and unsafe to send technicians to each remote geophysical telemetry terminal in the proposed North Slope network, where winter temperatures can drop to -56 degrees Fahrenheit and the hazardous, unoccupied terrain has no roads or emergency shelters.³² With the SERCEL system, according to Veritas, personnel do not have to venture into the field merely to download data, and are dispatched only when a remote terminal needs to be moved or repaired, thereby keeping survey teams safer by minimizing their time in a hazardous, remote environment far from medical facilities.³³ We therefore conclude that grant of the requested waiver would be in the public interest.

11. *Conclusion.* Veritas seeks authorization for secondary telemetry operations in a remote, uninhabited area where the primary licensees have no current operations, and their construction deadlines are years away. It seeks to conduct seismic geophysical telemetry, which typically is of a temporary nature, with equipment being moved from one location to another as exploration and drilling needs require.³⁴ Its contemplated equipment appears to pose no greater risk of interference to other users than

²⁴ See Waiver Supplement at 1. Specifically, Veritas states that, assuming a maximum field strength of 5.16 V/m with an omnidirectional antenna with 1.5 dBi of gain and 0.2 dB of loss due to the feed line cable, a two-watt transmitter operating on a 50-kilohertz channel has an approximate spectral density of .04 mW/Hz, while a six-watt transmitter has a spectral density of .04 mW/Hz when operating on a 200-kilohertz channel and .01 mW/Hz when operating on an 800-kilohertz channel. *Id.*

²⁵ *Id.*

²⁶ See Waiver Request at 2.

²⁷ See Petition at 3-4.

²⁸ The construction deadline for Station WQCP813 is April 26, 2015. The construction deadline for Station WQGF312 is December 29, 2016.

²⁹ See *id.* at 4-5.

³⁰ See Veritas Opposition at 3.

³¹ See Waiver Request at 1-2.

³² *Id.* at 2

³³ *Id.*

³⁴ See Amendment of Section 94.65(e) of the Commission's Rules to Rechannelize the 2450-2483.5 MHz Band, *Report and Order*, PR Docket No. 89-113, 5 FCC Rcd 4655, 4656 ¶ 13 (1990).

equipment not requiring a waiver. Under these circumstances, we conclude that Veritas has met the standard for grant of a waiver of the technical rules in Section 90.259.

12. We note, however, that the SERCEL mobile equipment that Veritas proposes to use has been approved by the Commission for a maximum output power of two watts.³⁵ Consequently, it cannot be operated with six watts output power until SERCEL obtains a new equipment authorization.³⁶ We hereby, on our own motion, grant SERCEL a waiver of the relevant technical requirements to allow it to receive a new equipment authorization consistent with the parameters of the waiver granted herein to Veritas.³⁷

13. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the Petition to Deny filed by Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, Telesaurus VPC LLC, and Skybridge Spectrum Foundation on March 5, 2008 IS DENIED; and the Motion to Dismiss and for Sanctions and Supplement to Motion to Dismiss and for Sanctions, Supplement to Petition to Deny, and Request to Accept Supplement filed by the same parties on April 15 and May 31, 2008, respectively, ARE DISMISSED.

14. IT IS FURTHER ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925(b)(3) and 90.259(a) of the Commission's Rules, 47 C.F.R. §§ 1.925(b)(3), 90.259(a), that the waiver request filed by CGG Veritas Land, Inc. on February 4, 2008 in association with FCC File No. 0003313571 IS GRANTED, and the application SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

15. 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

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³⁵ See Grant of Equipment Authorization KQ9LAUR; *see also* Veritas Geophysical Services, LLC, *Order*, 22 FCC Rcd 18656, 18659 n.24 (WTB MD 2007).

³⁶ See 47 C.F.R. § 2.1043(a) (change in output power rating requires a new equipment authorization).

³⁷ SERCEL should include a copy of this *Order* with its filing for a new equipment authorization.