

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

In the Matter of)	
)	
ADVANCED METROCOMM, INC.)	File No. 0003170556
Specialized Mobile Radio Station WNSS349)	

ORDER

Adopted: September 10, 2010

Released: September 13, 2010

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

1. *Introduction.* We have before us a request, filed by Advanced Metrocomm, Inc. (Advanced Metrocomm),¹ for waiver of Section 90.621(e)(2) of the Commission's Rules, which permits a licensee to use 800 MHz band Business/Industrial/Land Transportation (B/ILT) spectrum for commercial operation under certain conditions. For the reasons set forth below, we deny the waiver request, and will dismiss the above-captioned application.

2. *Background.* Section 90.621(e)(2) provides that licensees of 800 MHz B/ILT channels may request a modification of the license to authorize use of the channels for commercial operation.² In the case of a license for which the initial application was filed after November 8, 2000, or that was modified after that date to add 800 MHz B/ILT frequencies or to add or relocate base stations that expand the licensee's interference contour, a request to authorize use of the 800 MHz B/ILT channels for commercial operation may not be filed until five years after grant of the authorization for the new or modified license.³

3. In 2000, Advanced Metrocomm was authorized to operate Station WNSS349 on 800 MHz B/ILT channels with a base station in Burlson, Texas. Its application to authorize use of the channels for commercial operation was granted in 2005.⁴ Advanced Metrocomm subsequently filed the above-captioned application to modify the license by relocating the base station to Azle, Texas, while continuing to use the channels for commercial operation. It argues that the five-year holding period in Section 90.621(e)(2) does not apply in this instance, because the initial application for Station WNSS349 was filed before November 9, 2000.⁵ In the alternative, Advanced MetroComm requests a waiver of the five-year holding period.

4. *Discussion.* As an initial matter, we conclude that the five-year holding period applies in this instance. The above-captioned application is a request to modify the license to relocate a base station that expands the licensee's interference contour.⁶ The five-year holding period applies to an expansion of

¹ Letter dated July 10, 2009 from Alan S. Tilles, counsel for Advanced Metrocomm, to Terry Fishel, Associate Chief, Mobility Division, Wireless Telecommunications Bureau (Waiver Request), filed under application FCC File No. 0003170556.

² 47 C.F.R. § 90.621(e)(2).

³ 47 C.F.R. § 90.621(e)(2)(ii).

⁴ See FCC File No. 0002076177.

⁵ See Waiver Request at 2.

⁶ Indeed, the modification would give Station WNSS349 a mostly new service area, given the distance (approximately twenty-eight miles) of the proposed relocation.

the service area of station that was converted from B/ILT use to commercial use.⁷ Therefore, the five-year waiting period applies to the instant application for the Azle site, even though Advanced Metrocomm's application for the Burlson site was filed before November 9, 2000.

5. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case and that grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁸ Advanced Metrocomm argues that a waiver is warranted under the first prong, because the purpose of the five-year holding period was "to prohibit commercial entities from first licensing a station as a non-commercial station, and then converting it to commercial operation, in effect working around the eligibility issue. No such issue exists herein, as WNSS349 was operational for many years before its conversion."⁹ It also argues that a waiver would be in the public interest because the proposed relocation would move its base station farther from a short-spaced Public Safety licensee, which would result in a reduced possibility of interference and afford that licensee greater flexibility to modify its license.¹⁰

6. We disagree. While the five-year holding period was intended to deter trafficking in 800 MHz B/ILT spectrum,¹¹ Advanced Metrocomm overlooks the fact that the reason that the Commission sought to deter trafficking in 800 MHz B/ILT spectrum was to ensure that unassigned 800 MHz B/ILT channels would be licensed in the first instance only for B/ILT use.¹² Granting the instant waiver request would undermine that purpose. Moreover, with respect to the public interest, Advanced Metrocomm has not demonstrated that the City of Mesquite would actually benefit from the proposed relocation of Station WNSS349; nothing in the record indicates that the City has any plans to modify its system that would be facilitated by the proposed relocation, or that it asked Advanced Metrocomm to relocate.

7. *Conclusion.* We conclude that the five-year holding period in Section 90.621(e)(2) applies to an application that seeks to expand the interference contour of station that was converted from B/ILT use to commercial use, such as the instant application. We also conclude that Advanced Metrocomm has not demonstrated that a waiver of the five-year holding period is warranted under the circumstances presented. Therefore, we deny the waiver request, and will dismiss the application.

8. Accordingly, IT IS ORDERED that, pursuant to Sections 2 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152, 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver filed by Advanced Metrocomm, Inc. dated July 10, 2009 and filed in connection with application FCC File No. 0003170556 IS DENIED, and

⁷ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Memorandum Opinion and Order*, WT Docket No. 99-87, 17 FCC Rcd 7553, 7572 n.137 (2002) ("in the case of licenses that have been modified to add 800 MHz Business or I/ILT frequencies or to add or relocate base stations that expand the licensee's interference contour, commercial use of those frequencies or base stations may not be requested until five years after the modification"); *id.* at 7573 n.148.

⁸ 47 C.F.R. § 1.925(b)(3).

⁹ See Waiver Request at 2.

¹⁰ *Id.*

¹¹ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Report and Order*, WT Docket No. 99-87, 15 FCC Rcd 22709, 22762-64 ¶¶ 114-17 (2000) (*Report and Order*); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Memorandum Opinion and Order*, WT Docket No. 99-87, 17 FCC Rcd 7553, 7558 ¶ 10, 7571-72 ¶ 46 (2002) (*Memorandum Opinion and Order*).

¹² See *Report and Order*, 15 FCC Rcd at 22762 ¶ 114, 22763 ¶ 115; *Memorandum Opinion and Order*, 17 FCC Rcd at 7573 ¶ 48.

application FCC File No. 0003170556 SHALL BE DISMISSED.

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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau