



Federal Communications Commission
Washington, D.C. 20554

October 1, 2010

Mr. J. Jeffrey Craven
Thompson Coburn LLP
1909 K Street N.W., Suite 600
Washington, D.C. 20006-1167

Subject: Request to Modify Conditions on Waiver Granted in ET Docket No. 10-24

Dr. Mr. Craven:

This is in response to your letter dated September 23, 2010 requesting a modification of the waiver that permits the operation of low power auxiliary devices without a license in the television band on frequencies below 698 MHz. You state that this modification is needed to permit the use of Telex headsets within nuclear power plants in those instances where all of the terms of the waiver are not satisfied.

On January 14, 2010 the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking addressing the use of low power auxiliary devices in the television bands.¹ In the Report and Order, the Commission granted a waiver of its rules to permit such devices to operate within the television bands on an unlicensed basis on frequencies below 698 MHz until additional rules are adopted. In order to qualify for the waiver the low power auxiliary devices must meet a number of conditions including: 1) the transmitted power is limited to 50 mW; 2) the devices must maintain a specified separation distance from co-channel television transmitters; and 3) the equipment must be certified to meet the Commission's Part 74 technical standards.

In your letter you state that nuclear power plants have clearly established that they have a need to use the Telex headset systems and that a limited modification of the waiver is needed to protect plant workers from radiation and to preserve safe plant operations. You note that a significant number of plants are not able to meet the separation distance from television transmitters required by the waiver for a large portion of their equipment. You state that from 2007-2010 the plants have used the Telex equipment under a consensus plan endorsed by NAB, MSTV, and SBE and that there has not been one allegation of interference. The consensus plan permitted indoor operation at up to 100 milliwatts with no frequency coordination.

It is a well-established principle that the Commission will waive its rules in specific cases only if it determines, after careful consideration of all pertinent factors, that such a grant would serve the public interest without undermining the policy the rules are intended to serve. *See WAIT Radio v. FCC*, 418 FCC F.2d 1153 (D.C. Cir. 1969). Furthermore, in the January 15, 2010 Report and Order the Commission explicitly delegated authority to the Office of Engineering and Technology and the Wireless Telecommunications Bureau to modify the waiver on a case-by-case basis to permit entities to operate

¹ Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band, *Report and Order and Further Notice of Proposed Rulemaking*, 25 FCC Rcd 643 (2010).

low power auxiliary devices at power levels higher than 50 mW where it can be shown there is no significant risk of harmful interference to other users of the spectrum. Modifying the waiver conditions to allow use of Telex headsets inside nuclear power plants will serve the public interest by ensuring that personnel working inside these plants have essential equipment for critical communications.² In granting this modification of the waiver conditions we recognize that these devices employ relatively low power and nuclear power plants are physically separated from receivers that could potentially receive interference. The potential for interference will be further reduced by the fact that the modification that we are granting here will permit operation of the Telex headsets only inside of buildings at the nuclear power plants. As you note, Telex headsets have been used at nuclear power plants for over six years without any reported case of interference.

Accordingly, pursuant to authority delegated in sections 0.31 and 0.241 of the Commission's rules, 47 C.F.R. §§ 0.31, 0.241, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the waiver granted in WT Docket Nos. 08-166 and 08-167 and ET Docket No. 10-24 on January 14, 2010 to permit use of unlicensed low power auxiliary devices in the television bands is modified as follows. The use of low power auxiliary devices will be permitted on television frequencies below 698 MHz inside of nuclear power plants subject to following terms and conditions:

- 1) Such devices shall be limited to a transmit power of 100 mW.
- 2) Such devices shall only be operated within buildings.
- 3) Such devices may be operated without regard to the television station co-channel separation distances specified in the waiver granted on January 10, 2010.
- 4) Such devices in all other ways must comply with the terms of the waiver granted on January 14, 2010 in ET Docket No. 10-24.

If you have any further questions, please contact Nicholas Oros, Spectrum Policy Branch, Policy and Rules Division, via email at Nicholas.Oros@fcc.gov or via phone at (202)418-0636.

Sincerely,

Julius Knapp
Chief
Office of Engineering and Technology

Ruth Milkman
Chief
Wireless Telecommunications Bureau

² The Nuclear Energy Institute and Utilities Telecom Council have previously stated that there are no suitable alternative means of communication. *See* Reply Comments of the Nuclear Energy Council and Utilities Telecom Council, WT Docket 09-174, ET Docket 05-345, filed Nov. 5, 2009, at 11-15.