

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

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| In the Matters of |) | |
| |) | |
| WIRELESS INTERNETWORK, LLC |) | |
| |) | |
| Application for Fixed Point-to-Point |) | File No. 0007833228 |
| Microwave License at LaPorte, Indiana |) | Call Sign: WQWT823 |
| |) | |
| |) | |
| Application for Fixed Point-to-Point |) | File Nos. 0007833231 |
| Microwave License at Chicago, Illinois |) | Call Sign: WQWT825 |
| |) | |
| |) | |

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: April 19, 2018

Released: April 19, 2018

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

I. INTRODUCTION

1. In this *Memorandum Opinion and Order on Reconsideration*, we grant a petition for reconsideration by xWave Engineering LLC (“xWave”) of the grant of applications for Private Operational Fixed Microwave Point-to-Point licenses WQWT823 and WQWT825 (“Licenses”) to Wireless Internetwork, LLC (“WILLC”).

II. BACKGROUND

2. The 6525-6875 MHz band is currently available for assignment to stations in the Common Carrier Fixed Point-to-Point Microwave Service and the Private Operational Fixed (POFS) Point-to-Point Microwave Service.¹ Part 101 includes rules for both the POFS² and the Common Carrier Operational Fixed Service.³ The Commission’s licensing regime for these two services requires frequency coordination and the filing of an application for each microwave link or path, containing detailed information concerning the proposed operation.⁴ In order to complete frequency coordination, an applicant must give prior notice to existing users in the area and other applicants of the proposed applicant’s operations, make reasonable efforts to avoid interference and resolve conflicts, and certify to the Commission that the proposed operation has been coordinated.⁵ Once the applicant has completed frequency coordination, the applicant must file an application for authorization with the Commission, specifying the latitude and longitude of the transmitter to be used to an accuracy of one second.⁶

¹ See 47 C.F.R. § 101.101.

² See Part 101, Subpart H.

³ See Part 101, Subpart I.

⁴ See 47 C.F.R. §§ 101.21(f), 101.103.

⁵ See 47 C.F.R. § 101.21(f).

⁶ 47 C.F.R. § 101.103(d)(2)(ii).

3. On April 24, 2015, WILLC sent a Prior Coordination Notice (“PCN”) attempting to coordinate a microwave path in the upper 6 GHz band between LaPorte, Indiana and Chicago, Illinois.⁷ WILLC sent letters renewing the PCN on October 21, 2015, April 19, 2016, October 19, 2016, and April 19, 2017.⁸ During this two-year span, WILLC did not file any application for the channels, and did not alter or update its PCN.⁹

4. xWave retained Comsearch in early June 2017 to find available channels in the vicinity of Chicago, Illinois. Comsearch was unable to locate any unreserved channels, and determined that the channels subject to WILLC’s PCN were the only suitable channels for xWave and that the channels were not licensed by WILLC or subject to pending licensing.¹⁰ On June 13, 2017, xWave, through Comsearch, sent to WILLC a PCN seeking to coordinate a 6 GHz path in the designated area.¹¹ xWave requested an expedited response date of June 27, 2017.¹²

5. WILLC responded to the PCN, objecting to xWave’s proposed use of the channels, as it would interfere with WILLC’s contemplated usage.¹³ On June 27, 2017 xWave sent a reply letter to WILLC stating their intention to claim the channels through 101.103(d)(2)(xii).¹⁴ WILLC did not respond to xWave’s June 27th letter.¹⁵

6. On June 27, 2017, xWave filed applications for the channels.¹⁶ The xWave applications expressly stated the objections raised by WILLC, and reaffirmed that xWave was claiming a right to use the channels pursuant to 101.103(d)(2)(xii).¹⁷ On June 28, 2017, WILLC filed applications for the same paths.¹⁸ WILLC’s application did not mention xWave’s relinquishment request and included statements that there were no unresolved interference objections.¹⁹ On August 29, 2017, the Wireless Telecommunications Bureau (“Division”) granted WILLC’s applications, and on September 1, 2017, the Division granted xWave’s applications.²⁰

7. On October 3, 2017, xWave filed a petition for reconsideration of the grants of licenses to WILLC. xWave claims that WILLC improperly sought to use the channels while it had no legitimate claim to them.²¹ xWave alleges spectrum warehousing and argues that due to the age of WILLC’s PCN,

⁷ See Letter from Jesus S. DeJesus, Wireless Applications Corp. (dated June 28, 2017) (retrieved from ULS).

⁸ *Id.*

⁹ Petition for Reconsideration of Wireless Internetnetwork LLC (filed October 3, 2017) (xWave Petition) at 4.

¹⁰ xWave Petition at 5.

¹¹ Prior Coordination Notice, Comsearch, Job No. 170613COMSDS01 (June 13, 2017) (xWave PCN).

¹² *Id.*

¹³ xWave Petition at 4-5.

¹⁴ xWave Petition at 5.

¹⁵ *Id.*

¹⁶ File Nos. 0007831343 and 0007831344 (Filed June 27, 2017) (“xWave Applications”).

¹⁷ *Id.*

¹⁸ File Nos. 0007833228 and 0007833231 (Filed Sep. 6, 2017) (“WILLC Application”).

¹⁹ WILLC Application at 1.

²⁰ Public notice of the grant of the both Applications was given on September 6, 2017. See *Wireless Telecommunications Bureau Site-By-Site Action*, Report No. 12564, Public Notice (Sep. 6, 2017) at 12 and 14.

²¹ See xWave Petition at 6.

xWave's immediate need for the channels supersedes WILLC's PCN, and WILLC's refusal to relinquish the channels is invalid.²²

III. DISCUSSION

8. *Introduction.* We find that WILLC's license grants were invalid because at the time that it filed its applications, WILLC was required to relinquish the relevant frequencies to xWave, per xWave's request.²³ As discussed below, we conclude that xWave's request that WILLC relinquish the frequencies was properly based on its coordination process and the fact of its application. Under the specific facts presented here, Section 101.103(d)(2)(xii) of the Commission's rules required WILLC to relinquish the frequencies in question once xWave made that request. We must dismiss WILLC's applications, due to both substantive noncompliance with coordination procedures, and xWave's legitimate claim to the channels under Section 103(d)(2)(xii).

9. *Wireless Internetwork's Noncompliance with Frequency Coordination Procedures.* Section 101.103(d)(1) of the Commission's Rules provides in pertinent part, that

Proposed frequency usage must be prior coordinated with existing licensees, permittees and applicants in the area, and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth. Coordination must be completed prior to filing an application for regular authorization, or an amendment to a pending application, or any major modification to a license. . . . All applicants and licensees must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems as prior coordinated In the event that technical problems are not resolved, an explanation must be submitted with the application.²⁴

Furthermore, Section (d)(2)(vii) of the Rule provides that all unresolved technical problems must be disclosed in the final application, as well as a reason why the problem cannot be resolved internally.²⁵

10. On June 26, 2017 WILLC responded to xWave, stating that xWave's proposed paths would interfere with WILLC's contemplated system.²⁶ WILLC argued that it had a senior claim to the channels and was under no obligation to relinquish them. xWave responded to this objection in a letter to WILLC on June 27, 2017, requesting that WILLC relinquish the channels pursuant to Section 103(d)(2)(xii) because WILLC had not filed an application for the channels since they first coordinated them in April 2015, only renewing their PCN every six months. WILLC did not respond to this letter.²⁷

11. On June 27, 2017, xWave filed its application, disclosing its conflict with WILLC in accordance with Section 101.103 of the Commission's Rules.²⁸ On June 28, 2017, WILLC filed an

²² See xWave Petition at 7 (citing *Geodesic*).

²³ xWave Petition at 6.

²⁴ 47 C.F.R. § 101.103(d)(1).

²⁵ 47 CFR §101.103(d)(2)(vii).

²⁶ xWave Petition at 4 – 5.

²⁷ *Id.*

²⁸ Comsearch, xWave Supplemental Showing Pursuant to Section 101.103, 70613COMSDS01 at 1 (Aug 30, 2017).

application for the same channels, not disclosing the conflict with xWave,²⁹ thereby failing to comply with the Commission’s frequency coordination policies.

12. xWave’s expedited request was proper pursuant to section 101.103(d)(2)(vi).³⁰ While the section states that the burden rests on the notifying party to receive consent, our decision in *Geodesic*³¹ highlights the need for cooperation between “all applicants . . . and licensees to eliminate all problems and conflicts.”³²

13. *xWave’s request for relinquishment.* According to Section 101.103(d)(2)(xii) of our rules, “any frequency reserved by a licensee for future use in the bands subject to this part must be released for use by another licensee, permittee or applicant upon a showing by the latter that it requires an additional frequency and cannot coordinate one that is not reserved for future use.”³³ Per our decisions in *Asia Skylink* and *Geodesic*, frequencies reserved for periods of years, rather than months, may be subject to this release requirement.³⁴ This requirement has two prongs that must be satisfied by the applicant; a demonstration of need for the frequency, and an inability to coordinate another set of frequencies.³⁵

14. If the two prongs of Section 101.013(d)(2)(xii) are met, the party holding the reserved frequency must release it to the requesting party. This means that the requesting party then has priority over the relinquishing party for that frequency, which in turn means that the relinquishing party may not properly file an application for the frequency without re-coordinating it with the requesting party.

15. xWave’s request meets both of the aforementioned requirements. The lack of another suitable option may be shown by a statement to that effect from a frequency coordinator.³⁶ xWave provided such a statement from Comsearch in its applications,³⁷ and WILLC does not dispute its validity. xWave has also successfully demonstrated a need for the relevant frequencies, by completing the coordination process and filing an application. In the *Coordination Public Notice* addressing the issue, the Division and PSHSB stated that, “if the applicant shows that the applicant cannot coordinate a channel that is not reserved for future use and *is prepared to file an application* we believe that the rule requires that the party holding the growth channel must release it” (emphasis added).³⁸ Here, xWave went through the coordination process and proceeded to file its applications in a prompt manner. We believe this is

²⁹ Wireless Application Corp., Wireless Internetwork Supplemental Showing Pursuant to Section 101.103, WAC2015-06996 at 1 (June 28, 2017).

³⁰ 47 CFR §101.103(d)(2)(vi).

³¹ See *Geodesic Networks, LLC, et al.*, Memorandum Opinion and Order and Order on Reconsideration, 29 FCC Rcd 10429, 10433 para. 14 (WTB BD 2014) (*Geodesic*).

³² 47 CFR §101.103(d)(2)(iv).

³³ 47 CFR §101.103(d)(2)(xii).

³⁴ See *Asia Skylink, Inc.*, Memorandum Opinion and Order, DA 99-2965 (WTB PS&PWD rel. Dec. 23, 1999) at para. 14 (*Asia Skylink*) (applicant who had reserved channels for six years was required to relinquish channels); *Geodesic Networks, LLC, et al.*, Memorandum Opinion and Order and Order on Reconsideration, 29 FCC Rcd 10429, 10434 paras. 16-17 (WTB BD 2014) (*Geodesic*) (applicant holding growth channels for 2.5 years required to relinquish channels to another party).

³⁵ *Coordination Public Notice*, 30 FCC Rcd at 361.

³⁶ *Coordination Public Notice*, 30 FCC Rcd at 361.

³⁷ See Supplemental Showing Pursuant to 101.103(d), Job Number: 170613COMSDS01 (filed August 30, 2017) (“There are still unresolved cases with Wireless Internetwork LLC’s ASR1063456 – SBAIN02239-S path. A detailed analysis was performed on our path and it was not possible to coordinate a non-reserved channel Therefore, we are claiming frequency pair 5945.20/6197.24V in accordance with 47 CFR 101.103(d)(2)(xii)”).

³⁸ *Coordination Public Notice*, 30 FCC Rcd at 361.

sufficient to demonstrate need for the frequencies, because it shows an intent to acquire a license and trigger the construction requirement.

16. When xWave filed its application, WILLC had been holding its growth channels for approximately 2 years without filing an application to license the frequencies. Furthermore, WILLC does not provide any special circumstances that could be used to justify its reservation of those frequencies for years. When the Commission enacted Section 101.103(d)(2)(xii), it contemplated that growth channels would be held for “months,” not years.³⁹ The Commission specifically stated that, under this rule, “reserve growth channels should be made available to another applicant upon a demonstration of need.”⁴⁰ We interpret the filing of xWave’s application for a frequency as a demonstration of its need. If one party is willing to file an application and start the clock ticking on the construction requirement, and another party has not, then the former has shown a greater need for the frequency. Here, xWave properly filed an application for the frequencies before WILLC filed such an application.

IV. CONCLUSION AND ORDERING CLAUSES

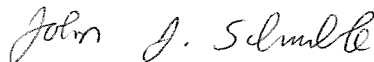
17. xWave’s applications for the frequencies WILLC had reserved as growth channels are sufficient to demonstrate a need for those frequencies, because the applications are substantively complete and demonstrate a bona fide intent to use the channels, and no other suitable channels were available. The Division’s grant of the WILLC’s Applications was therefore improper because WILLC’s initial coordination of the frequencies was over two years old and another party has demonstrated a need for the frequencies; in addition to WILLC’s failure to disclose the conflict in their application.

18. Accordingly, IT IS ORDERED that pursuant to Sections 4(i), 309, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and 405, and Sections 1.106 and 1.939 of the Commission’s rules, 47 C.F.R. §§ 1.106, 1.939, that the Petition for Reconsideration filed by xWave Engineering, LLC on October 3, 2017 IS GRANTED.

19. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.934 of the Commission’s Rules, 47 CFR § 1.946, that the licensing staff of the Broadband Division SHALL SET ASIDE the grant of licenses to Wireless Internetwork, LLC, SHALL TERMINATE the authorizations for Call Signs WQWT823 and WQWT825, and SHALL DISMISS the applications filed by Wireless Internetwork, LLC on June 28, 2017 (File Nos. 0007833558 and 0007833231).

20. These actions are taken pursuant to the authority delegated by Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION



John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

³⁹Part 101 Report & Order, 11 FCC Rcd at 13473 n.102.

⁴⁰ Part 101 Report & Order, 11 FCC Rcd at 13474, para. 66.