

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

In the Matter of)	
)	
TOPEKA SMSA LIMITED PARTNERSHIP)	FCC File No. 9608810
)	
Request for Reconsideration of Grant of)	
Secondary Status for Station WMK920)	
Topeka, Kansas)	

ORDER ON RECONSIDERATION

Adopted: October 20, 1999

Released: October 20, 1999

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1.1 *Introduction.* On August 12, 1998, Topeka SMSA Limited Partnership (Topeka) requested reconsideration of the imposition of a secondary status condition on the authorization for fixed microwave service (FMS) Station WMK920, Topeka, Kansas.¹ For the reasons set forth herein, we grant the request and re-issue the license with primary status.

1.2 *Background.* The Commission has reallocated portions of the 2 GHz band from FMS to emerging technology (ET) services.² To facilitate the transition from FMS to ET, the Commission promulgated regulations regarding the future licensing of FMS stations in the 2 GHz band.³ According to the Commission's Rules, new stations, extensions of existing networks and major modifications of existing stations will be licensed on a secondary basis.⁴ Primary status will be granted for a limited number of minor modifications.⁵ All other minor modifications will render the modified FMS license

¹Letter from Kellye Abernathy, Director, Regulatory Services for Southwestern Bell Mobile Systems, Inc. on behalf of Topeka SMSA Limited Partnership to Steve Buenzow, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (August 12, 1998) (Topeka Letter).

²47 C.F.R. § 101.69-81; *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, First Report and Order and Third Notice of Proposed Rulemaking*, 7 FCC Rcd 6886 (1992).

³47 C.F.R. §101.81; *see* Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8825, 8867-69 ¶¶ 86-88 (1996) (*Cost Sharing First Report and Order*).

⁴47 C.F.R. § 101.81; *see Cost Sharing First Report and Order*, 11 FCC Rcd at 8868 ¶188.

secondary to ET systems unless the FMS licensee justifies primary status and the modification does not add to the relocation costs to be paid by the new ET licensees.⁶

1.3 On October 15, 1996, Topeka filed an application for authorization to modify the facilities for Station WMK920.⁷ The modification consisted of data corrections regarding the overall antenna structure height and antenna centerline height. Topeka states that it learned that the information on the license was inaccurate after performing an "audit 1A tape drop."⁸ Effective February 19, 1997, the Licensing and Technical Analysis Branch granted a modified authorization for Station WMK920 with a secondary status condition on the license. Prior to this time, Station WMK920 was authorized to operate on a primary basis.

1.4 On August 12, 1998, Topeka requested reconsideration of the imposition of the secondary status condition on Stations WMK920 and re-issuance of these licenses on a primary basis.⁹ In its Petition for Reconsideration, Topeka states that the modifications to its coordinates were corrections due to audit 1A tape drop information and did not reflect any change in the actual station location.¹⁰

1.5 *Decision.* Topeka's license was issued with a secondary status condition effective February 19, 1997, but Topeka did not seek reconsideration until August 12, 1998. Ordinarily, licensees have only thirty days to seek reconsideration of a condition placed on their licenses.¹¹ As we decided in *Contel Cellular of Nashville, Inc.*, however, in the case of the secondary status conditions placed on 2 GHz FMS licenses, the language used did not provide sufficient notice to the affected licensees that their licenses were subject to a condition.¹² Accordingly, for the reasons explained in *Contel Cellular of Nashville, Inc.*, Topeka's request will be considered on the merits.¹³

⁵47 C.F.R. § 101.81

⁶ *Id.*

⁷Topeka SMSA Limited Partnership Application for Station Authorization in the Private Microwave Radio Service (File No. 9608810) (filed October 15, 1996).

⁸Topeka Letter at 1. The antenna structure height was actually 280 feet as opposed to 246 feet and the antenna height was 218 feet instead of 189 feet as indicated in the prior authorization.

⁹Topeka Letter at 1.

¹⁰ *Id.*

¹¹47 C.F.R. § 101.47(c) (1998) (currently 47 C.F.R. § 1.945(e)); 47 U.S.C. § 405.

¹²Contel Cellular of Nashville, Inc., *Order on Reconsideration*, 14 FCC Rcd 6302, 6305 TTT 10-13 (WTB PSPWD 1999).

¹³ *Id.*

1.6 Topeka states that the change to the antenna structure height and antenna height merely corrected errors discovered from the audit 1A tape drop and did not involve an actual change at the transmit or receive station.¹⁴ Under the Commission's Rules, secondary status is not applied to data corrections which do not involve a change in the location of an existing facility.¹⁵ Moreover, the Commission determined in adopting final rules regarding future licensing in the 2 GHz band that data corrections are minor technical changes that do not add to the relocation costs of ET licensees and thus are not subject to the imposition of a secondary status condition.¹⁶ We are persuaded that the changes in antenna centerline height and antenna height are data corrections resulting from the audit tape drop, a more precise measuring method. Therefore, we find that Topeka's license for Station WMK920 should not have been accorded secondary status, and we will re-issue the licenses with primary status.

1.7 ACCORDINGLY, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. § 1.106 and 101.81 of the Commission's Rules, 47 C.F.R. §§ 1.106 and 101.81, the Petition for Reconsideration of Topeka SMSA Limited Partnership filed on August 12, 1998 IS GRANTED and the license for Station WMK920 will be re-issued with primary status.

1.8 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

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁴ *See Topeka Letter at 1.*

¹⁵ 47 C.F.R. § 101.81(d).

¹⁶ *See Cost Sharing First Report and Order, 11 FCC Rcd at 8868; 47 C.F.R. § 101.81(d).*