

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

In the Matter of)	
)	
CENTRAL NEBRASKA PUBLIC POWER & IRRIGATION DISTRICT)	FCC File Nos. 745581, 745578
)	
Request for Reconsideration of Grant of Secondary Status and Reinstatement of Primary Status for Station WGO83, Elwood, NE, and Station WGO97, Gothenburg, NE)	

ORDER ON RECONSIDERATION

Adopted: March 23, 2000

Released: March 24, 2000

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

1. *Introduction.* On April 26, 1999, Central Nebraska Public Power & Irrigation District (Central Nebraska) requested reconsideration of the imposition of a secondary status condition on the authorization for fixed microwave service (FMS) Stations WGO83, Elwood, NE, and WGO97, Gothenburg, NE.¹ For the reasons set forth herein, we deny the request.

2. *Background.* The Commission has reallocated portions of the 2 GHz band from FMS to emerging technology (ET) services, including the personal communications services.² To this end, the Commission has adopted certain transition rules.³ In doing so, the Commission balanced the needs of incumbent FMS licensees to continue to operate their systems with the need to conserve vacant 2 GHz spectrum for use by ET licensees, to provide ET licensees with a stable environment in which to plan and implement new services, and to prevent escalation of the costs associated with relocating FMS licensees.⁴

¹ Central Nebraska Public Power & Irrigation District Petition for Reconsideration (filed April 26, 1999) (Petition).

² Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *First Report and Order and Third Notice of Proposed Rule Making*, WT Docket No. 92-9, 7 FCC Rcd 6886 (1992) (*ET First Report and Order*).

³ See 47 C.F.R. §§ 101.69-101.81. The rules are intended to reaccommodate the FMS licensees in a manner that would be most advantageous for the incumbent users, least disruptive to the public and most conducive to the introduction of new services. See *ET First Report and Order*, 7 FCC Rcd at 6886-87 ¶ 5.

⁴ *ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5, 6891 ¶ 30; 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 Rule Making*, WT Docket No. 95-157, 11 FCC Rcd 8825, 8866-69 ¶¶ 86-88 (1996) (*Cost Sharing First Report and Order*).

Thus, rather than immediately clearing the 2 GHz band of the incumbent FMS users, the Commission permits the incumbents to continue to occupy the band on a co-primary basis with the ET licensees for a significant length of time, by the end of which the incumbents are to relocate to another portion of the spectrum.⁵ ET licensees have the option, however, of requiring the FMS incumbents to relocate sooner if they pay the additional costs caused by the earlier relocation.⁶ Second, the Commission is authorizing new FMS stations, extensions of existing FMS systems, and major modifications of existing FMS stations only on a secondary basis to ET systems.⁷ Most minor modifications of FMS stations are also authorized on a secondary status unless the licensee can demonstrate that it needs primary status and that the modifications will not add to the relocation costs to be paid by the ET licensee.⁸ The result is that while incumbent FMS licensees are able to continue operating their systems with primary status -- as those systems currently exist -- any expansions and most modifications to the systems result in secondary status.

3. Central Nebraska is a political subdivision of the State of Nebraska that supplies electricity and irrigation, and provides incidental flood control and ground water recharge benefits to the State.⁹ It is authorized to operate a 2 GHz path between Station WGO83, Elwood, NE, and Station WGO97, Gothenburg, NE. Central Nebraska uses this link for remote monitoring and control of two hydroelectric plants that are controlled from Gothenburg; monitoring and controlling irrigation structures; and providing two-way communications, including emergency communications.¹⁰ On October 9, 1998, Central Nebraska filed applications to modify the licenses for Stations WGO83 and WGO97. Specifically, Central Nebraska sought to correct the stations' coordinates, lower the antenna height for Station WGO83 from 195 feet to 151 feet and lower the antenna height of Station WGO97 from 135 feet to 120 feet, and change the polarization of the antennas from horizontal to vertical. On March 26, 1999, Central Nebraska was issued modified licenses for the stations with secondary status. Prior to this time, the stations operated with primary status. On April 26, 1999, Central Nebraska petitioned for reconsideration of the imposition of secondary status and requested reinstatement of primary status for the stations.

4. *Discussion.* Section 101.81 of the Commission's Rules provides that all major modifications to existing 2 GHz FMS systems will be authorized on a secondary basis to ET systems, and, except for certain technical changes that may be made without losing primary status, all minor modifications will render the modified FMS license secondary to ET operations unless the incumbent FMS licensee affirmatively justifies primary status and establishes that the modification would not add to the relocation costs of ET licensees.¹¹ Central Nebraska contends that all of the modifications to Stations WGO83 and WGO97 were either technical changes or minor modifications, and that it requires primary

⁵ 47 C.F.R. §§ 101.69(b), 101.79(a). *See also ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5.

⁶ 47 C.F.R. §§ 101.69(a), 101.71-77.

⁷ 47 C.F.R. § 101.81.

⁸ *Id.*

⁹ Petition at 1.

¹⁰ *Id.* at 2-3.

¹¹ 47 C.F.R. § 101.81.

status for its operations and the modifications would not increase relocation costs.¹²

5. We disagree. Corrections to station coordinates¹³ and reductions in antenna height¹⁴ are in fact technical changes. Changes in antenna polarization, however, are major modifications.¹⁵ Therefore, we find that the modified stations were authorized with secondary status, consistent with the provisions of the Commission's Part 101 rules. Further, we conclude that Central Nebraska has failed to demonstrate that reversal of our prior decision regarding this matter is warranted.

6. ACCORDINGLY, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 101.69 of the Commission's Rules, 47 C.F.R. §§ 1.106, 101.69, the Petition for Reconsideration of Imposition of Secondary Status filed by Central Nebraska Public Power & Irrigation District on April 26, 1999, IS DENIED.

7. 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 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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

¹² Petition at 3-4.

¹³ 47 C.F.R. § 101.81(d).

¹⁴ 47 C.F.R. § 101.81(f); *see* Houston Pipe Line Co., *Order on Reconsideration*, DA 99-2189, ¶ 8 (WTB PSPWD rel. Oct. 15, 1999)

¹⁵ 47 C.F.R. § 1.929(d)(1)(viii) (formerly 47 C.F.R. § 101.57(d)(5)).