

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

In the Matter of)	
)	
AB Fillins)	
)	File No. CWD 96-15
Petition for a Declaratory Ruling)	
Preempting the Authority of the Tohono O'odham)	
Legislative Council to Regulate the Entry of)	
Commercial Mobile Radio Service to the Sells)	
Reservation Within the Tucson MSA,)	
Market No. 77)	
)	
Application for Phase 1)	
Major Modification)	
Tucson, AZ MSA)	File No. 06436-CL-MP-95
Mkt. No. 77 (B2))	
)	
Tohono O'odham Utility Authority)	
)	
Application for Construction Permit)	File No. MSD-94-9
To Construct and Operate a Cellular Radio)	
Telephone System in the Domestic Public)	
Cellular Radio Telecommunications Service in)	
The Unserved Area in the Tucson, Arizona)	
Metropolitan Statistical Area, Market No. 77,)	
Request for Waiver of Section 22.31)	

ORDER ON RECONSIDERATION

Adopted: March 6, 2000

Released: March 14, 2000

By the Commission:

1. This order addresses a Petition for Clarification or, in the Alternative, for Partial Reconsideration (Petition) filed on September 2, 1997 by AB Fillins. The Petition concerns certain aspects of the Commission's Memorandum Opinion and Order released on August 1, 1997 in the above-captioned matter (Commission Order).¹ In that order, among other actions, we granted in part and denied in part Tohono O'odham Legislative Council and its Utility Authority's (TOUA) Petition to Dismiss or Deny a Phase 1 major modification application filed by AB Fillins (TOUA Petition) and denied AB Fillins' major modification application. In its Petition, AB Fillins seeks clarification or reconsideration as to whether its modification application has been denied in whole or in part and requests the Commission to grant its

¹ *AB Fillins*, 12 FCC Rcd 11755 (1997).

application, as amended, to remove the three particular cell sites opposed by TOUA. AB Fillins also seeks reconsideration of the Commission's conclusion that TOUA had standing to challenge AB Fillins' modification application.² For the reasons discussed below, we grant AB Fillins' request to the extent of granting its application, as amended, and otherwise deny its petition.

2. AB Fillins asserts that the Commission Order is unclear on its face.³ AB Fillins points out that the Commission Order granted the TOUA Petition only "to the extent that it requests us to deny authorization for AB Fillins to construct the three proposed sites located on TOUA's tribal lands."⁴ Moreover, the relevant ordering clause stated that "TOUA's Petition to Dismiss or Deny AB Fillins' Modification Application is GRANTED to the extent described above."⁵ However, the ordering clause disposing of AB Fillins' application states without qualification that "AB Fillins' Application for Phase I Major Modification is DENIED."⁶ We clarify that the only portion of AB Fillins' modification application that was at issue in the Commission's Order was AB Fillins' inclusion of the three proposed cell sites located on tribal land. Accordingly, we grant AB Fillins' amended modification application, which omits the three proposed cell sites that were on tribal land.⁷

3. We disagree with AB Fillins' argument that TOUA lacked standing to challenge AB Fillins' modification application.⁸ To establish standing, the petitioner must allege sufficient facts to demonstrate that a grant of the subject application would cause the petitioner to suffer a direct injury.⁹ In this case, TOUA could suffer direct injury from grant of AB Fillins' application because, as noted above, AB Fillins proposed to operate from sites located on TOUA's tribal lands. In addition, TOUA was itself seeking an authorization to provide cellular service on its tribal lands.¹⁰ Accordingly, TOUA clearly had standing to challenge AB Fillins' modification application and we see no reason to reconsider the Commission's Order on this point.

4. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 308 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 308 and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106,

² AB Fillins' Petition does not request reconsideration of any other portion of the Commission Order.

³ Petition at 1.

⁴ 12 FCC Rcd at 11767 ¶ 36.

⁵ *Id.* at 11768 ¶ 40.

⁶ *Id.* at 11768 ¶ 41. *See id.* at 11767-68 ¶¶ 36, 37 (stating without qualification that we "deny AB Fillins' Application for Phase I Major modification").

⁷ As we are granting AB Fillins' request for relief with respect to its amended application, the Petition's argument that the Commission erred in finding that AB Fillins lacked reasonable assurance of site availability for certain sites and then denying the entire application is moot. We therefore do not address it here.

⁸ Petition at 2.

⁹ 47 U.S.C. § 309(d)(1), *Los Angeles Cellular Telephone Company*, 13 FCC Rcd 4601, 4603 (1998), and *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972).

¹⁰ *See AB Fillins*, 12 FCC Rcd at 11762-66.

AB Fillins' Petition for Clarification or, in the Alternative, for Partial Reconsideration, filed on September 2, 1997, IS GRANTED to the extent we are granting AB Fillins' application as modified.

5. IT IS FURTHER ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Clarification or, in the Alternative, for Partial Reconsideration, filed by AB Fillins on September 2, 1997, IS DENIED in all other respects.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary