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

In the Matter of Application of	)	
	)	
LANDLINX COMMUNICATIONS	)	File No. C002966
	)	
to operate Station WPMP955,	)	
in various locations in the United States	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 25, 2001 **Released: November 23, 2001**

By the Commission:

I. INTRODUCTION

1. On January 19, 2001, the California State Automobile Association (CSAA) filed an application for review[1] of the December 20, 2000, decision by the Wireless Telecommunications Bureau (Bureau), Public Safety and Private Wireless Division (Division) that an application by Landlinx Communications (Landlinx) to operate on twenty channels in the 150-174 MHz band was properly granted.[2] CSAA argues that the grant was in violation of Section 90.35(e) of the Commission's Rules, and violated the Commission's policy regarding demonstration licenses.[3] For the reasons discussed below, we deny CSAA's application for review.

II. BACKGROUND

2. On May 11, 1998, Landlinx filed an application seeking authorization to operate five mobile units throughout eight states, on twenty Industrial/Business Pool frequencies in the 150-174 MHz band (including frequency 150.935 MHz).[4] Landlinx sought the authorization to enable it to demonstrate its communications business products.[5] On August 18, 1998, CSAA filed an informal objection to the Landlinx application.[6] CSAA stated that Landlinx's use of frequency 150.935 MHz could potentially cause congestion that would harm CSAA's co-channel operations in the Salt Lake City area.[7] CSAA also

[1] Application for Review (filed Jan. 19, 2001).

[2] Landlinx Communications, *Second Order on Reconsideration*, 15 FCC Rcd 24932 (WTB PSPWD 2000) (*Second Order on Reconsideration*).

[3] Application for Review at 1-2.

[4] *See* FCC Application File No. C002966 (filed May 11, 1998).

[5] *Id.*

[6] *See* Letter from Peter Fuerst, CSAA, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (filed Aug. 18, 1998).

[7] *Id*. at 2.

contended, *inter alia*, that authorizing Landlinx to use twenty frequencies was not consistent with Section 90.35(e) of the Commission's Rules,[8] which provides in part, "Normally only one frequency, or pair of frequencies in the paired frequency mode of operation, will be assigned for mobile service operations by a single applicant in a given area."[9] In consideration of CSAA's Objection, the Division's Licensing and Technical Analysis Branch (Branch) returned the Landlinx application to the Industrial Telecommunications Association (ITA), the certified frequency coordinator for the application, on September 16, 1998, and requested that ITA address CSAA's objection.[10] ITA responded to CSAA's objection, and recertified the application and returned it to the Branch for processing, on October 26, 1998.[11] The Branch granted the authorization to Landlinx to operate Station WMP955 on October 30, 1998.

3. CSAA petitioned for reconsideration of the grant on November 30, 1998.[12] The Division denied the petition on January 3, 2000.[13] In the denial, the Division noted that under the Commission's Part 90 rules, frequency 150.935 MHz is available only on a shared basis, and will not be assigned for the exclusive use of any licensee.[14] The Division stated that ITA had determined that no alternative frequencies were available for Landlinx's use.[15] The Division also stated that "the application was properly coordinated, and CSAA must share the frequency with Landlinx."[16] In addition, the Division agreed with ITA that grant of Landlinx's application was not inconsistent with Section 90.35(e), because Landlinx did not propose to operate only in a single area, and CSAA had not adequately supported its speculation that Landlinx's operations would be concentrated in the Salt Lake City area.[17]

4. On January 24, 2000, CSAA filed a second petition for reconsideration in this matter.[18] The Second Petition repeated certain arguments made in the first petition, and also argued, *inter alia*, that,

[8] *See* 47 C.F.R. § 90.35(e).

[9] *See* Letter from Peter Fuerst, CSAA, to Mary Shultz, Chief, Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at 2-3 (filed Aug. 18, 1998).

[10] *See* Letter from the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to the Industrial Telecommunications Association (Sept. 16, 1998).

[11] *See* Letter from Mark E. Crosby, ITA, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (filed Oct. 26, 1998) (ITA Letter).

[12] CSAA Petition for Reconsideration (filed Nov. 30, 1998).

[13] *See* Landlinx Communications, *Order on Reconsideration*, DA 99-3038 (WTB PSPWD rel. Jan. 3, 2000) (*Order on Reconsideration*).

[14] *Id.*, ¶ 4 (citing 47 C.F.R. § 90.173(a)).

[15] *Id.* (citing ITA Letter at 2).

[16] *Id.*

[17] *Id.*, ¶ 6.

[18] CSAA Petition for Reconsideration and/or License Conditions (filed Jan. 24, 2000) (Second Petition).

because Landlinx planned to use the facilities to demonstrate its communications products, special conditions should have been placed on the license pursuant to a 1983 *Public Notice* relating to licenses issued "to radio equipment manufacturers, communications sales organizations, and others for the purpose of demonstrating equipment, conducting propagation studies, and performing field strength surveys."[19] The Division denied the second petition in a *Second Order on Reconsideration* released on December 20, 2000. The Division declined to address the arguments that it had considered and rejected in the *Order on Reconsideration*, because CSAA had failed to present additional facts relevant to this matter.[20] With respect to the 1983 *Public Notice*, the Division concluded that because the Landlinx license was not issued pursuant to the provisions of that *Public Notice*, it would be inappropriate to impose the conditions described in that *Public Notice* on Landlinx.[21]

5. On January 19, 2001, CSAA filed the instant application for review.[22] CSAA repeats its arguments that the grant of twenty channels was contrary to Section 90.35(e) of the Commission's Rules, and that the Landlinx license should have special conditions placed on it so as not to violate the Commission's policies on demonstration licenses.[23] On September 18**,** 2001, CSAA filed a motion to accept a supplement to its application for review, accompanied by the supplement.[24]

III. DISCUSSION

6. We affirm the Division's denial of CSAA's second petition. Section 90.35(e) of the Commission's Rules requires a satisfactory showing of need when applicants seek more than one frequency or pair of frequencies "in a given area."[25] CSAA contends that the Landlinx application should be deemed to cover a single "area," because the eight states in which it sought to operate are contiguous.[26] If deemed a single area, CSAA argues that "the grant of twenty channels pursuant to a single application with no justification of necessity is a grant of nineteen channels too many."[27] Section 90.35(e) does not specifically define "area," but we reject the interpretation that any amount of contiguous geography constitutes a single "area" with respect to mobile-to-mobile operations. It is more reasonable to read the rule in light of each

[19] *See* Demonstration Licenses in the Business Radio Service, *Public Notice*, Mimeo No. 2422 (rel. Feb. 16, 1983) (*Public Notice*).

[20] *Second Order on Reconsideration*, 15 FCC Rcd at 24933 ¶ 4 (citing, *e.g.*, Gaines, Bennett Gilbert, 8 FCC Rcd 3986 (Rev. Bd. 1993)).

[21] *Second Order on Reconsideration*, 15 FCC Rcd at 24934 ¶ 5.

[22] Application for Review (filed Jan. 19, 2001).

[23] *Id*. at 1-2.

[24] *See* Motion to Accept Supplement to Application for Review and Supplement to Application for Review (filed Sept. 18, 2001).

[25] *See* 47 C.F.R. § 90.35(e).

[26] Application for Review at 4.

[27] *Id.* at 6.

mobile unit's area of operation.[28] We agree with the Division that Landlinx applied to operate in many areas, as each of the mobile units can only operate within a small portion of the eight-state area at any given time.[29]

7. Moreover, even if we were to accept CSAA's argument that there is one applicable "area," we still think that the Landlinx grant is a logical application of Section 90.35 of our Rules, which does not prohibit us from assigning more than one frequency. We conclude that Landlinx provided a satisfactory showing of need for the multiple frequencies it requested in its application. The stated use on the Landlinx application is demonstration of its products, so we do not expect its mobile units to be in constant use. Landlinx is authorized to operate only five mobile units on twenty channels throughout an eight-state area. Since presumably the mobile units will communicate only with each other, Landlinx will be using no more than two channels at any given time. Because the units' authorized output power is limited to twenty-five watts, the potential for interference is small. In the event of actual interference to another party, both parties are obligated to attempt to mutually resolve the problem.[30] We find it to be in the public interest to afford Landlinx the flexibility of using multiple frequencies, to avoid causing or incurring interference on these shared channels.[31] In this connection, CSAA does not assert that separate applications would similarly violate our Rules. We see no reason to require an applicant in Landlinx's situation to file multiple overlapping applications when the same result can be reached with one application.[32]

8. With respect to the applicability of special conditions, we agree with the Division that it would be inappropriate to impose the conditions described in that *Public Notice* on Landlinx's license, because the license was not granted pursuant to the *Public Notice*. CSAA presents no authority for its underlying assumption that an application for a license that will be used to demonstrate communications products may only be granted pursuant to special conditions associated with a demonstration license, even if the applicant otherwise meets the requirements in our rules for a regular authorization. Indeed, it is not evident that the *Public Notice* even applies to this case. The *Public Notice* expressly applies only to demonstration licenses in the Business Radio Service.[33] The Business Radio Service is no longer a separate

[28] *Cf., e.g.*, Replacement of Part 90 by Part 88 to Reuse the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14308 n.146 (1997) (*Refarming Second Report and Order*) (a station's service area in the 150-174 MHz band is the area contained within its 37 dBu contour).

[29] Indeed, given the authorized output power of 25 watts, each mobile unit has an operating radius of approximately 14 kilometers.

[30] 47 C.F.R. § 90.173(b).

[31] *See* 47 C.F.R. § 90.173(a) ("Except as otherwise specifically provided in this part, frequencies assigned to land mobile stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee.").

[32] Because the Commission promotes efficiency in the filing and processing of applications, we cannot support such an outcome. For example, with the creation of the Universal Licensing System in 1998, the Commission noted that licensees who wanted to modify multiple licenses could eliminate the traditional practice of the submission of duplicative and overlapping applications. *See* Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027, 21040 ¶ 19 (1998).

[33] *Public Notice* at 1.

component of the 150-174 MHz band, having been consolidated with other services into the Industrial/Business Pool.[34]

9. Finally, we reject CSAA's argument in the supplement to its application for review that, under the Commission's recent decision in *S&L Teen Hospital Shuttle*,[35] the Branch erred in granting Landlinx's application without allowing CSAA time to reply to ITA's response to CSAA's informal objection to the application.[36] In that case, due to administrative inadvertence, the Branch granted an application without first reviewing an informal objection to it.[37] Upon the filing of an application for review, the Commission stated, "Had Branch staff been aware of [the] opposition, it would have – in keeping with its own practices – considered the merits of the Petition to Deny before ruling on the subject application."[38] From this, CSAA infers that it was entitled to a formal pleading cycle with respect to its informal objection.[39] We disagree. *S&L Teen Hospital Shuttle* addressed whether the Branch should have considered an informal objection; in no way did it consider whether there is any right to file a formal reply to a response to an informal objection. Moreover, we agree with the Division that "there is no requirement for a formal pleading cycle, and the Commission may grant an application without waiting for any specific amount of time after the submission of informal protests and objections."[40] That is, we reject CSAA's assertion that "informal requests must be treated formally by the Commission."[41]

10. Consequently, we deny CSAA's application for review and affirm the decisions below. We find no material error or omission in the *Order on Reconsideration* or *Second Order on Reconsideration*. We are not persuaded by CSAA's concern that "the potential for current and future licensees to use the authorized spectrum in a manner not anticipated at the time of the grant [to] inflict mischief against CSAA is great."[42] We remind CSAA that these are shared frequencies not assigned for its exclusive use, and that in the event of actual interference to CSAA's operations (as opposed to potential interference based on CSAA's worst case scenario of how Landlinx might use the spectrum), both parties are obligated to attempt to resolve the problem by mutually satisfactory arrangements.[43]

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[34] *See Refarming Second Report and Order*, 14 FCC Rcd at 14318 ¶ 20. In fact, frequency 150.935 MHZ was formerly in the Automobile Emergency Radio Service in the areas in which Landlinx operates. *See* 47 C.F.R. § 90.35(c) (1996).

[35] S&L Teen Hospital Shuttle, *Memorandum Opinion and Order*, 16 FCC Rcd 8153 (2001) (*SLTHS*).

[36] Supplement at 5.

[37] *SLTHS*, 16 FCC Rcd at 8154 ¶ 2.

[38] *Id.* at 8155 ¶ 5.

[39] Supplement at 3.

[40] *Second Order on Reconsideration*, 15 FCC Rcd at 24934 ¶ 5.

[41] Supplement at 3. We will not address CSAA's related argument in its supplement regarding 47 C.F.R. § 1.45, *see* Supplement at 3-4, because CSAA has not explained why this argument could not have been raised earlier. *See* 47 C.F.R. § 1.115(c), (d).

[42] Application for Review at 8.

[43] *See* 47 C.F.R. § 90.173(a), (b).

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review filed by the California State Automobile Association on January 19, 2001 IS DENIED.

12. IT IS FURTHER ORDERED that the Motion to Accept Supplement to Application for Review filed by the California State Automobile Association on September 18, 2001 IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary