

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

In the Matter of	)	
	)	
COUNTY OF SAN MATEO, CALIFORNIA	)	File Nos. A004521, A007122, A009109,
	)	and 0000013680
Applications to Modify Public Safety	)	
Land Mobile Radio Station WIG278	)	

**ORDER ON REVIEW AND RECONSIDERATION**

**Adopted:** January 3, 2001

**Released:** January 8, 2001

By the Commission:

**I. INTRODUCTION**

1. Before us for consideration is an Application for Review filed by the County of San Mateo, California ("San Mateo" or "the County") on December 13, 1999.<sup>1</sup> San Mateo seeks partial review of the November 12, 1999 decision by the Wireless Telecommunications Bureau (Bureau) in this proceeding. The Bureau granted the County's January 28, 1999 waiver request and associated license application to incorporate thirteen frequency pairs from commercial paging control frequencies in the 470-512 MHz band into its public safety radio system, licensed under Call Sign WIG278.<sup>2</sup> The Bureau concurrently dismissed as moot San Mateo's May 26, 1998 Petition for Reconsideration<sup>3</sup> of the April 24, 1998 decision by the Bureau's Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch). The Branch's decision rescinded the Branch's grant of three 1997 applications to modify its license for Station WIG278 to add two channel pairs from land mobile radio frequencies in the 470-512 MHz band. San Mateo contends that the Bureau erred in dismissing the Petition, and requests that the Commission reinstate and resolve the Petition. After considering the arguments and evidence presented by San Mateo, we find that the Bureau erred in dismissing the County's Petition. Moreover, we find that the Branch erred in rescinding its grant of San Mateo's modification applications. Therefore, we grant San Mateo's Application for Review, reinstate the Petition to pending status, and grant the Petition.

**II. BACKGROUND**

2. On April 18, 1997, San Mateo filed an application to modify its license for Call Sign WIG278 to add frequency pair 489/492.4875 MHz, a 470-512 MHz band channel in the San Francisco area,<sup>4</sup> at two

<sup>1</sup> San Mateo Application for Review (filed Dec. 13, 1999) (Application for Review).

<sup>2</sup> County of San Mateo, California, *Memorandum Opinion and Order*, 14 FCC Rcd 19002 (WTB 1999) (*Order*).

<sup>3</sup> San Mateo Petition for Reconsideration (filed May 26, 1998) (Petition).

<sup>4</sup> *See* 47 C.F.R. § 90.311(a) (1996).

sites.<sup>5</sup> The modification application was granted on May 21, 1997.<sup>6</sup> On September 16, 1997, San Mateo filed a second modification application to add the same frequency pair to a third site.<sup>7</sup> On October 29, 1997, San Mateo filed a third modification application to add another frequency pair, 483/486.4875 MHz at a fourth site.<sup>8</sup> The second and third modification applications were granted on November 6 and 17, 1997, respectively.<sup>9</sup>

3. On April 24, 1998, more than five months after it granted the County's final modification application, the Branch set aside its actions granting San Mateo's three modification applications.<sup>10</sup> The Branch stated that it had been notified by the Industrial Telecommunications Association (ITA) on November 5, 1997, that it had processed San Mateo's first modification application ahead of an application for the same frequency pair filed on December 26, 1996,<sup>11</sup> by Champion Communications Services, Inc. (Champion).<sup>12</sup> The Branch received such notification more than five months after its initial grant. Champion did not file any petition for reconsideration of the Branch's grants of the County's modification applications. On May 26, 1998, the County timely filed its Petition for Reconsideration of the Branch's action.

4. On January 28, 1999, while the Petition was pending, San Mateo filed an application<sup>13</sup> and waiver request<sup>14</sup> to add to its system thirteen frequency pairs from frequencies in the 470-512 MHz band allocated for paging control operations in the Bay Area.<sup>15</sup> In its waiver request, the County referred to the pending Petition and stated,

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<sup>5</sup> FCC File No. A004251.

<sup>6</sup> See Letter from Michael J. Regiec, Acting Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division to Steve Dupre, San Mateo, at 1 (Apr. 24, 1998) (Branch Letter).

<sup>7</sup> FCC File No. A007122.

<sup>8</sup> FCC File No. A009109.

<sup>9</sup> Branch Letter at 1.

<sup>10</sup> *Id.*

<sup>11</sup> FCC File No. D065490.

<sup>12</sup> Branch Letter at 1.

<sup>13</sup> FCC File No. 0000013680.

<sup>14</sup> San Mateo Waiver Request (filed Jan. 28, 1999) (Waiver Request).

<sup>15</sup> *Order*, ¶ 4. Specifically, San Mateo sought the use of these thirteen 12.5 kHz frequency pairings allocated for Part 22 Public Land Mobile Services paging control: 482/485.0125, 482/485.0625, 482/485.2125, 488/491.0125, 488/491.0875, 488/491.1375, 488/491.2125, 488/491.2250 (new channel created through narrowbanding), 488/491.2375, 488/491.2500 (new narrowband channel), 488/491.2625, 488/491.2750 (new narrowband channel), and 488/491.2875 MHz. *Id.*, n.2.

[E]ven if the County is permitted to keep those two frequencies, it will still have far too little channel capacity to satisfy its public safety communications requirements. [¶]Therefore, [the] County is now seeking authority to utilize 13 channel pairs on frequencies currently allocated for paging control operations. . . . The County is confident that this new system will alleviate many of the life-threatening problems that face its current radio communications operations.<sup>16</sup>

In a supplement to the waiver request, San Mateo stated that it would relinquish channels at 45.66, 151.475, 482/485.5625, and 484/487.4875 MHz if its request were granted.<sup>17</sup>

5. After seeking public comment<sup>18</sup> and fully considering the record, the Bureau granted San Mateo's January 28, 1999 waiver request and application in the *Order* on November 12, 1999. Relying on the record in its entirety and particularly on the above-quoted statement in the waiver request, the Bureau also concluded that the grant "would obviate the need for" the two frequency pairs at issue in the Petition.<sup>19</sup> Consequently, the Bureau dismissed the Petition as moot.<sup>20</sup> On December 13, 1999, the County filed the instant Application for Review of the Bureau's dismissal of the Petition.

### III. DISCUSSION

6. The County argues that the Bureau erred in inferring that granting the waiver request would render the Petition moot. With respect to the statement in the waiver request upon which the Bureau relied, the County notes that it said that grant of the waiver request would alleviate *many* of its communications problems, not all of them.<sup>21</sup> The County also cites the engineering analysis provided with its waiver request, which indicated that the planned system would use sixteen channels, *i.e.*, more than the thirteen requested in the waiver request.<sup>22</sup> Therefore, the County contends that its Petition is not moot and should not have been dismissed.

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<sup>16</sup> Waiver Request at 5-6.

<sup>17</sup> San Mateo Supplement to Request for Waiver (filed May 12, 1999) at 2; *see Order*, ¶ 7.

<sup>18</sup> *See* Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by San Mateo County, California, to Obtain a License for Thirty-One Frequencies Allocated for Paging Control Operations, *Public Notice*, 14 FCC Rcd 4090 (WTB PSPWD 1999).

<sup>19</sup> *Order*, n.7.

<sup>20</sup> *Id.*, ¶¶ 16, 18.

<sup>21</sup> Application for Review at 3-4.

<sup>22</sup> *Id.* at 4 (citing Waiver Request, Att. A at 4).

7. We will grant the Application for Review and reinstate the Petition. San Mateo has demonstrated that there is no necessary relationship between the frequencies sought in the County's Section 337(c) waiver request and the frequencies at issue in the Petition. We note, however, that the waiver request is ambiguous on this point. First, it suggests that the County filed the waiver request at least partly in response to the Branch's rescission of the grant of the modifications (suggesting that San Mateo deemed the waiver request to supersede the Petition), but it also says that granting the request would solve only "most" of the County's communications problems (suggesting that other problems would be solved with other frequencies, such as those at issue in the Petition). Second, the engineering report attached thereto is somewhat unclear, because the paragraph on which San Mateo now relies as evidence that it indicated its desire for more spectrum than that sought in the waiver request refers to frequencies "currently held."<sup>23</sup> This statement suggests that frequencies needed for the new system beyond the thirteen frequency pairs would come from spectrum already assigned to Station WIG278. Finally, the offer in the supplement to the waiver request to relinquish frequencies is equally equivocal: that San Mateo offered to relinquish specific frequencies could indicate that it did not intend to relinquish its claim to any other frequencies, but it could also be inferred from the offer to return two frequencies in the 470-512 MHz band that grant of the waiver would give San Mateo all the frequencies it needed in that band.

8. Nevertheless, Section 1.113(a) of our Rules provides that the person, panel, or board taking action pursuant to delegated authority has thirty days in which to modify or set aside its own motion.<sup>24</sup> The Branch granted San Mateo's applications for station modification on May 21, November 6, and November 17, 1997. The Branch was not authorized to rescind its decisions after the respective thirty-day periods had elapsed. Thus, each grant was final thirty days after the date of its grant, and the Branch's April 24, 1998 rescission is invalid.<sup>25</sup> Further, in order to be considered by the Commission, Champion must have filed any petitions for reconsideration of the Branch's grants within thirty days of the date of each final Commission action.<sup>26</sup> No such petitions were filed. On November 5, 1997, more than five months after the Branch's grant of San Mateo's first station modification application, the Branch received a notification from ITA, an FCC-certified frequency coordinator, that Champion had filed its application for channel pair 489/492.4875 MHz on December 26, 1996, and that the Branch had processed San Mateo's application out of line. ITA's notification was untimely for purposes of modifying the Branch's actions, and therefore could not be considered nor acted upon *sua sponte* by the Branch. As a result, the Branch's grants of the County's modification applications must be reinstated. In light of these facts, we find that San Mateo's Petition must be granted.

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<sup>23</sup> Waiver Request, Att. A at 4.

<sup>24</sup> 47 C.F.R. § 1.113(a).

<sup>25</sup> See, e.g., In the Matter of Application of Steven S. Bosshard d/b/a Bosshard Radio Services, Assignment and Modification of the License for Station WNKX-748, Temple, Texas, *Memorandum Opinion and Order*, FCC 99-349 (rel. Nov. 18, 1999).

<sup>26</sup> 47 C.F.R. § 1.106(f).

#### IV. CONCLUSION

9. For the foregoing reasons, we conclude that the Bureau erred in dismissing the Petition. Therefore, we grant San Mateo's Application for Review and reinstate its Petition for Reconsideration of the Branch's rescission of its station modifications to pending status. Moreover, we find that Champion did not timely file an objection to the Branch's grants of the County's station modifications. Pursuant to our Rules, the station modification grants therefore became final thirty days after the date of their grant. As a result, the Branch erred in rescinding its prior grants. Therefore, we also grant San Mateo's Petition for Reconsideration.

#### V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review filed on December 13, 1999, by the County of San Mateo, California, **IS GRANTED**, and the Petition for Reconsideration filed by the County of San Mateo on May 26, 1998 **IS REINSTATED**.

11. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed by the County of San Mateo **IS GRANTED**. The Bureau is directed to take such actions as necessary consistent with this *Order on Review and Reconsideration*.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary