

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

In the Matter of

LICENSE COMMUNICATIONS
SERVICES, INC.
Application for Modification of
Business Radio Station WIE 694

Application
File No. 415669

SOUTH BAY REGIONAL PUBLIC
COMMUNICATIONS AUTHORITY
Application and Waiver Request
for Use of Certain Public Mobile
Service Channels

Application
File No. 415919

MEMORANDUM OPINION AND ORDER
ON RECONSIDERATION

Adopted: April 15, 1996;

Released: April 24, 1996

By the Acting Chief, Wireless Telecommunications
Bureau:

I. INTRODUCTION

1. This *Memorandum Opinion and Order* addresses a Petition for Reconsideration (Petition) filed by Licensing Communications Services, Inc. (LCSI), and an Application and Request for Waiver filed by the South Bay Regional Public Communications Authority (South Bay). LCSI's Petition requests reconsideration of the denial of LCSI's waiver request by the Wireless Telecommunications Bureau's Licensing Division (Division) to use Part 22 Public Mobile Service frequencies in its existing licensed Part 90 Private Land Mobile Radio communications system. The Division returned LCSI's initial application and waiver request as deficient. Like LCSI, South Bay seeks authority to use Part 22 frequencies in a Part 90 radio system.

2. LCSI and South Bay state that they are in need of additional frequencies in the 470-512 MHz band. They claim that in the Los Angeles area there are no available frequencies in this band that are allocated for Part 90 use, and therefore they are forced to request a waiver to use available 470-512 MHz frequencies allocated for Part 22 operations. The frequencies in question are designated for

Part 22 point-to-multipoint operations, such as those needed for control of wide-area paging systems. To permit the use of 470-512 MHz Part 22 frequencies by Part 90 licensees would preclude their future use by eligible Part 22 licensees. Further, channels in the private land mobile services below 800 MHz, including the channels in the 470-512 MHz band, recently were split fourfold to make additional capacity available to Part 90 licensees. Therefore, we are denying the LCSI Petition and the South Bay Request for Waiver.

II. BACKGROUND

3. *LCSI Application*. On February 22, 1995, LCSI, a private carrier licensee in the Part 90 Business Radio Service, filed an application for modification of its license to add the frequencies 470/473.0125 MHz and 470/473.0375 MHz. LCSI stated that it required additional frequencies for its present system operating in the 470-512 MHz band because it is heavily loaded. LCSI further states that no Part 90 frequencies in the 470-512 MHz band are available for assignment in the Los Angeles area.¹ Frequencies in the 470-512 MHz band allocated for Part 22 common carrier operations are, however, available in the Los Angeles area. Therefore, LCSI included a waiver request to allow the use of these Part 22 frequencies in its Part 90 operations.²

4. On July 17, 1995, the Division returned the LCSI application (*Return Notice*) with a denial of its waiver request.³ The *Return Notice* stated that the LCSI request for a waiver of Sections 90.311(a) and 22.621 of the Commission's Rules, 47 C.F.R. §§ 90.311(a) and 22.621, was deficient, and indicated that LCSI should modify, coordinate, and resubmit its application.⁴ On August 16, 1995, LCSI filed its Petition requesting reconsideration of the Division's action. The Petition was followed by a Supplement on August 23, 1995, that included a statement from the frequency coordinator that 470-512 MHz frequencies were not available for Part 90 operations in the Los Angeles area.⁵

5. *South Bay Application*. On June 6, 1995, South Bay, an eligible in the Part 90 Local Government Radio Service, filed an application and waiver request to use four Part 22 frequency pairs to expand its communications system operating in the 470-512 MHz band in the Los Angeles area. Two of the four frequency pairs, 470/473.0125 MHz and 470/473.0375 MHz, are the same as those requested by LCSI in its waiver request. South Bay also cited the unavailability of Part 90 frequencies in the 470-512 MHz band in the Los Angeles area as justification for its request.⁶

¹ The 470-512 MHz frequency band is shared with Channels 14-20 UHF TV operations. In the Los Angeles area, Part 22 and Part 90 land mobile services may only use frequencies from 470-476 MHz (TV Channel 14) and 506-512 MHz (TV Channel 20).

² LCSI's waiver request asked that it be authorized to add the frequency pairs 470/473.0125 MHz and 470/473.0375 MHz to its existing Part 90 station, WIE 694, in the Los Angeles, California area. Use of these frequencies requires a waiver of the Commission's Rules because these frequencies are allocated for Part 22 Public Mobile Service point-to-multipoint operations in the Los

Angeles area. See 47 C.F.R. § 22.621.

³ *Application Return Notice*, File No. 415669-IB (dated July 17, 1995).

⁴ 47 C.F.R. §§ 90.311(a) and 22.621 list the frequencies in the 470-512 MHz band that are available for Part 90 and Part 22 operations, respectively.

⁵ Filings made after the LCSI Petition and Supplement include a South Bay Opposition to Petition for Reconsideration (dated Sept. 13, 1995), and a LCSI Reply to the South Bay Opposition (dated Sept. 25, 1995).

⁶ Filings made after the submission of the South Bay application include a LCSI Request to Dismiss South Bay's application

III. DISCUSSION

6. *LCSI Petition*. In its Petition, LCSI states that "[t]he denial of the waiver request and the consequent return of LCSI's application is based upon the Division's incorrect perception of the nature and content of LCSI's justification for the waiver request." LCSI contends that the *Return Notice* does not contain reasoned decision-making as required by law.⁷

7. We disagree. In the *Return Notice*, the Division provided a reasonable basis for denying LCSI's Waiver Request, based on the record evidence:

LCSI provided no justification for only using exclusive and not shared channels. LCSI did not consider the 470-512 MHz channels in the General Access Pool, under Rule 90.311. Further, any other 470-512 MHz channels where LCSI would be outside of the 40 mile radius of current licensees, Rule 90.313(c), were not addressed.

No support for LCSI's request was provided by the Business [Radio Service] coordinator, NABER, that no other alternatives exist in any Part 90 channels.

Additionally, the frequencies requested in Part 22 were recently removed from common carrier trunked base-to-mobile and placed in point-to-multipoint operations, Report and Order CC Docket No. 92-115, released September 9, 1994. Thus Part 22 eligibles may request use of these channels under the new rules.

Since it appears that unique circumstances do not exist and there are other alternatives in Part 90 for LCSI, your request for a waiver is being denied.⁸

8. Section 90.151(a) of the Commission's Rules, 47 C.F.R. § 90.151(a), requires that waiver requests include a showing that unique circumstances are involved, and that there is no reasonable alternative solution within existing rules. The *Return Notice* stated that it appeared that unique circumstances do not exist and that there are other alternatives available to LCSI in Part 90. LCSI argues, to the contrary, that unique circumstances do exist because it is well known that there is little, if any, capacity in the Business Radio Service or General Access Pool in the 470-512 MHz band in the Los Angeles area.⁹ While we are aware of the continuing shortage of 470-512 MHz frequencies available for Part 90 operations in the Los

Angeles area, the unavailability of frequencies in a specific band in a particular geographic area cannot be considered a unique circumstance. In today's communications environment, this factor is often the norm, particularly in major urban areas. This particular problem has been addressed in the Commission's recent "Refarming" decision, where channels in the 470-512 MHz band, among others, have been split fourfold to obtain additional frequencies to relieve frequency congestion.¹⁰ We expect that the equipment for using these new frequencies will soon become available. Thus, we anticipate relief in the near future for licensees, such as LCSI, that are experiencing difficulty in obtaining frequencies to expand existing systems. In sum, rather than undermine our existing allocations framework by permitting *ad hoc* private use of commercial spectrum, we believe the public interest is better served by increasing frequency availability through the rulemaking process.

9. The *Return Notice* also stated that under the new Part 22 rules, these 470-512 MHz point-to-multipoint frequencies are now available to Part 22 eligibles. In 1989, the Commission provided some frequency relief for Part 90 operations by reallocating seventeen Part 22 common carrier channel pairs for Part 90 private land mobile public safety use in the Los Angeles area. Seven channel pairs were retained for Part 22 common carrier operations. Four of these seven channel pairs were designated for two-way trunked system use.¹¹ In 1994, these four channel pairs were converted to point-to-multipoint use¹² and were designated for control link operations in wide-area paging systems.¹³

10. We acknowledge that the Part 22 frequencies requested by LCSI are currently unused in the Los Angeles area. The Commission, however, has recently received approximately 7000 applications for 931 MHz Part 22 paging systems which will need access to the 470-512 MHz band for control link frequencies. Where possible, applications for these systems have been granted. However, it is estimated that about half of the applications cannot be processed at this time because they are mutually exclusive, *i.e.*, they are for operations in the same geographical area.¹⁴ As a result of this application backlog, there have been few authorizations granted for 470-512 MHz control link frequencies used in conjunction with 931 MHz Part 22 paging systems. Therefore, although Part 22 470-512 MHz frequencies may be currently unassigned in any given geographic area, grant of LCSI's waiver request would likely

der, 9 FCC Rcd 6513 (1994).

¹³ See Section 22.623(b) of the Commission's Rules, 47 C.F.R. § 22.623(b).

¹⁴ Currently, there are no provisions in 47 C.F.R. Part 22 outlining procedures for processing mutually exclusive applications. The Wireless Telecommunications Bureau is in the process of developing a computer program to facilitate the processing of the non-mutually exclusive applications. On February 8, 1996, we adopted a *Notice of Proposed Rule Making*, WT Docket No. 96-18, FCC 96-52, proposing to license 931 MHz paging systems on a market area basis. We expect that, as a result of this rulemaking, the current situation in the licensing of 931 MHz paging stations will be resolved, including the backlog of mutually exclusive applications, and that Part 22 licensees will then request Part 22 470-512 MHz frequencies for control link use for the 931 MHz paging transmitters.

and waiver request (dated July 21, 1995), a South Bay Opposition to LCSI's Request to Dismiss (dated Aug. 8, 1995), and a LCSI Reply to South Bay's Opposition (dated Aug. 8, 1995).

⁷ LCSI Petition at 2-3.

⁸ *Return Notice*, Attachment.

⁹ LCSI Petition at 3.

¹⁰ *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, PR Docket No. 92-235, Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 10076 (1995).

¹¹ *Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and Other Services*, CC Docket No. 87-120, Second Report and Order, 4 FCC Rcd 6419-20 (1989).

¹² *Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, CC Docket No. 92-115, Report and Or-

preclude future grants of Part 22 applications for these frequencies in the Los Angeles area. For these reasons, we are denying LCSI's Petition.

11. South Bay *Petition for Waiver*. The South Bay application, filed almost four months after the LCSI application, also was accompanied by a Petition for Waiver to use four Part 22 point-to-multipoint frequency pairs in the Los Angeles area. Two of the requested frequency pairs are the same as requested by LCSI. The additional two pairs, 506/509.0125 MHz and 506/509.0375 MHz, are also allocated for Part 22 point-to-multipoint use. South Bay argues that the 470-512 MHz band has become the primary public safety communications band in the core Los Angeles County area, and that the unused Part 22 frequencies would be compatible with South Bay's existing system. In addition, South Bay states that the frequencies will provide a sufficient base of compatible channels to enable them to develop a modern shared-use public safety communications system.¹⁵

12. As we stated above with respect to LCSI's Petition, it would not be in the public interest to decrease the availability of 470-512 MHz frequencies for Part 22 point-to-multipoint operations in the Los Angeles area. Granting South Bay's Petition for Waiver would deny Part 22 applicants the use of 8 of the 14 point-to-multipoint frequencies available in the Los Angeles area, and would limit the development of Part 22 paging systems in that area. Also, as previously stated, the creation of additional 470-512 MHz frequencies by the Commission's action in our "Refarming" proceeding (*see* n.10, *supra.*) will benefit Part 90 licensees, such as South Bay, that seek additional frequencies for system expansion. We, therefore, are denying the South Bay Petition for Waiver.

IV. ORDERING CLAUSE

13. Accordingly, in view of the foregoing, the Petition for Reconsideration filed by License Communications Services, Inc. IS DENIED. Additionally, the Petition for Waiver filed by the South Bay Regional Public Communications Authority IS DENIED and the associated application IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Michele C. Farquhar
Acting Chief, Wireless Telecommunications Bureau

¹⁵ Petition for Waiver at pp. ii and 15. South Bay states that the frequencies would enable them to develop a new system and to implement trunking once UHF trunking equipment becomes available.