

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 21 of the)
Commission's Rules for the Domestic)
Public Fixed Radio Services)

CC Docket No. 93-2

U S WEST COMMENTS

U S WEST, Inc., whose cellular and telephone subsidiaries hold more than 1,100 point-to-point microwave radio service ("PPMS") licenses, submits these comments in response to the Notice of Proposed Rulemaking, FCC 93-5, released February 9, 1993 ("Notice").

I. THE CURRENT PROCESS IS IN NEED OF REPAIR

There is one point on which the Commission and all members of the industry agree: the current PPMS licensing process is in desperate need of repair. The delays associated with the current regulatory process are impeding carriers from meeting the telecommunications service requirements demanded by their customers and, as discussed below, may even require carriers to stop providing already operational services. There is little prospect that the Commission will be allocated additional resources in the near future to handle the increasingly heavy volume of PPMS license applications. Consequently, revising the regulatory process is the only way to attack this increasingly critical situation.

At the time McCaw filed its rulemaking petition 18 months ago, grants of unopposed PPMS license applications were taking a minimum of

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75 to 90 days from the date of filing.¹ The situation has since worsened. U S WEST companies have more than 50 license applications which have been pending in excess of five months, with six applications pending for more than one year.

Market demands do not take into account regulatory processes, much less the manpower and budgetary constraints under which the Commission now operates. Customers have always demanded quality service. However, with increasing frequency customers are also demanding that their service requirements be met immediately, knowing that, from a technical perspective, microwave systems can be constructed in days, if not hours.

Because of the delays associated with the current PPMS application process, common carriers have been required to use other procedures to meet the legitimate demands imposed by their customers. Some carriers seek special temporary authority after filing their applications for permanent licenses.² Others commence service by following the procedures for temporary-fixed locations,³ and by filing an application for a permanent license after the microwave system has become operational.

The result of using these temporary procedures has been to compound the problem and worsen the heavy burden already faced by the

¹See McCaw Petition for Rulemaking, RM-7861, at 11 (Oct. 16, 1991).

²See 47 C.F.R. § 21.25.

³See 47 C.F.R. §§ 21.707 and 21.708.

Commission staff. Rather than reviewing one application for each station, as was the original plan,⁴ the Commission staff is now often required to review two applications (*i.e.*, one temporary and one permanent), effectively doubling the staff's work load. The Commission properly focuses its finite resources on reviewing the temporary requests to ensure that service is provided as quickly as possible, but this (correct) focus only exacerbates the underlying problem — an even greater backlog of permanent applications results.

What is more, the volume of temporary authority requests has become so large that carriers now find themselves nearing the expiration of their temporary authorizations without having obtained their permanent licenses. Absent extraordinary and immediate action, carriers with special temporary authority nearing expiration face the prospect of powering down their operational systems until the permanent licenses are granted. U S WEST companies have approximately eight temporary authorizations which will expire within the next month, with another 15 such authorizations expiring before June 9, 1993. Indeed, another six temporary authorizations have already expired, requiring U S WEST to seek an extension of temporary authority. If these extensions are not granted, U S WEST will be compelled to stop providing already operational services.

⁴The Commission streamlined its Part 21 licensing process from two steps to one less than six years ago. See Part 21 Revision Order, 2 FCC Rcd 5713 (Sept. 25, 1987).

II. THE REFORM PROPOSALS CURRENTLY ON THE TABLE MAY NOT BE WORKABLE OR PROVIDE MEANINGFUL RELIEF

McCaw originally proposed that Part 21 be amended to enable carriers to use the same procedures for obtaining permanent authorization for PPMS facilities that are currently used for temporary-fixed locations.⁵ However, some members of the industry opposed this proposal because of the absence of notice prior to commencement of operations,⁶ and the Commission has questioned whether the proposal is consistent with the 30-day notice and comment period prescribed by Section 309 of the Communications Act. *See Notice* at ¶ 13.

As an alternative, the Commission has now proposed permitting construction of PPMS systems prior to the issuance of licenses. While U S WEST supports this proposal, it must question whether the proposal's adoption would provide meaningful relief in enhancing a carrier's ability to respond promptly to the public's demand for service.

As noted above, the processing time for a permanent microwave application approaches, and in some cases even exceeds, eight months. Consequently, even if the Commission were to permit pre-authorization construction of the PPMS, the fact is that carriers will still face extended delays in obtaining authority to operate their systems. The time is therefore ripe to consider yet another proposal. U S WEST submits a new proposal below.

⁵See McCaw Petition for Rulemaking, RM-7861 (Oct. 16, 1991).

⁶See, e.g., AT&T Comments, RM-7861 (Dec. 27, 1991); Western TeleCommunications Comments, RM-7861 (Dec. 27, 1991); National Spectrum Managers Ass'n Reply Comments, RM-7861 (Jan. 13, 1992).

III. AN ALTERNATE PROPOSAL THAT MAY SATISFY BETTER ALL THE INTERESTS INVOLVED

U S WEST proposes a two-step process which, it believes, will expedite substantially the current process without infringing upon the legitimate interests of the Commission and existing PPMS licensees.

Under the first part of U S WEST's proposal, microwave carriers would file an application (FCC Form 494) for a "blanket" permanent microwave authorization. The blanket application would identify, among other things, licensee qualification information, the frequency bands in which the applicant proposes to operate, and the areas where service would be provided. In evaluating the application, the Commission would review the applicant's legal, technical, and financial qualifications and would examine whether the public interest, convenience and necessity would be served by a grant as set forth in Section 21.700(a) of its Rules. The blanket application would, moreover, be placed on a 30-day public notice, allowing interested parties to file petitions to deny the application based on such issues as the applicant's qualifications to be a licensee.

Following grant, permanent microwave stations would be implemented under the blanket authority rather than individually licensed. Under the second prong of U S WEST's proposal, a licensee wishing to operate a permanent station pursuant to its blanket would first be required to complete successfully frequency coordination.⁷

⁷See 47 C.F.R. § 21.100(d)(2)(i). Under Section 21.100(d)(2)(ii), existing PPMS licensees and applicants must be notified, and the notification must include relevant technical details of the proposal, including the frequencies and polarizations involved. Sections 21.100(d)(2)(iv) and (v) afford carriers up to 30 days to respond to the notification and to raise interference or other technical concerns.

Upon successful completion of the frequency coordination process, the holder of the blanket license would file, in lieu of an FCC Form 494 and prior to operation, a notification (using a new, simplified, prescribed form) relating to the proposed permanent microwave station. Similar to the temporary-fixed microwave notification filed under Section 21.708, a notice permanent microwave operation would provide, among other things, the dates of proposed operation, evidence that prior frequency coordination was successfully completed, and the specific technical parameters associated with the proposed station (which would be contained in the coordination materials).

The notification filed with the Commission would also be served upon all existing PPMS licensees and applicants who were notified as part of the frequency coordination process.⁸ This notice would give existing licensees yet an additional opportunity to review the proposal for interference issues and would ensure that the applicant's final proposal is consistent with that distributed in the frequency coordination process.

If, within 28 days following receipt of the notice, no petition to deny were filed and if the Commission did not raise its own objection, then the proposed station would automatically be covered by the blanket authority previously obtained by the applicant. The licensee could, therefore, commence operations on the dates set forth in the notification without the need for yet another grant of the application by the Commission.

⁸The licensee should serve either a certified copy or a file-stamped copy of the notice of operations.

If, however, a petition to deny is filed (or if the Commission were to raise an objection), the proposal would not become part of the blanket authorization unless and until the applicant had adequately addressed the objection.

U S WEST's proposal process meets all legal requirements. Section 309(b)(1) of the Communications Act requires a 30-day public notice period before an application for a common carrier authorization can be granted by the Commission. This statutory requirement would be satisfied because the application for blanket authorization would be placed on 30-day public notice and would afford interested parties the opportunity to oppose the application.

But U S WEST's proposal goes beyond this legal requirement in two ways. First, U S WEST proposes to retain the current 30-day notification and response frequency coordination period before commencement of operations. Interested parties would thus have prior notice of the technical parameters associated with a proposed station and a 30-day period within which to raise interference or other technical concerns before the station would be constructed and placed into operation under the blanket authorization.

Moreover, U S WEST proposes that, once frequency coordination has been successfully completed, the same notification filed with the Commission be served on all interested parties, giving them yet another 28 days to review the proposal.⁹ This would afford additional protection to both the

⁹This process would obviate the need for the Commission to issue its own public notice because all interested parties would receive copies of the notification directly.

Commission and existing PPMS licensees while at the same time reducing the processing burden on the Commission.¹⁰

U S WEST's proposal would also meet the needs of the industry. The proposal should give carriers the flexibility they require to respond to the needs of the public. Upon successful completion of frequency coordination, carriers will have a reasonable expectation that they can commence service within one month of the filing of their notice of operation.

U S WEST's proposal would also benefit the Commission. The proposal eliminates the need to approve every permanent fixed point-to-point microwave station. The Commission's finite resources could instead be focused on station proposals of greater consequences (*i.e.*, those which are opposed). And because of the speed in which carriers would be able to commence operations, carriers would no longer have the need or incentive to invoke one of the temporary or special authorization procedures, further reducing the paperwork burden now faced by the Commission.

Finally, U S WEST's proposal is fully consistent with the pre-authorization construction proposal contained in the Notice. Common carriers should have the right to commence construction (but not operation) prior to confirmation that their proposal is not opposed. Of course, carriers exercising this option must assume the risk if their proposal is opposed, whether

¹⁰This station-specific notification would not itself be an application for authorization; general authority would already be granted in the blanket authorization. As such, while this 28-day comment period would not be required by Section 309 of the Communications Act, it nevertheless would afford interested parties an additional degree of protection and comfort.

by the Commission or a member of the industry, and that their proposal may not become part of their respective blanket authorization.

IV. COMMENTS REGARDING OTHER PROPOSALS

A. Pre-Authorization Construction Criteria

The Commission proposes to preclude applicants from taking advantage of pre-authorization construction if they meet any one of six criteria. See Notice at ¶ 5. The Commission should reconsider two of these criteria.

1. Applicants Seeking Waivers. Under the current proposal, applicants requesting a waiver of a Commission rule could not begin construction before obtaining authorization. See Notice at ¶ 5(2). The Commission should re-evaluate this proposed restriction.

Outage requirements occasionally dictate use of 6 GHz, as opposed to 11 GHz, frequencies on some paths. These paths often serve small areas (*e.g.*, rural central offices) where only one working channel is required initially. Given U S WEST's commitment to use reliable facilities, the use of one-by-one frequency diversity (*i.e.*, one working channel for one protection channel) is necessary, and this requires a waiver of Commission rules addressing minimum circuit loading. Inasmuch as the Commission has decided that the applicant will assume any financial risk associated with the denial of an application if construction were to commence before final disposition of the application, there is no reason not to afford the same flexibility to waiver applicants *vis-a-vis* non-waiver applicants.

2. FAA Clearance. The Commission also proposes to preclude pre-authorization construction to any applicant who has not "received a deter-

mination from the FAA that the proposed antenna structure would pose no hazard to aviation." See Notice at ¶ 5(4). It is reasonable to require licensees to file a notice of proposed construction with the FAA. But there is no reason to wait for the FAA to make a determination regarding each station if FAA determinations were obtained by other parties (and assuming those determinations are accurate and have not expired). Adoption of this proposal merely risks more, non-productive delay.

B. There Is No Reason to Change the 18-Month Construction Period

The Commission adopted the current 18-month construction period for PPMS licensees less than six years ago.¹¹ The Commission now proposes to reduce this period by 67%, to six months, noting that "most [applicants] complete construction within a few months of grant of an authorization." Notice at ¶ 17.

While most licensees complete construction within six months of grant of their application, not all licensees can do so. U S WEST in particular serves a mountainous region where microwave is often the only cost-effective means to serve a community. The construction period in many mountainous areas is generally short, sometimes only four months if concrete foundations must be laid.

The reduction of the construction period to six months would inhibit severely U S WEST's ability to construct needed systems, especially in its rural areas. If the Commission were to adopt this proposal, U S WEST

¹¹See Part 21 Revision Order, FCC Rcd at 5721-22.

would be compelled to file for extensions of time, needlessly adding to the paperwork burden faced by both U S WEST and the Commission.

The current construction deadline of 18 months was adopted less than six years ago. No reason has been advanced to change this period, and a reduction in the construction period could substantially impair U S WEST's ability to provide service, or to modernize its facilities, in its rural areas. The Commission should, therefore, leave the existing rule intact.

C. Form 494A

The Commission seeks comment on whether FCC Form 494A should be eliminated for PPMS applicants. *See Notice* at ¶ 16.

Form 494A should be retained if the Commission maintains the current licensing process or if it adopts the pre-authorization construction proposal. Form 494A gives existing licensees the opportunity to ensure that the construction of PPMS facilities is (or was) completed within the parameters of the proposal distributed during frequency coordination.

However, the Commission should substantially shorten the Form 494A, deleting redundant and unnecessary information, and should consider adopting a "short form" 494A for those situations where the construction and operation of PPMS facilities is not at variance with the original proposal. For example, station information and technical data is unnecessary if the station plan is consistent with the original proposal. A form listing simply the stations and associated file numbers would be sufficient to inform the FCC and the industry that construction as authorized has been completed.

Form 494A would not be necessary if the Commission were to adopt U S WEST's "blanket" licensing process. However, it would be useful to develop a similar (but more streamlined) form for licensees to use in notifying the Commission and the public of any proposed station operation.

D. Proposed Revisions to Form 494

The Commission also proposes to revise Form 494. Among other things, it proposes to eliminate Form 430 by requiring applicants to instead report their licensee qualification information on Form 494.

Form 494 is in need of streamlining. But the Commission's proposed Form 494 is 50% longer than the current form (from four to six pages). The Commission should review carefully its current Form 494 and delete all unnecessary information. For example, in a competitive environment, there would appear to be no reason to require applicants to include the estimated costs of their proposed systems. Similarly, there would appear to be no reason to require applicants to submit antenna and building heights in both feet and meters.

If the Commission were to adopt U S WEST's "blanket" proposal, it could eliminate Form 430 and avoid enlarging the Form 494 to include licensee qualification information. Such information would be addressed in the original "blanket" authorization, thereby obviating the need as a licensee reports additional stations.

V. A LONG-TERM PROPOSAL: ELECTRONIC FILING

The medium by which the Commission receives and evaluates license applications is essentially the same as that used when the Commission was established almost 60 years ago: paper copy applications. The industry has already computerized much of its application data. U S WEST believes that the accuracy of applications and processing speed could be improved if the Commission were to accept electronic rather than paper applications.

The Commission obviously faces budgetary constraints in considering a new proposal such as this. But the Commission should adopt as a goal the use of electronic filings and should begin working with the industry to develop consensus procedures over an electronic filing system.

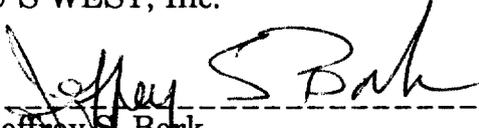
VI. CONCLUSION

All members of the industry share the Commission's objective "to allow PPMS applicants to respond more efficiently to the increased demands for rapid delivery of service, and to help promote . . . the elimination of unnecessary regulations." Notice at ¶ 21. U S WEST submits its proposal and these comments with the hope of meeting these objectives without infringing upon the legitimate interests of the Commission and existing PPMS licensees. U S WEST believes that its proposal avoids unnecessary regulatory hurdles to needed services yet accommodates the Commission's need for timely information, existing licensees' need to ensure against interference,

and the industry's need to respond to changing demand with a minimum of delay.

Respectfully submitted,

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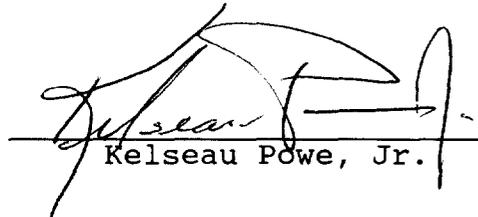
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March 16, 1993

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CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify on this 16th day of March, 1993, that I have caused a copy of the foregoing **U S WEST COMMENTS** to be hand delivered to the persons named on the attached service list.


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