

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

In the Matter of Application of)
SHEKINAH NETWORK) File No. BPLIF-19951019BJ
For a New Instructional Television)
Fixed Service Station on Channels G1-G4,)
Midway, NC)

MEMORANDUM OPINION AND ORDER

Adopted: August 26, 2003

Released: September 2, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. In this Memorandum Opinion and Order, we address Shekinah Network's (Shekinah) above-captioned long-form application (FCC Form 330) to operate a new Instructional Television Fixed Service (ITFS) station in Midway, North Carolina on Channels G1-G4. Additionally, we address CAI Wireless Systems, Inc.'s (CAI) petition to deny Shekinah's application. For the reasons stated below, we grant CAI's petition to deny and dismiss Shekinah's application.

2. Background. ITFS stations are intended primarily to provide a formal educational and cultural development in aural and visual form. Its licensees make extensive use of the spectrum to provide formal classroom instruction, distance learning, and videoconference capability to a wide variety of users. The G Group channels for ITFS are 2644-2650 MHz, 2656-2662 MHz, 2668-2674 MHz and 2680-2686 MHz.

3. Shekinah filed the above-captioned application on October 19, 1995. Shekinah's application appeared on public notice as accepted for filing on November 6, 1998. On December 8, 1998, CAI filed

1 Effective March 25, 2002, the Commission transferred regulatory functions for the Instructional Television Fixed Service and the Multipoint Distribution Service/Multichannel Multipoint Distribution Service from the Mass Media Bureau (MMB) to the Wireless Telecommunications Bureau (Bureau). Radio Services Are Transferred From Mass Media Bureau to Wireless Telecommunications Bureau, Public Notice, 17 FCC Rcd 5077 (2002). Accordingly, the Bureau's Public Safety and Private Wireless Division assumed all regulatory duties associated with these services effective March 25, 2002. Id.

2 Petition to Deny filed by CAI Wireless Systems, Inc. (filed Dec. 8, 1998) (Petition). Shekinah opposed the petition to deny on December 18, 1998. Opposition to Petition to Deny (filed Dec. 18, 1998) (Opposition). CAI filed a reply on December 23, 1998. Reply to Opposition (filed Dec. 23, 1998) (Reply).

3 47 C.F.R. § 74.931.

4 Id.

5 47 C.F.R. § 74.902.

6 Public Notice Report No. 24363A, Mass Media Bureau, Instructional Television Fixed Service: Proposed Construction Permits and Licenses (rel. Nov. 6, 1998).

the Petition against Shekinah's application. CAI contends that Shekinah's proposed facilities will cause harmful interference to ITFS Station WHR940, Driver, Virginia, licensed to Hampton Roads Educational Telecommunications Association, Inc. (HRETA).⁷

4. *Discussion.* Based on our review of the record in this proceeding, we conclude that Shekinah's application is defective and must be dismissed. In the Petition, CAI provides an engineering study alleging that Shekinah's proposed operation will cause some interference to the protected service area (PSA) boundary of ITFS Station WHR940.⁸ As a result, CAI seeks denial of the application.⁹ Shekinah alleges that HRETA did not have a PSA at the time it filed its application because HRETA did not request a PSA until October 20, 1995.¹⁰ CAI responds that HRETA applied for a PSA on July 13, 1994 and that its request was granted on June 1, 1995.¹¹

5. At the time Shekinah filed its application, Section 74.903(e) of the Commission's Rules required Shekinah to protect applicants or licensees who had requested a PSA prior to the filing of its application.¹² A review of the Commission's licensing records confirms that HRETA requested a PSA on July 13, 1994 and that its request was granted on June 1, 1995.¹³ Further, Section 74.903(a)(1) of the Commission's rules requires the applicant to engineer its system to provide at least 45 dB of co-channel interference protection within the PSA of all other authorized or previously proposed stations. We agree with CAL's contention that Shekinah's proposed operations fails to provide the requisite interference protection to HRETA's ITFS Station WHR940. Based on the record in this proceeding, as confirmed by an independent engineering study performed by Division staff, we find that Shekinah's proposed station fails to provide at least 45 dB of co-channel interference protection within the PSA of previously authorized Station WHR940. Accordingly, we will direct the Licensing and Technical Analysis Branch to dismiss its application as defective pursuant to Section 73.3566 of the Commission's Rules.

6. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 74.912 of the Commission's rules, 47 C.F.R. § 74.912, the petition to deny filed by the CAI Wireless Systems, Inc. on December 8, 1998 IS GRANTED.

⁷ Petition at 2.

⁸ Petition, Engineering Statement of Stephen Daugherty, Electrical Engineer, CAI Wireless Systems, Inc.

⁹ Petition at 3.

¹⁰ Opposition at 2.

¹¹ Reply at

¹² 47 C.F.R. § 74.903(e)(1995).

¹³ File No. MBPIF-19940713DD.

7. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 73.3566 and 74.903 of the Commission's Rules, 47 C.F.R. §§ 73.3566, 74.903, that the Licensing and Technical Analysis Branch SHALL DISMISS the application filed on October 19, 1995 by Shekinah Network (File No. BPLIF-19951019BJ).

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau