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

In the Matter of Application of	)	
	)	
DIRECT CONNECT USA, INC.	)	File No. 0000837712
	)	
And Request for Waiver of Sections 90.305,	)	
90.307, and 90.309 of the Commission's	)	
Rules for Use of Channel 19 Frequencies	)	
Outside a 50-Mile Radius of Philadelphia, PA	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 22, 2003 **Released: October 3, 2003**

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

I. INTRODUCTION

1. In this *Memorandum Opinion and Order,* we address a petition for reconsideration filed on August 2, 2002 by Direct Connect USA, Inc. (Direct Connect).[1] The Petition seeks reconsideration of a July 3, 2002 decision denying Direct Connect's waiver request and dismissing the above-captioned application.[2] For the reasons discussed below, we grant the Petition.

II. BACKGROUND

2. Section 90.305(a) of the Commission's Rules[3] requires licensees to locate their land mobile radio base stations operating in the 470-512 MHz band within 80 kilometers (50 miles) of the geographic center of the urban areas listed in Section 90.303 of the Commission's rules.[4] In addition, mobile units associated with these base stations must operate within 48 kilometers (30 miles) from the base stations.[5] The Commission established this mileage restriction to protect over-the-air broadcast operations on TV Channels 14-21 from harmful interference by land mobile radio systems operating in the 470-512 MHz band.[6] The purpose of the 50-mile limitation is to ensure that television stations and

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[1] Direct Connect USA, Inc. Petition for Reconsideration (filed Aug. 2, 2002) (Petition). Direct Connect supplemented its Petition on April 11, 2003. Direct Connect USA, Supplement to Petition for Reconsideration (filed Apr. 11, 2003).

[2] FCC File No. 0000837712 (initially filed on February 6, 2002 and re-filed on March 4, 2002) (the Application).

[3] 47 C.F.R. § 90.305(a).

[4] 47 C.F.R. § 90.303.

[5] *See* 47 C.F.R. § 90.305(b).

[6] *See* Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, *Notice of Proposed Rule Making,* Gen. Docket No. 85-172, 101 FCC 2d 852 (1985).

land mobile radio stations do not interfere with one another.[7]

3. In 2001, the Commission established a standard for approving requests to operate outside the 80-mile area prescribed in Section 90.305 of the Commission's Rules. Specifically, in *Goosetown*, the Commission determined that any applicant seeking a waiver to operate outside the 80-mile area must demonstrate that it would provide full protection to any existing full power or low power TV station, including allotments and pending applications for such stations, at the time the waiver is filed.[8] If an applicant that proposes to operate further than eighty miles from the geographic center sufficiently demonstrates that it warrants a grant of a waiver, its operation would be secondary to current and future full power and low power TV stations.[9]

4. Direct Connect operates a land mobile radio network on the 470-512 MHz band in the State of New Jersey and portions of the New York metropolitan area.[10] On February 6, 2002, Direct Connect applied to extend its existing 470-512 MHz communications network by proposing to operate a land mobile radio facility in Mineola, Nassau County, New York[11] on frequencies within the UHF TV Channel 19.[12] In conjunction with its application, Direct Connect requested a waiver of Section 90.305 of the Commission's Rules to operate its proposed 470-512 MHz repeater facility at a site more than fifty miles from the geographic center of the urbanized area in which the Commission assigned the requested channels for primary land mobile radio use.[13]

5. On March 4, 2002, the Licensing and Technical Analysis Branch (Branch) dismissed the February 6, 2002 application on procedural grounds. Direct Connect submitted the Application on April 4, 2002.[14] In connection with the Application, Direct Connect reasserted its request for a waiver of Section 90.305 of the Commission's Rules.[15] Entravision Holdings, LLC (Entravision)[16] and Mountain Broadcasting Corporation (Mountain)[17] sought the placement of conditions upon the grant of the application on May 23, 2002 and July 5, 2002, respectively.

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[7] *Id*.

[8] Goosetown Enterprises, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 12,792, 12797 (2001) (*Goosetown*).

[9] *Id.* at 12798 ¶ 13. The applicant must state that it is willing to accept a license on the basis of not interfering with existing and future full power and low power TV stations. *Id*. at n.46. Absent such a statement, the request will be dismissed. *Id.*

[10] Request for Waiver, FCC Form 601 File No. 0000837712 (filed on April 4, 2002) (Waiver Request).

[11] Coordinates 40-44-59N, 073-38-19W (NAD27).

[12] *See supra* note 2; Petition at 4 n.8.

[13] Waiver Request. Direct Connect also sought a waiver of Sections 90.307(a) and (d) and 90.309, Table E, Footnote 3 of the Commission's Rules to operate less than sixty and ninety miles from WMBC-DT (Channel 18) and WTXX-TV (Channel 20) and less than ninety miles from WUVN (Channel 18). *Id.*

[14] *See* Petition at 4 n.8.

[15] Waiver Request, *supra* note 10.

[16] Entravision Holdings, LLC Informal Objection to Application of Direct Connect USA, Inc. (filed May 23, 2002) (Entravision Petition). Entravision is the licensee of UHF Television Station WUVN (TV), Hartford, Connecticut, which transmits a broadcast signal on UHF channel 18.

[17] Mountain Broadcasting Corporation Informal Comments to Application of Direct Connect USA, Inc. (filed July 5, 2002) (Mountain Petition). Mountain is the permittee of WMBC-DT, the digital television station associated with WMBC-TV, Newton, New Jersey. The Policy and Rules Branch of the Division dismissed Mountain's informal comments on October 4, 2002 based upon the Division's Dismissal Letter, *infra* note 18. *See* Application of Direct Connect USA, Inc. *Order,* 17 FCC Rcd 19579 (WTB-CWD-PRB 2002).

6. On July 3, 2002, the Branch denied Direct Connect's Waiver Request and accordingly dismissed the Application.[18] On August 2, 2002, Direct Connect filed the instant Petition seeking reconsideration of the denial of its waiver and dismissal of its application.

III. DISCUSSION

7. Because the Application filed by Direct Connect proposes to operate a 470-512 MHz station on TV channel 19 frequencies located more than eighty miles from the center of city coordinates for Philadelphia, PA, Direct Connect sought a waiver of Section 90.305(a) of the Commission's rules. Accordingly, Direct Connect must demonstrate that it would provide full protection to any existing full power or low power TV stations, including allotments and pending applications for such stations, at the time it filed its waiver.[19] Additionally, because Direct Connect proposes to operate further than eighty miles from the geographic center, its operation, if permitted, would be secondary to current and future full power and low power TV stations.[20]

8. Direct Connect states that the Mineola, Nassau County, New York location would provide the necessary coverage without intruding into the protected contours of co-channel and adjacent channel television stations.[21] Direct Connect attaches a technical channel study to the Waiver Request demonstrating that its proposed station "will not cause prohibited interference to UHF, NTSC or DTV operations within their protected contour on any co-channel or 1st, 2nd, or 5th adjacent channel.[22] Furthermore, Direct Connect states that the channel study "provides full[] protection for all existing full-power or low-power TV stations, including allotments and pending applications for such stations."[23] We note that both Entravision and Mountain seek conditions upon the grant of a license to Direct Connect to ensure that Direct Connect's proposed operations will protect WUVN's and WMBC-DT's operations.[24]

9. To ensure Direct Connect satisfies the Commission standard adopted in *Goosetown*, we reviewed the record before us and performed our own engineering analysis to determine whether Direct Connect's proposed operation is likely to cause interference to TV facilities entitled to protection. Because the proposed base station is located 97.33 miles (156.60 km) from the Philadelphia reference coordinates, we note that the service contour will extend 47.33 miles (76.17 km) beyond the permissible

[18] Universal Licensing System, FCC File No. 0000837712, Automated Notice of Dismissal, Reference No. 1491658 (July 3, 2002) (Dismissal Letter).

[19] *Goosetown,* 16 FCC Rcd at 12797 ¶ 13.

[20] *Id.* at 12797-8 ¶ 13.

[21] Waiver Request at 3.

[22] *Id.* at 4 n.7 (citing a private land mobile channel study prepared by Fox Ridge Communications, Inc.).

[23] *Id.* at 4 n.8.

[24] Entravision Petition at 4. The conditions sought by Entravision are as follows: (1) Direct shall modify its operations in the event WUVN on Channel 18 modifies its facilities; (2) If Direct Connect's operations cause interference to WUVN's facilities, then WUVN facilities shall have priority over Direct Connect's operations and direct Connect will have to modify its facilities to remove the interference; (3) Direct Connect shall prohibit an mobile associated with its base station to operate beyond the 8.2 mile zone for its base station; and (4) In the event Direct Connect seeks to modify its base station facility, it shall first notify WUVN so that WUVN can review the application and decide whether to object to the modification proposed. *Id.* at 4; Mountain Petition at 1.

limit specified in Section 90.303(a).[25] Therefore, Direct Connect must demonstrate that it would provide full protection to any existing full power or low power TV station, including allotments and pending applications for such stations, at the time it filed its waiver request.[26] The results of our independent analysis confirms that the proposed Mineola base station will satisfy all the protection criteria of 47 C.F.R. § 90.307 with respect to full service[27] co-channel and adjacent channel TV stations.[28]

10. Our determination that the proposed operations will provide full protection to any existing full power or low power TV station does not end our inquiry. *Goosetown* requires Direct Connect to "accept a license on the basis of not interfering with existing and future full power and low power TV stations."[29] This agreement on the part of the applicant is crucial to ensure the integrity of the spectrum's use and availability vis-à-vis a principle of non-interference not only at the time Direct Connect files its application, but also at any point in the future. This commitment also serves as a safeguard to ensure that sufficient spectrum remains available to allow all existing full power television stations to receive a new DTV channel that replicates their existing service area to the maximum extent possible. Direct Connect satisfies this requirement. In its Petition, Direct Connect states it "would accept a license so conditioned" on not interfering with existing and future full power and low power TV stations.[30] Accordingly, because we determine that Direct Connect would fully protect all television stations that are entitled to protection, and in recognition of its affirmation to accept a license conditioned on the same, we conclude that granting a waiver in this case would not frustrate the underlying purpose of the rule.

11. We also conclude that Direct Connect has shown that grant of the Waiver Request would be in the public interest. Specifically, we believe that Direct Connect has amply demonstrated that its proposed operations would serve the public interest by increasing the availability and enhancing the provisioning of communications services throughout the greater New York metropolitan area.[31] We are

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[25] *See* 47 C.F.R. § 90.303(a).

[26] Direct Connect identifies the following "affected" TV stations considered by its proposal: (1) Co-Channel WCDC, Channel 19, Adams, MA; (2) Co-Channel WGBH-DT, Channel 19, Boston, MA; (3) 1st Adj. Channel 20, WTXX, Waterbury, CT; (4) 1st Adj. Channel 18 WUVN, Hartford, CT; (5) 1st Adj. Channel 18 WMBC-DT, Newton, NJ; (6) 2nd Adj. Channel 21, WLIW(TV), Garden City, NY; (7) 5th Adj. Channel 24 WNYE-DT, New York, NY. *See* Engineering Exhibit of Larry H. Will, P.E. (Attachment 2 to the Application and the Waiver Request).

[27] The issue raised by the Division regarding an unidentified translator station located 1.25 kilometers from Direct Connect's proposed station is moot because the application for modification of construction permit for station WPXU-LP, Amityville, NY filed by Paxson Communications LPTV (the likely unidentified entity cited by the Division) was dismissed. Application of Paxson Communications LPTV, Inc., FCC File No. BMPTTL-JG0601AR, *Memorandum Opinion and Order*, 17 FCC Rcd 5779 (MMB-VSD 2002). Various applications were filed by LPTV stations seeking Class A status pursuant to the Communications Broadcasters Protection Act of 1999 (CBPA). *See* 47 U.S.C. § 336(f). The CBPA provides that no Class A LPTV station may cause interference to PLMR systems operating within eighty miles of the geographic coordinates of the urban areas referred to in 47 C.F.R. § 90.303, within which PLMR systems (or point-to-multipoint systems operating pursuant to 47 C.F.R. § 22.621) are allowed to operate. *See* 47 U.S.C. § 336(f)(7)(C).

[28] Factored into our analysis is Direct Connect's proposal to limit mobile operating range in the direction of WMBC-DT to 3.75 miles (5.95 km) from the proposed transmitter site.

[29] *Goosetown*, 16 FCC Rcd at 12797-8 ¶ 13 and n.46.

[30] Petition at 8. To the extent Entravision requests the Commission to compel Direct Connect to accept other conditions beyond what the Commission has previously recognized in *Goosetown,* its informal objection is dismissed. This determination, however, is not meant to prevent or inhibit "affected" third parties from negotiating more aggressive or particular terms with Direct Connect as deemed necessary.

[31] *See* Direct Connect Supplement to Petition to Reconsideration (filed April 11, 2002) (Supplement).

also encouraged by the technical capability that Direct Connect's network, as augmented by the proposed operation, would provide in terms of reliable coverage in one of the more spectrum-congested areas in the nation. Equally compelling is Direct Connect's interest in pursuing provision of non-switched, wide area network capabilities for public safety entities. On balance, we believe that the proposed operation will address critical public safety requirements – such as providing additional opportunities for addressing increased coverage and interoperability. We also envision that other public interest benefits, such as maximization of economies of scale and cost-effectiveness, will result from grant of the requested relief. We also believe that Direct Connect's commitment to accept a license conditioned on protecting full power and low power TV stations is a safeguard to ensure that sufficient spectrum remains available to allow all existing full power television stations to a receive a new DTV channel that replicates their existing service area to the maximum extent possible.

IV. CONCLUSION

12. For the reasons stated above, we will reinstate Direct Connect's application and grant its waiver request. The Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division will process Direct Connect's application in accordance with this decision. Accordingly, we grant Direct Connect's Petition for Reconsideration to the extent discussed herein.

V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 309 of the Communications Act of 1934, as amended, 47 C.F.R. §§ 145(i), 309, and Sections 1.41 and 1.106 of the Commission's rules, 47 C.F.R. §§ 1.41, 1.106, that the informal objection filed by Entravision Holdings, LLC on May 23, 2002, IS DISMISSED.

14. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, the Waiver Request filed by Direct Connect USA, Inc., on April 4, 2002, IS GRANTED subject to the condition that the proposed operations will provide full interference protection to any existing full-power or low power TV station that is caused by the operation of the proposed system.

15. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309 the application filed by Direct Connect to operate a land mobile radio facility operating on frequencies between 500 MHz and 506 MHz (UHF TV Channel 19) located in Mineola, New York, on April 4, 2002 IS GRANTED subject to the condition that the proposed operations will provide full interference protection to any existing full-power or low power TV station that is caused by the operation of the proposed system.

16. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's Rules, that the petition for reconsideration filed by Direct Connect on August 2, 2002 IS GRANTED.

17. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's Rules, that the Supplement to Petition for Reconsideration filed by Direct Connect on April 11, 2002 IS GRANTED.

18. 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
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