

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

In the Matter of)
STATE OF WASHINGTON) FCC File Nos. 000023072 and 000023073
Petition for Reconsideration of Secondary Status)
for Station WCP43, Spokane, Washington, and)
Station WCP44, Spokane Washington)

ORDER ON RECONSIDERATION

Adopted: August 3, 2000

Released: August 7, 2000

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

1. Introduction. On January 31, 2000, the State of Washington (Washington) requested reconsideration of the imposition of a secondary status condition on the authorization for fixed microwave service (FMS) Stations WCP43 and WCP44, Spokane, Washington. For the reasons discussed herein, we dismiss Washington's petition.

2. Background. On August 9, 1999, Washington filed applications to modify the licenses for Stations WCP43 and WCP44. The proposed modifications for Station WCP43 included 1) an increase in antenna height of sixty feet, 2) a change of location to the replacement tower, 3) a sixty-foot increase in the structure height, 4) an increase in the effective isotropic radiated power (EIRP), and 5) an increase in antenna beamwidth. The proposed modifications for Station WCP44 included 1) a correction of the location, 2) a correction of the elevation, and 3) an increase in antenna beamwidth. On January 14, 2000, Washington was issued modified licenses for the stations with secondary status. Prior to this time, the stations operated with primary status. Washington requested reconsideration of the imposition of secondary status and reinstatement of primary status for the stations in a January 31, 2000 letter to the Chief of the Public Safety and Private Wireless Division's Licensing and Technical Analysis Branch (Branch), which is located in Gettysburg, Pennsylvania.

3. Discussion. Section 405 of the Communications Act, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on reconsideration. Section 405, as implemented by Section 1.106(f) of the Commission's Rules, requires a petition for reconsideration to be filed within thirty days from the release date of the Commission's action. In addition, Section 1.106(i) provides that a petition for reconsideration must be submitted to the

1 Letter from Terry C. Miller, Communications Systems Manager, ITS, State of Washington to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (dated January 31, 2000).

2 See FCC File No. 0000023073.

3 See FCC File No. 0000023072.

4 47 U.S.C. § 405.

5 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

Secretary, Federal Communications Commission, Washington, D.C. 20554.⁶

4. The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location as specified in the Commission's Rules.⁷ A document is filed with the Commission upon its receipt at the location designated by the Commission.⁸ Accordingly, based on the plain language of the Commission's Rules, a petition for reconsideration submitted to the FCC's Gettysburg, Pennsylvania office is not properly filed.⁹

5. We conclude that Washington did not satisfy the filing requirement in accordance with Section 1.106 of the Commission's Rules when it submitted its petition for reconsideration to the Commission's Gettysburg, Pennsylvania office instead of submitting it to the Commission's Office of the Secretary. Because the thirty-day window for filing a petition for reconsideration, as determined under Section 1.4 of the Commission's Rules,¹⁰ closed on February 14, 2000, the petition was not received by the Secretary within the thirty-day period. In addition, we note that no request for waiver of the requisite filing location was submitted, thus, we conclude that that petition should be dismissed.¹¹ Therefore, we dismiss this petition for reconsideration.

⁶ 47 C.F.R. § 1.106(i).

⁷ 47 C.F.R. § 0.401.

⁸ 47 C.F.R. § 1.7; First Auction of Interactive Video and Data Service (IVDS) Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 (1996); Complaints Regarding Cable Programming Services Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14 (CSB 1995).

⁹ *See, e.g.*, Memorandum of Agreement between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080 (WTB 1999) (determining that a facsimile copy to a division office neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782 (WTB PSPWD 1999) (finding that a petition for reconsideration sent to the Commission's lock box at Mellon bank neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office), *aff'd*, *Order on Reconsideration*, 15 FCC Rcd 3060 (WTB PSPWD 2000).

¹⁰ 47 C.F.R. § 1.4.

¹¹ We also note that the modified stations were correctly authorized with secondary status, consistent with the provisions of the Commission's Part 101 rules. Section 101.81 of the Commission's Rules provides that all major modifications to existing 2 GHz FMS systems will be authorized on a secondary basis to emerging technology (ET) systems, and, except for certain technical changes that may be made without losing secondary status, all minor modifications will render the modified FMS license secondary to ET operations unless the incumbent FMS licensee affirmatively justifies primary status and establishes that the modification would not add to the relocation costs of the ET licensees. 47 C.F.R. § 101.81. Washington contends that all of the proposed modifications to Stations WCP43 and WCP44 were either minor modifications or technical changes. We disagree. Although some of the modifications proposed by Washington are technical changes, increases in EIRP and antenna beamwidth are major modifications. 47 C.F.R. § 1.929(d)(1). Therefore, the Branch correctly authorized the stations' modifications with a secondary status condition.

6. ACCORDINGLY, IT IS 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, 47 C.F.R. § 1.106, State of Washington's petition for reconsideration dated January 31, 2000 IS DISMISSED.

7. 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