

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

In re Applications of
GARY PETRUCCI
220 MHz Station WPCY298
Honolulu, Hawaii
and
TEXLAND PARTNERSHIP
220 MHz Station WPBU886
Bryan/College Station, Texas
File No. D035043
File No. D030635

ORDER

Adopted: February 4, 2000

Released: February 7, 2000

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. We have before us two petitions for reconsideration filed on August 26, 1996, both seeking review of the dismissal of their respective modification applications for non-nationwide Phase I 220 MHz systems - one filed by Gary Petrucci for Station WPCY298 in Honolulu, Hawaii and the other filed by Texland Partners (Texland) for Station WPBU886 in Bryan/College Station, Texas. Both modification applications were dismissed by the Licensing and Technical Analysis Branch (Branch) because they requested a change in frequency from their original authorizations, while modifications were only permitted for a change in base station location. For the reasons discussed below, we find that the staff properly dismissed the amended modification applications as untimely pursuant to section 90.755(a) of our rules.

2. In April 1996, Texland and Petrucci, through their agent American Digital Communications, Inc. (ADC), filed modification applications requesting to permanently modify their licenses, pursuant to section 90.751 of the Commission's rules, by relocating the base station and changing the frequency. On July 17, 1996, the Branch dismissed Texland's modification application because it sought a change in frequency, and section 90.751 permitted an applicant to modify its 220 MHz license solely for the purpose of relocating a base station. On July 23, 1996, the Branch dismissed Petrucci's modification

1 Due to internal reorganization, the former Land Mobile Branch of the Licensing Division of the Wireless Telecommunications Bureau is now known as the Licensing and Technical Analysis Branch of the Commercial Wireless Division of the Wireless Telecommunications Bureau.

2 47 C.F.R. § 90.755(a) (applicants must have filed their applications for modifications of 220 MHz licenses pursuant to section 90.751 of our rules by May 1, 1996).

3 47 C.F.R. § 90.751 (allowing Phase I 220 MHz licensees the opportunity to seek modification of their licenses to relocate their initially authorized base stations).

4 See Notice of Application Dismissal, sent by Terry L. Fishel, Chief, Land Mobile Branch to Texland (July 17, 1996).

application for the same reason.<sup>5</sup>

3. On July 23, 1996, ADC sent the staff two letters claiming that an administrative error on its part resulted in the wrong frequency being entered into Form 600 Schedule E of Texland's and Petrucci's modification applications. On August 26, 1996, Petrucci and Texland separately filed petitions for reconsideration, stating that the defects in their modification application were the result of ADC's administrative error, and submitted corrected Form 600 Schedule E along with the petition.<sup>6</sup>

4. We find that the Branch properly dismissed Petrucci's and Texland's modification applications because of their erroneous listing of changes in frequency. Section 90.751 of the Commission's rules allowed modification of an existing license only for base station relocation purposes. Both Petrucci and Texland requested a frequency change as well as a change in base station location. The fact that administrative errors caused the applications to be defective is immaterial. Texland and Petrucci were on notice that the Commission would consider applications that did not comply with its requirements defective and possibly dismiss them.<sup>7</sup> A strict standard is necessary because of the combined effect of limited agency resources, an overwhelming number of applications, and the fact that modifications to an application may directly and indirectly affect numerous other applications. The correction of an application that modifies its engineering data or the reinstatement of a formerly excluded application may require extensive additional analysis and if permitted, may delay the processing of all interconnected applications, not simply the one amended.<sup>8</sup>

5. We find that when the Branch correctly dismissed Petrucci's and Texland's modification applications, they lost their places in the processing line. We consider both Petrucci's corrected Form 600 Schedule E and Texland's corrected Form 600 Schedule E, submitted along with their petitions, to be new applications for modifications of a 220 MHz license. Since Texland and Petrucci filed these applications after the May 1, 1996 deadline for requesting modifications to a 220 MHz license pursuant to section 90.751, the resubmitted applications are untimely and we must deny them.

6. Accordingly, pursuant to sections 4(i) and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 405, and sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, IT IS ORDERED that the petition for reconsideration filed by Gary Petrucci on August 26, 1996, and the petition for reconsideration filed by Texland Partners on August 26, 1996, ARE DENIED.

7. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(a), and sections 0.331 and 90.755(a) of the Commission's rules, 47 C.F.R. §§ 0.331, 90.755(a), treating the petition for reconsideration filed by Gary

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<sup>5</sup> See Notice of Application Dismissal, sent by Terry L. Fishel, Chief, Land Mobile Branch to Petrucci (July 23, 1996).

<sup>6</sup> We note that Texland filed the its petition for reconsideration more than 30 days after the Branch dismissed its modification application. Since section 1.106(f) of the Commission's rules requires a party to file a petition for reconsideration within 30 days from the date of the public notice of the final Commission action, the petition is untimely. See 47 C.F.R. § 1.106(f).

<sup>7</sup> See 47 C.F.R. § 90.139(c) (Commission considers applications that are not in accordance with its requirements defective and may dismiss them).

<sup>8</sup> See *Salzer v. FCC*, 778 F.2d 869, 873 (D.C. Cir. 1985).

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Petrucci on August 26, 1996 and the petition for reconsideration filed by Texland Partners on August 26, 1996 as applications for modification of a 220 MHz license, that those applications ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION



William W. Kunze  
Deputy Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau