

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

In the Matter of	)	
	)	
Application of Mike Henderson d/b/a Henderson	)	
Construction	)	FCC File No. 003C29199
	)	Call Sign WPQG522
For a new 800 MHz Business Radio Station in the	)	
General Category, serving Coalinga, Fresno,	)	
California	)	
	)	

**ORDER ON RECONSIDERATION**

**Adopted: November 29, 2000**

**Released: December 1, 2000**

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

**I. INTRODUCTION**

1. We have before us a petition for reconsideration (Petition) filed by Champion Communication Services (Champion) on July 28, 2000, requesting reconsideration of a decision by the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) regarding the grant of a 800 MHz General Category channel to Mike Henderson d/b/a Henderson Construction (Henderson).<sup>1</sup> For the reasons discussed herein, we grant the Petition.

**II. BACKGROUND**

2. On October 4, 1995, the Wireless Telecommunications Bureau (Bureau) suspended the acceptance of new applications for General Category channels.<sup>2</sup> The Bureau nonetheless indicated that it would continue to process those applications for General Category channels that were received by the Bureau's Licensing Division as of 12:00 a.m. midnight on October 4, 1995.<sup>3</sup> The Bureau determined that all other applications, including those that were still in the frequency coordination process, were subject to the suspension and would be returned to the applicant upon receipt by the Bureau.

3. On March 24, 2000, Henderson submitted an application to become an additional licensee on an existing community repeater operating on General Category channel 851.5875 MHz located on Joaquin Ridge, California. On July 6, 2000, the Branch granted the application and assigned Call Sign WPQG522 to the station. On July 28, 2000, Champion filed the Petition seeking reconsideration of the

<sup>1</sup> Petition for Reconsideration (filed July 28, 2000) (Petition). The Petition is unopposed.

<sup>2</sup> Licensing of General Category Frequencies in the 806-809.750/851-854.750 MHz Bands, *Order*, 10 FCC Rcd 13190 (WTB 1995) (*General Category Suspension Order*).

<sup>3</sup> *Id.*

grant of the station WPQG522 license to Henderson. Champion is licensed for exclusive operation on frequency channel 851.5875 MHz from a site atop Bear Mountain, California under Call Sign WPGW927.<sup>4</sup> Champion argues that that General Category Suspension Order was still in effect when Henderson's application was filed.<sup>5</sup> Champion further argues that a waiver of the General Category Suspension Order was not appropriate because the General Category Suspension Order did not explicitly authorize waivers.<sup>6</sup> Assuming *arguendo* that the General Category Suspension Order allows waivers, Champion argues, a waiver is not appropriate because Henderson failed to include any information in its application to justify such a waiver.<sup>7</sup> Champion further argues that because Champion's license for the Bear Mountain site authorizes exclusive use of 851.5875 MHz, grant of Henderson's application would be inconsistent with the provisions of Section 90.621(6)(2)(i) of the Commission's Rules.<sup>8</sup> Thus, Champion argues, Henderson's application should have been dismissed as defective for failure to comply with the Commission's Rules.<sup>9</sup>

### III. DISCUSSION

4. Based upon our review of the information before us, we agree with Champion that Henderson's application was defective in two respects.<sup>10</sup> First, Henderson filed an application for a General Category channel on March 24, 2000, while the General Category Suspension Order was in effect, but did not request a waiver of the General Category Suspension Order. Second, Table 1 of Section 90.621 of the Commission's Rules<sup>11</sup> prohibits Henderson from operating on 851.5875 MHz at Joaquin Ridge because Champion's station WPGW927 license authorizes exclusive use of 851.5875 MHz from the Bear Mountain site. Henderson also failed to request a waiver of that provision or to indicate Champion's concurrence with Henderson's proposed operation.

5. Under section 1.934(d)(2) of the Commission's Rules, the Commission may dismiss as defective an application that requests an authorization that would not comply with one or more of the Commission's rules and does not contain a request for wavier of those rules.<sup>12</sup> Accordingly, Henderson's

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<sup>4</sup> Petition at 4.

<sup>5</sup> Petition at 1.

<sup>6</sup> Petition at 3.

<sup>7</sup> *Id.*

<sup>8</sup> 47 C.F.R. § 90.621(b)(2)(i). Petition at 3-4.

<sup>9</sup> Petition at 4.

<sup>10</sup> We note, as an initial matter, that we do not concur with Champion's assertion that, as a general matter, waivers of the General Category Suspension Order are not authorized. *See* Petition at 3. In this regard, we note that the Bureau has granted waivers of the General Category Suspension Order. *See* In the Matter of New Jersey Transit Authority Request for Waiver of the 800 MHz Category Freeze for Applications Files Nos. A003427, A003426, A003425, A003423, A003412, and A003422, *Order*, DA 99-384, 14 FCC Rcd 4334 (1999). *See also* In the matter of the State of Florida Request for Waiver of the General Category Freeze, *Order*, DA 97-1631, 12 FCC Rcd 11567 (1997).

<sup>11</sup> 47 C.F.R. § 90.621(b)(2)(i), Table 1.

<sup>12</sup> 47 C.F.R. § 1.934(d)(2).

application was defective and should be dismissed.

#### IV. ORDERING CLAUSES

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, the petition for reconsideration filed by Champion Communication Services on July 28, 2000, IS HEREBY GRANTED.

7. 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) and 405, the grant of the license for Call Sign WPQG522 IS HEREBY SET ASIDE, the FCC File Number 003C029199 returned to pending status, and the Division's Licensing and Technical Analysis Branch is directed to dismiss such application consistent with the terms of this Order on Reconsideration.

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