

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

In the Matter of)
RADI-LINK, INC.) FCC File No. C012938
Petition for Reconsideration of Partial Grant of)
License for Station WPPW990 at Various)
Locations in the Chicago, Illinois area)

ORDER ON RECONSIDERATION

Adopted: December 4, 2000

Released: December 5, 2000

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

1. Introduction. On March 14, 2000, Radi-Link, Inc. (Radi-Link) filed a Petition for Reconsideration (Petition)1 of the Licensing and Technical Analysis Branch's (Branch), Public Safety and Private Wireless Division, Wireless Telecommunications Bureau partial grant of the above-captioned application for Station WPPW990. For the reasons discussed below, we dismiss the Petition for Reconsideration.

2. Background. On June 1, 1999, Radi-Link filed an application for 16 channel pairs in the 470-512 MHz band at four locations in and around the Chicago area. On February 15, 2000, Radi-Link was advised2 that the justification for 16 channel pairs was insufficient and that its commitments from 200 subscribers would justify no more than 3 channels.3 Accordingly, on February 23, 2000, pursuant to its showing for 200 subscribers, Radi-Link's application was partially granted for 3 channels. On March 14, 2000, Radi-Link filed its petition with the Commission's Gettysburg office.

3. Discussion. We will dismiss Radi-Link's petition because it was not filed at the correct location. Section 1.106(i) of the Commission's Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.4 The Commission maintains different offices for different purposes, and persons filing documents with the

1 Letter from James Gunn, President, Radi-Link, Inc. to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, filed March 14, 2000.

2 Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division to James Gunn, President, Radi-Link, dated February 15, 2000.

3 See 47 C.F.R. § 90.313(a)(1), which states that a channel is fully loaded at 90 mobile units; see also 47 C.F.R. § 90.313(c) which provides that a licensee must show than an assigned frequency pair is at full capacity before it can be assigned an additional frequency pair.

4 47 C.F.R. § 1.106(i).

Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's Rules.⁵ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.⁶ A document is filed with the Commission upon its receipt at the location designated by the Commission.⁷ Accordingly, the plain language of the Commission's Rules states that a petition for reconsideration submitted to the Commission's Gettysburg, Pennsylvania, office is not properly filed.⁸

4. The Petition was never filed with the Office of the Secretary. Therefore, we find that the Petition was not timely filed in the proper location. Moreover, Radi-Link did not file a request for waiver to file its Petition in Gettysburg, as opposed to filing it with the Office of the Secretary. Consequently, absent a waiver, we conclude that Radi-Link's Petition should be dismissed as improperly filed.⁹

5. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Radi-Link, Inc., on March 14, 2000, IS DISMISSED.

⁵ 47 C.F.R. § 0.401.

⁶ *Id.*

⁷ 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).

⁸ *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 10251 (WTB PSPWD 2000).

⁹ Even if we reached the substance of Radi-Link's argument, we would still dismiss its petition. Radi-Link does not dispute that the Branch correctly applied the Commission's Rules to its application. Instead, Radi-Link argues that the rules applicable to 800 MHz Specialized Mobile Radio (SMR) stations should be applied in the 470-512 MHz band. The appropriate forum for this argument is a petition for rule making, not a licensing proceeding. *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments, Policies of the Private Land Mobile Services, *Third Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 10922, 10934 ¶ 27 (1999).

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

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
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