

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

In the Matter of)
)
LANDLINX COMMUNICATIONS)
)
Petition for Reconsideration of the)
Order on Reconsideration Affirming)
Call Sign WPMP955, filed by the)
California State Automobile Association)

SECOND ORDER ON RECONSIDERATION

Adopted: December 18, 2000

Released: December 20, 2000

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

I. INTRODUCTION

1. In this *Second Order on Reconsideration*, we address the petition for reconsideration submitted by the California State Automobile Association, Inc. (CSAA), an affiliate of the American Automobile Association (AAA), to the above-captioned private land mobile radio (PLMR) station held by Landlinx Communications (Landlinx). Based on the record in this proceeding, we deny CSAA's petition.

II. BACKGROUND

2. On May 11, 1998, Landlinx filed an application for authorization to operate on various Industrial/Business Pool PLMR frequencies on a conventional basis.¹ On August 18, 1998, CSAA filed an informal objection to Landlinx's application.² In consideration of CSAA's objection, the Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Bureau), returned the application to the Industrial Telecommunications Association (ITA), the FCC-certified frequency coordinator that certified the application for submission to the FCC, on September 16, 1998, and asked ITA to respond to CSAA's objection.³ On October 26,

¹ FCC File No. C002966 (filed May 11, 1998).

² Letter from Peter Fuerst, California State Automobile Association (CSAA), to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (filed Aug. 18, 1998).

³ Letter from Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to ITA (filed Sept. 17, 1998).

1998, ITA re-certified the application, and returned it to the Branch for processing.⁴ The Branch granted the application on October 30, 1998. CSAA petitioned for reconsideration of the grant on November 30, 1998.⁵ The Bureau denied the petition on January 3, 2000.⁶ On January 24, 2000, CSAA again sought reconsideration.⁷

III. DISCUSSION

3. In its Second Petition, CSAA repeats its arguments with regard to public safety considerations and legislative notice thereof.⁸ CSAA also alleges that the Branch committed an administrative processing error by ignoring filed pleadings.⁹ In addition, CSAA continues to argue that Landlinx's licenses are inconsistent with the spectrum efficiency provisions of the Commission's Rules.¹⁰

4. Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.¹¹ A petition that simply reiterates arguments previously considered and rejected will be denied.¹² In its Second Petition, CSAA repeats several arguments that we have already considered and rejected in the *Order on Reconsideration*. For example, CSAA repeats its arguments that the grant to Landlinx fails to address public safety considerations,¹³ does not comply with the Balanced Budget Act of 1997,¹⁴ and is inconsistent with Section 90.35(e) of the Commission's Rules.¹⁵ We considered and rejected each of these arguments in the *Order on Reconsideration*.¹⁶ After reviewing CSAA's Second Petition, we believe that CSAA has failed to present additional facts relevant to this matter and not previously raised or that the *Order on Reconsideration*

⁴ Letter from Mark E. Crosby, ITA, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (filed Oct. 26, 1998).

⁵ CSAA Petition for Reconsideration (filed Nov. 30, 1998).

⁶ In the Matter of Landlinx Communications, Petition for Reconsideration of Grant of License for Call Sign WPMP955 filed by California State Automobile (sic), *Order on Reconsideration*, DA 99-3038 (WTB PSPWD Jan. 3, 2000).

⁷ CSAA Petition for Reconsideration (filed Jan. 24, 2000) ("Second Petition").

⁸ Second Petition at 4-6.

⁹ *Id.* at 2, 3.

¹⁰ *Id.* at 6-8.

¹¹ *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106(c).

¹² *Id.*; *Gaines, Bennett Gilbert*, 8 FCC Rcd 3986 (Rev. Bd. 1993).

¹³ Second Petition at 4-5.

¹⁴ Second Petition at 5-6.

¹⁵ 47 C.F.R. § 90.35(e). *See* Second Petition at 6-8.

¹⁶ *See Order on Reconsideration*, ¶¶ 4-6.

contains a material error or did not fully and fairly consider these arguments. We therefore summarily deny CSAA's petition with respect to these arguments.

4. CSAA also makes two arguments that were not considered in the *Order on Reconsideration*. First, CSAA alleges that the Branch committed an administrative processing error when it granted the licenses to Landlinx only four days after ITA filed its objection to CSAA's informal protest, thus depriving CSAA of a reasonable opportunity to respond to ITA's claims.¹⁷ CSAA cites to a letter where the Commercial Wireless Division set aside the grant of a license because the staff granted applications without reviewing pending petitions.¹⁸ We believe that such letter ruling is inapposite to the circumstances present here. That ruling was based upon the failure to review the entire record, as opposed to the time period between the filing of pleadings and the time a grant was made. In this case, PLMR is not a service subject to the formal procedures associated with the disposition of petitions to deny.¹⁹ Rather, CSAA and ITA's objections fall within the informal objection provisions of Section 1.41 of the Commission's Rules.²⁰ Under Section 1.41, there is no requirement for a formal pleading cycle, and the Commission may grant an application without waiting for any specific amount of time after the submission of informal protests and objections. Moreover, we believe that CSAA has had a full and fair opportunity to present its arguments in its objection and in its two petitions for reconsideration. Accordingly, we reject CSAA's argument that there was an administrative processing error in this matter.

5. CSAA also argues that special conditions should be placed on the Landlinx licenses because the *Order on Reconsideration* stated that Landlinx would use the facilities "to demonstrate the products in its communications business."²¹ We disagree. CSAA relies on a public notice relating to licenses issued for the limited purpose of "demonstrating equipment, conducting propagation studies, and performing field strength surveys."²² The Landlinx licenses, however, were not issued pursuant to the provisions of that public notice. Accordingly, we believe that it would therefore be inappropriate to impose the conditions described in that public notice.

IV. CONCLUSION

7. For the reasons set forth above, we find no basis to set aside the grant of Landlinx's licenses. We will not reconsider arguments CSAA's arguments that we have previously considered and rejected. CSAA's remaining arguments do not provide a basis for reconsideration.

¹⁷*Id.* at 2.

¹⁸ See Letter from Ronald B. Fuhrman, Deputy Chief, Technical Analysis Section, Commercial Wireless Division, Wireless Telecommunications Bureau, to Damon Silva, Cumulous Communications (dated Nov. 17, 1999).

¹⁹See 47 C.F.R. § 1.939.

²⁰See 47 C.F.R. § 1.41.

²¹ Second Petition at 3-4, citing *Order on Reconsideration*, ¶ 2.

²² Demonstration Licenses in the Business Radio Service, *Public Notice*, released February 16, 1983.

V. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that pursuant to Section 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by the California State Automobile Association on January 24, 2000 IS DENIED.

9. This action is taken pursuant to delegated authority granted under the provisions of 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