

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

In the Matter of)	
)	
Cynthia Kaufman)	File No. 94F502
)	
Finder's Preference Request)	
For Station WPCW879)	
Licensed to James Shaw)	
at Lafayette, California)	

MEMORANDUM OPINION AND ORDER

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

Adopted: February 24, 2000

Released: February 25, 2000

1. On October 6, 1995, James Shaw (Shaw), licensee of Specialized Mobile Radio (SMR) Station WPCW879, filed a petition for reconsideration (Petition) of a decision by the Wireless Telecommunications Bureau's Office of Operations granting an award of a finder's preference to Cynthia Kaufman (Kaufman).¹ For the reasons discussed below, Shaw's Petition is dismissed.

2. Shaw was served with a finder's preference request (finder's request) on February 6, 1995, alleging that station WPCW879 was not constructed at its authorized location. The target licensee failed to file an opposition to the finder's request. The Bureau's Office of Operations granted a finder's preference award to Kaufman on August 25, 1995 because Shaw failed to construct station WPCW879. Shaw filed his Petition on October 6, 1995, 11 days after the statutory deadline for filing a petition for reconsideration.

3. The target licensee's petition for reconsideration was filed 11 days late, and therefore was untimely. Pursuant to Section 405 of the Communications Act, as amended, the 30-day right to appeal is statutory, and cannot be waived.² Therefore, we dismiss Shaw's petition for reconsideration and affirm the award of a finder's preference to Kaufman for station WPCW879.

4. 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) and 405, and sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331 and 1.106, the Petition for Reconsideration filed by James Shaw in Finder's Preference Case No. 94F502 IS DISMISSED.

¹ See Letter from William J. Kellett, Esq., Office of Operations, to Cynthia Kaufman, dated August 25, 1995.

² 47 U.S.C. § 405.

5. IT IS FURTHER ORDERED that the award of a finder's preference to Cynthia Kaufman for station WPCW879, Lafayette, CA, IS AFFIRMED. Cynthia Kaufman has 90 days from the date of this order to file an application with the Commission for the awarded frequency. If the target licensee files an application for review of this decision, the filing of an application SHALL BE TOLLED.

FEDERAL COMMUNICATIONS COMMISSION

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