

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

In the Matter of)
)
CUMULOUS COMMUNICATIONS)
) File No. A034945
Application for Licenses in the Private Land)
Mobile Radio Service at Sanger, Fresno, Santa)
Nella, Mariposa, Westley and Cameron Park, in)
California)
)

ORDER ON RECONSIDERATION

Adopted: April 23, 2001

Released: April 25, 2001

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

1. Introduction. In this Order, we address the petition for reconsideration filed by the California State Automobile Association, Inc. (CSAA), an affiliate of the American Automobile Association (AAA).1 CSAA seeks clarification or partial reconsideration of our July 20, 2000, grant of frequencies 452.5125 MHz and 452.5375 MHz to Cumulous Communications (Cumulous) in connection with the grant of a ten-channel trunked private land mobile radio (PLMR) authorization to Cumulous.2 Based upon the record in this proceeding, we grant CSAA's petition and conclude that the frequencies 452.5125 MHz and 452.5375 MHz should be replaced with other frequencies.

2. Background. In 1997, the Commission consolidated the twenty existing PLMR services into two frequency pools, Public Safety and Industrial/Business (I/B), and determined that each of the frequency coordinators that were certified to provide coordination services in any of the radio services included in the I/B pool would be eligible to coordinate any frequency in the I/B pool.3 Frequencies that had been assigned to the Automobile Emergency Radio Service (AERS) and were exclusively coordinated by AAA were included in the I/B pool.4

3. On March 12, 1999, Cumulous filed an application for authorization to operate on various I/B frequencies, including some that were previously allocated to the AERS.5 On April 21, 1999, CSAA

1 Petition for Clarification and/or Partial Reconsideration filed August 16, 2000 (Petition).

2 Cumulous Communications, Memorandum Opinion and Order, 15 FCC Rcd 12840 (WTB PSPWD 2000) (MO&O).

3 Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Tem, Second Report and Order, PR Docket No. 92-235, 12 FCC Rcd 14307, 14317 ¶20, 14328 ¶40 1997.

4 Id, 12 FCC Rcd at 14317 ¶20.

5 FCC File No. A034945 (filed March 12, 1999).

filed an objection to Cumulous' application.⁶ In its objection, CSAA argued, among other things, that there were more suitable frequencies available to Cumulous.⁷ On July 20, 2000, the Chief, Public Safety and Wireless Division, Wireless Telecommunications Bureau, granted, in part, the Cumulous application, limiting the license grant to ten channels.⁸ On August 16, 2000, CSAA filed a petition for reconsideration seeking that the frequencies 452.5125 MHz and 452.5375 MHz not be granted to Cumulous as a part of the 10 frequencies authorized by the Commission. Cumulous responded, in writing, to CSAA's request on August 28, 2000 stating that it had no objection to the request and that it would accept a grant of ten channels, other than 452.5125 MHz and 452.5375 MHz, from among those frequencies requested.⁹

4. *Discussion.* We have reviewed CSAA's request and conclude that grant of the request is warranted. In this connection, we note that the frequencies 452.5125 MHz and 452.5375 MHz have been designated as low power frequencies.¹⁰ As a result, these frequencies are outside the pool of regularly assignable channels in the 450-460 MHz band¹¹ and were frozen until January 29, 2001.¹² The power output proposed by Cumulous exceeds the current power limit of 2 watts. Therefore, we believe that assigning frequencies other than those two frequencies to Cumulous is in the public interest. Further, Cumulous consents to having two alternate frequencies assigned in lieu of 452.5125 MHz and 452.5375 MHz. A review of our records indicates that two additional frequencies are available for assignment. Therefore, we shall assign Cumulous a total of ten frequencies, which will not include the frequencies 452.5125 MHz and 452.5375 MHz.

5. ACCORDINGLY, IT IS ORDERED 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 the California State Automobile Association, Inc. on August 16, 2000 IS GRANTED.

⁶ Letter from John Prendergast, Esq., counsel for the California State Automobile Association (CSAA), to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (filed April 21, 1999) (CSAA Objection).

⁷ *Id.* at 1, 2.

⁸ *See MO&O.*

⁹ Letter from Dennis C. Brown, Esq., counsel for Cumulous Communications, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (filed August 28, 2000).

¹⁰ *See* Wireless Telecommunications Bureau Accepts LMCC Low Power Plan for Part 90 450-470 MHz Band, *Public Notice*, 15 FCC Rcd 11598, 11601 (WTB 2000).

¹¹ *See* Replacement of Part 90 by Part 88 to Revise the Private Land Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Bureau Services, PR Docket No. 92-235, *Report and Order*, 10 FCC Rcd 10076 (1995).

¹² *See* Freeze on the Filing of High Power Applications for 12.5 kHz Offset Channels in the 450-460 MHz Band to be Lifted January 29, 2001, *Public Notice*, 15 FCC Rcd 9996 (WTB PSPWD 2000).

6. IT IS FURTHER ORDERED that application FCC File No. A034945, filed by Cumulous Communications on March 12, 1999, IS GRANTED with frequencies other than 452.5125 MHz and 452.5375 MHz.¹³

7. 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

¹³ Cumulous proposes operations at six different sites. The frequencies we will assign are as follows: Site A, 451.2875 MHz, 451.3375 MHz, 451.4125 MHz, 451.4625 MHz, 451.5125 MHz, 451.5625 MHz, 451.6125 MHz, 451.6625 MHz, 451.7125 MHz, and 451.7625 MHz. Site B: 451.2875 MHz, 451.3375 MHz, 451.4125 MHz, 451.4625 MHz, 451.5125 MHz, 451.5625 MHz, 451.6125 MHz, 451.6625 MHz, 451.7125 MHz, and 451.7625 MHz. Site C: 451.2875 MHz, 451.3125 MHz, 451.3875 MHz, 451.4625 MHz, 451.4875 MHz, 451.5625 MHz, 451.5875 MHz, 451.6375 MHz, 451.7125 MHz, and 452.0375 MHz. Site D: 451.2875 MHz, 451.3125 MHz, 451.3375 MHz, 451.4875 MHz, 451.7125 MHz, 452.3125 MHz, 452.4125 MHz, 452.4875 MHz, 452.6375 MHz, and 452.6625 MHz. Site E: 451.2875 MHz, 451.3125 MHz, 451.5875 MHz, 451.7125 MHz, 452.0875 MHz, 452.2875 MHz, 452.3125 MHz, 452.4125 MHz, 452.4875 MHz, and 452.6375 MHz. Site F: 451.3375 MHz, 451.5125 MHz, 451.7125 MHz, 451.7625 MHz, 452.0625 MHz, 452.0875 MHz, 452.1125 MHz, 452.1375 MHz, 452.1625 MHz, and 452.1875 MHz.