

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

In the matter of
JIM CRINKLAW
Licensee of Trunked Industrial/Business Pool
Radio Service Station WPQA434, Memphis, TN

MEMORANDUM OPINION AND ORDER

Adopted: July 20, 2001

Released: July 27, 2001

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

I. INTRODUCTION

1. On May 8, 2000, Industrial Telecommunications Association, Inc. (ITA) filed an informal request to set aside the above-captioned authorization granted to Jim Crinklaw (Crinklaw). For the reasons set forth below, we deny ITA's Set-aside Request. On our own motion, however, we initiate a proceeding to modify Crinklaw's license to remove the frequency pair 464.5875/469.5875 MHz.

II. BACKGROUND

2. Pursuant to Section 90.187 of the Commission's Rules, trunking is permitted in the Private Land Mobile Radio (PLMR) bands between 150 MHz and 512 MHz in those areas where the applicant/licensee has exclusive use of the frequencies in its service area or where the applicant/licensee obtains the consent of all affected licensees. Affected licensees are defined as either those whose service areas overlap a circle with a radius of 70 miles from the proposed trunked system's base station, or those whose service contour intersects the interference contour of the proposed trunked system's base station. On April 19, 2000, the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division granted Crinklaw authorization to operate Industrial/Business Pool trunked Station WPQA434, Memphis, Tennessee, on frequency pairs 451.3375/456.3375 MHz, 451.6875/456.6875 MHz, 452.1625/457.1625 MHz, 452.3125/457.3125 MHz, 452.4875/457.4875 MHz, 452.6375/457.6375 MHz, 452.6875/457.6875 MHz, 452.7625/457.7625 MHz, 452.8625/457.8625 MHz, 464.5875/469.5875 MHz. By letter received May 8, 2000, ITA requested that the license grant be set aside on the grounds that Station WPQA434 would interfere with Station WPLD779, Shelby County, Tennessee, licensed to Tri Star Food Service (Tri Star), on 464.5875/469.5875 MHz, and Crinklaw never

1 Letter to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, from Andre F. Cote, Senior Vice President, Spectrum Operations & Analysis, ITA (filed May 8, 2000) (Set-aside Request).

2 47 C.F.R. § 90.187(b).

3 47 C.F.R. § 90.187(b)(2)(ii), (iii). The trunked applicant/licensee chooses which method to use to determine the licensees from whom consent is needed. 47 C.F.R. § 90.187(b)(2)(iii).

received consent from Tri Star.⁴

3. On February 19, 2001, the Branch asked the Personal Communications Industry Association (PCIA), which coordinated the Crinklaw application, to respond to ITA's analysis and demonstrate that its coordination was in compliance with the Commission's Rules.⁵ If PCIA determined the coordination was defective the Branch asked that PCIA propose a resolution of the problem.⁶ PCIA responded on March 19, 2001, that, based on its records for consent letters and contour studies for the Crinklaw application, "there may be a co-channel license that was not accounted for" at 464.5875 MHz.⁷ PCIA recommended the Commission correct Crinklaw's license for Station WPQA434 by removing the 464.5875 MHz frequency.⁸

4. On March 19, 2001, Crinklaw responded to the Branch Letter.⁹ He stated that after ITA submitted its Set-aside Request, a Crinklaw representative contacted the principal of Tri Star to seek consent and was told that Tri Star had not used 464.5875 MHz for seven months and had no present intention of using the frequency, but that it would not consent to Crinklaw's trunked use of the frequency unless Crinklaw paid Tri Star \$15,000.¹⁰

III. DISCUSSION

5. Crinklaw requests that we dismiss ITA's Set-aside Request. First, he argues that the Set-aside Request was procedurally deficient because it was not signed and it was not filed with the Secretary's Office, as Section 1.106 of the Commission's Rules requires.¹¹ We note that the Set-aside Request was signed.¹² As for filing with the Secretary's Office, Crinklaw assumes that the Set-aside Request is a petition for reconsideration and thus subject to the procedural requirements of Section 1.106. The Set-aside Request is in fact an informal request for Commission action under Section 1.41 of the Commission's Rules, which does not specify a location for submitting such requests.¹³ Accordingly, we find that neither argument warrants dismissal of the Set-aside Request.¹⁴

6. Next, Crinklaw argues that the ITA interference analysis was flawed.¹⁵ Specifically,

⁴ Set-aside Request at 1 (referencing interference analysis conducted by ITA and attached to the Set-aside Request).

⁵ Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to PCIA, (Feb. 15, 2001) (Branch Letter).

⁶ *Id.*

⁷ Letter from Don Andrew, Coordination Services Specialist, PCIA, to Tracy Simmons, Federal Communications Commission (filed March 19, 2001) (PCIA Response Letter).

⁸ *Id.* at 1.

⁹ Reply to FCC Inquiry (filed March 19, 2001) (Crinklaw Reply). Crinklaw also filed an opposition to the Set-aside Request. Opposition to Petition for Reconsideration (filed May 18, 2000) (Crinklaw Opposition).

¹⁰ Crinklaw Reply at 2, Exhibit A.

¹¹ Crinklaw Opposition at 1-2 (citing 47 C.F.R. § 1.106(i)).

¹² *See* Set-aside Request at 2.

¹³ 47 C.F.R. § 1.41 ("Except where formal procedures are required under this part, requests for action may be submitted informally.")

¹⁴ Crinklaw further argued that ITA's Set-aside Request should be considered a petition for partial reconsideration and not a reconsideration of the entire license since ITA only questioned one of the ten channels. Crinklaw Opposition at 2. As discussed above, we consider ITA's Set-aside Request an informal request for Commission action and are acting accordingly.

¹⁵ *Id.*

Crinklaw asserts that the analysis considered the 19 dBu interference contour of Station WPQA434 and the 37 dBu service contour of Station WPLD779, instead of the 21/39 dBu contour analysis mandated by Section 90.187(b)(2)(iii) of the Commission's Rules.¹⁶ Based on our review of this matter, we believe that the Set-aside Request mistakenly states that ITA's analysis was of the 19/37 dBu contours,¹⁷ because the attached analysis to which it refers clearly indicates that the 21/39 dBu contours were compared.¹⁸ Thus, we disagree with Crinklaw's contention that the analysis was flawed. As a result, we concur that Station WPQA434's predicted interference contour overlaps Station WPLD779's predicted service contour by 50.95 kilometers on the 464.5875 MHz frequency.¹⁹

7. Crinklaw also argued in his Opposition that he should be allowed time to secure consent from Tri Star because he was unaware, until ITA's complaint, that his station might interfere with Tri Star's station.²⁰ Crinklaw has now been allowed ample time to secure such consent and has in fact attempted to do so,²¹ thus mooted this argument.

8. Finally, Crinklaw argues that Tri Star is not entitled to co-channel interference protection because it has permanently abandoned its licensed facility.²² He contends that Tri Star's license has canceled automatically pursuant to Section 90.157 of the Commission's Rules.²³ Regardless of whether this is true,²⁴ however, Station WPLD779 was on the Commission's licensing database when the Crinklaw application was filed. The frequencies assigned to an expired or canceled license remain unavailable until the license is deleted from the database or otherwise indicated to be inactive.²⁵ Because the license has not been deleted, Crinklaw is not free to ignore it. Accordingly, this argument does not warrant denial of ITA's Set-aside Request.²⁶

9. PCIA has acknowledged that it incorrectly coordinated the Crinklaw application for Station WPQA434.²⁷ Specifically, it did not account for Station WPLD779. However, we find that

¹⁶ *Id.* (citing 47 C.F.R. § 90.187(b)(2)(iii)).

¹⁷ Set-aside Request at 1.

¹⁸ *Id.* at Attachment 1, Overlap Study Report, R6602.

¹⁹ *Id.*

²⁰ Crinklaw Opposition at 2.

²¹ Crinklaw Reply at 2.

²² *Id.*

²³ *Id.* (citing 47 C.F.R. § 90.157).

²⁴ We note that this proceeding is a modification of a license and subject to 47 C.F.R. § 1.87, which states that any protest of the proceeding is considered a petition to deny under 47 U.S.C. § 309, which requires that such allegations of fact must be supported "by affidavit of a person or persons with *personal* knowledge thereof." 47 U.S.C. § 309(d)(1) (emphasis added). The hearsay statements in the affidavit attached to the Crinklaw Reply do not suffice. *See, e.g.,* Mississippi Authority For Educational Television, *Memorandum Opinion and Order*, 79 FCC 2d 300, 306 ¶ 11 (1980) (citing Rules and Policies to Facilitate Public Participation and Regulation of the Various Communications Industries in the Public Interest, *Memorandum Opinion and Order*, 61 FCC 2d 1112, 1125 ¶ 56 (1976)).

²⁵ Samuel Ferguson, *Order on Reconsideration*, DA 00-2801, ¶ 7 (WTB rel. December 13, 2000) (citing Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Memorandum Opinion and Order*, PR Docket No. 90-481, 8 FCC Rcd 6690, 6693 ¶ 24 (1993)).

²⁶ We reserve discretion to make further inquiry into whether Tri Star has permanently discontinued operation of Station WPLD779, or otherwise violated the Commission's Rules.

²⁷ PCIA Response Letter at 1.

setting aside the entire license granted to Crinklaw for Station WPQA434, as requested by ITA, is unnecessary and unwarranted based on the information before us. We believe that Section 316 of the Communications Act of 1934, as amended,²⁸ involving modifications of licenses, and not Section 312(a)(2) of the Act involving revocations of licenses, provides the appropriate vehicle for addressing this matter. Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.²⁹ In this connection, we note that the proposed modification would serve the public interest by preserving the existing coverage areas of affected parties and preventing harmful interference, while not unduly disrupting Crinklaw's operations or penalizing the licensee for PCIA's apparent defective coordination.

10. In accordance with Section 1.87(a) of the Commission's Rules,³⁰ this *Memorandum Opinion and Order* will not become final until the licensee has received notice of our action and had an opportunity to protest the modification. Accordingly, Crinklaw and any other interested licensee or permittee³¹ has thirty days from the release date of this *Memorandum Opinion and Order* to protest the proposed license modification. To protest the modification, an interested party must submit a written statement with sufficient evidence to show that the modification would not be in the public interest.³² The protest must be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554. If no protest is timely filed, the right to file a protest will be deemed waived and the licensee will be deemed to have consented to the modification.³³

IV. CONCLUSION

11. For the reasons stated above, we conclude that the grant of Crinklaw's application was defective. Accordingly, we propose to modify the license of Crinklaw concerning the operation of Station WPQA434. Specifically, we propose to remove the 464.5875 MHz frequency from Crinklaw's authorization for Station WPQA434.

V. ORDERING CLAUSES

12. ACCORDINGLY IT IS ORDERED, pursuant to Section 4(i) and 312 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 312, and Section 1.41 of the Commission's Rules, 47 C.F.R. §§ 1.41, the Set-aside Request filed by Industrial Telecommunications Association, Inc., on May 8, 2000, IS DENIED.

13. IT IS PROPOSED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, the license for Private Land Mobile Radio Services Station WPQA434, held by Jim Crinklaw, BE MODIFIED to remove the frequency pair 464.5875/469.5875 MHz.

14. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.87(i) of the Commission's Rules, 47 C.F.R. §

²⁸ 47 U.S.C. § 316.

²⁹ 47 U.S.C. § 316(a). Section 316(a)(1) requires that we notify the affected licensee of the proposed modification(s) and the public interest reasons for the action, and, as a general matter, afford at least 30 days to respond.

³⁰ 47 C.F.R. § 1.87(a).

³¹ 47 C.F.R. § 1.87(c).

³² 47 C.F.R. § 1.87(d).

³³ 47 C.F.R. § 1.87(g), (h).

1.87(i), that this *Memorandum Opinion and Order* shall be served by certified mail, return receipt requested, upon Jim Crinklaw.

15. 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 COMMUNICATION COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau