

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

In the Matter of )
)
BIRMINGHAM SOUTHEAST, LLC ) FCC File No. D147088
)
Application for Industrial/Business Station )
in the Private Land Mobile Radio Services )

ORDER ON RECONSIDERATION

Adopted: January 25, 2001 Released: January 26, 2001

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

1. Introduction. On November 16, 2000, Birmingham Southeast, LLC (Birmingham Southeast), requested1 reconsideration of a "Notice of Application Dismissal" dated November 6, 2000 from the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division (Branch).2 For the reasons set forth below, we dismiss the petition for reconsideration.

2. Background. On June 15, 2000, Birmingham Southeast submitted an application requesting mobile frequencies 72.48 MHz and 72.56 MHz at one location in the Jackson, Mississippi area.3 On August 28, 2000, the Branch dismissed4 Birmingham Southeast's application because the application lacked frequency coordination as required by Sections 90.135 and 90.175 of the Commission's Rules.5

3. On September 14, 2000, Birmingham Southeast refiled its application, again without frequency coordination.6 The application requested a new frequency assignment of mobile frequencies 72.48 MHz and 72.56 MHz. The application indicated that the station class was fixed. The Branch

1 Letter from Lory Troxell, Federal Licensing, Inc., on behalf of Birmingham Southeast, LLC, to FCC, Gettysburg, Pennsylvania (received November 16, 2000) (Petition).

2 Notice of Application Dismissal, FCC Form 574E, dated November 6, 2000, from Chief, Licensing and Technical Analysis Branch to Birmingham Southeast, File No. D147088 (Dismissal Letter).

3 Application for Mobile Radio Service Authorization, FCC Form 600 (received June 15, 2000). The application was assigned file number D142845.

4 Notice of Application Dismissal, FCC Form 574E, dated August 28, 2000, from Chief, Licensing and Technical Analysis Branch to Birmingham Southeast, File No. D142845.

5 47 C.F.R. §§ 90.135, 90.175.

6 Application for Mobile Radio Service Authorization, FCC Form 600 (received September 14, 2000). The application was assigned file number D147088.

returned the application for correction of the station class and frequency coordination on September 25, 2000.<sup>7</sup>

4. On October 5, 2000, Birmingham Southeast again resubmitted the application without frequency coordination. On November 6, 2000, the Branch dismissed the application because it lacked frequency coordination.<sup>8</sup> On November 16, 2000, Birmingham Southeast sent a letter to the Commission's Gettysburg, Pennsylvania office requesting reconsideration of the November 6 action.

5. *Discussion.* We will dismiss Birmingham Southeast's reconsideration petition because it was not properly filed. 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.<sup>9</sup> The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's Rules.<sup>10</sup> Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.<sup>11</sup> A document is filed with the Commission upon its receipt at the location designated by the Commission.<sup>12</sup> 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.<sup>13</sup>

6. 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, Birmingham Southeast did not request a 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 Birmingham Southeast's petition should be dismissed as improperly filed.<sup>14</sup>

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<sup>7</sup> Application Return Notice for the Private Land Mobile Radio Services, FCC Form 1034G, dated September 25, 2000, from Licensing and Technical Analysis Branch to Birmingham Southeast.

<sup>8</sup> Dismissal Letter at 1.

<sup>9</sup> 47 C.F.R. § 1.106(i).

<sup>10</sup> 47 C.F.R. § 0.401.

<sup>11</sup> *Id.*

<sup>12</sup> 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).

<sup>13</sup> *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).

<sup>14</sup> Even if we considered the merits of Birmingham Southeast's petition, we would affirm the dismissal of its application because it lacked frequency coordination required by Section 90.175 of the Commission's Rules. 47 C.F.R. § 90.175. We note as a general matter that applications for new frequency assignment of a license in the 72-76 MHz band typically do not require frequency coordination. *See* § 90.175(a), (i)(3). However, an application

7. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration submitted by Birmingham Southeast, LLC, on November 16, 2000 IS DISMISSED.

8. 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 COMMUNICATIONS COMMISSION

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which involves mobile frequencies subject to Section 90.35(c)(77) of the Commission's Rules does require frequency coordination. *See* 47 C.F.R. § 90.175(i)(3). Here, Section 90.175(i)(3) required Birmingham Southeast to obtain frequency coordination because the requested mobile frequencies, 72.48 MHz and 72.56 MHz, are subject to Section 90.35(c)(77). *See* 47 C.F.R. §§ 90.35(c)(77), 90.175(i)(3). Therefore, Birmingham Southeast's application, which lacked frequency coordination, was properly dismissed by the Branch.