

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

In the Matter of
JPJ Electronic Communications, Inc.
For Reconsideration of Dismissal of Informal
Request to Modify Station KNNQ312, Licensed to
the Town of Clay, New York

ORDER ON RECONSIDERATION

Adopted: February 2, 2001

Released: February 6, 2001

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

I. INTRODUCTION

1. The Division has before it a petition for reconsideration (Petition) filed on July 12, 2000, by JPJ Electronic Communications, Inc. (JPJ). JPJ requests reconsideration of the action by the Chief, Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division, dismissing JPJ's earlier request to modify the above-captioned license of the Town of Clay, New York (the Town). For the reasons set forth below, we grant the Petition in part but deny the captioned request on the merits.

II. BACKGROUND

2. On June 12, 1995, the Commission granted Irvin Geib (Geib) a license to operate an 800 MHz conventional Specialized Mobile Radio (SMR) system on Channel 22 in Deerfield Township, New York. On January 10, 1996, the Town filed an application with the Commission for a new 800 MHz trunked system that included Channel 22, and which the Commission granted on April 12, 1996, under Call Sign KNNQ312. The Commission's licensing records reflect that Geib's 1995 license was superseded on

1 JPJ Electronic Communications, Inc. (JPJ), Petition for Reconsideration (filed July 12, 2000) (Petition).

2 Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC to JPJ Electronic Communications, Inc., dated June 12, 2000 (Branch Letter).

3 JPJ Electronic Communication, Inc., Request for License Modification (filed December 23, 1999) (Request).

4 Channel 22 is frequency pair 806/851.5375 MHz. See 47 C.F.R. § 90.613.

5 See Petition at 1 citing application File No. 9412691818 (granted under call sign WPHM952).

6 See Application File No. D012959 (filed January 10, 1996). See generally Petition at 1-2.

July 30, 1996, to decrease the number of authorized mobiles to two units.<sup>7</sup> Geib subsequently assigned this authorization to JPJ.<sup>8</sup>

3. On December 23, 1999, JPJ filed a Request for License Modification (Request) to have the Commission force the Town to move from Channel 22 to another frequency. JPJ stated that “significant interference was experienced” after construction of both systems at the authorized transmitter sites.<sup>9</sup> JPJ argued that the Town’s license was granted in error because the transmitter site proposed in the Town’s application was only 50.94 miles from JPJ’s earlier-licensed site, which JPJ averred did not satisfy the minimum distance separation requirements of the Commission Rules.<sup>10</sup> On June 12, 2000, the Branch dismissed JPJ’s Request after deeming it to be a late-filed petition for reconsideration of the Commission’s April 12, 1996, action granting the Town a license for Station KNNQ312.<sup>11</sup>

4. On July 12, 2000, JPJ filed the instant Petition, which contends that the Branch erred in concluding that it lacked authority to consider JPJ’s Request.<sup>12</sup> JPJ asks us to reconsider the Branch Letter and to modify the Town’s license for Station KNNQ312 by deleting Channel 22 and adding designation for authorization on “an alternative frequency.”<sup>13</sup> On July 24, 2000, the Town filed an Opposition to Petition for Reconsideration arguing that JPJ’s Petition must fail.<sup>14</sup>

### III. DISCUSSION

5. As a preliminary matter, we agree with JPJ that the Branch erred in dismissing the Request as an untimely petition for reconsideration of the Town’s 1996 license grant. JPJ styled its pleading as a request to modify the Town’s license; thus, the Branch should not have considered the Request to be governed by Section 405 of the Communications Act,<sup>15</sup> which governs petitions for reconsideration. Nor

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<sup>7</sup> “This license supersedes and replaces previous authorization of same date and file number to decrease mobile per cert[ification] dated 6-11-96. 7-30-96 AMS.” (Granted Archive – WPHM952; Date Archived - 08/02/96).

<sup>8</sup> See Petition at 1.

<sup>9</sup> Petition at 2.

<sup>10</sup> *Id.*

<sup>11</sup> Branch Letter at 1 citing 47 C.F.R. § 1.106 (petitions for reconsideration must be filed within thirty days from the date of public notice of the Commission action for which reconsideration is sought).

<sup>12</sup> Petition at 3.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> Town of Clay, Opposition to Petition for Reconsideration (filed July 24, 2000). We note for clarity’s sake that the Town expends a considerable amount of energy in its Opposition attempting to describe the concept of “notice” in administrative law. See Opposition at 4. The Town should be advised that while it may be correct in its assertion that public notice is deemed to be effective individual notice for interested parties, the Commission does not routinely place Private Land Mobile Radio Service applications on public notice, and thus, the Town is incorrect when it asserts otherwise.

<sup>15</sup> 47 U.S.C. § 405. Section 405 of the Act sets forth the requirements that a petitioner must satisfy before we may consider the petitioner’s pleadings on reconsideration. Section 405 of the Act, as implemented by Section 1.106(f) of the Commission’s Rules, 47 C.F.R. § 1.106(f), requires that a petition for reconsideration be filed within thirty days of the date of public notice of the Commission action.

did JPJ's failure to petition for reconsideration within thirty days of the Town's 1996 license grant forever extinguish our authority under the Communications Act of 1934 (the Act), as amended, to modify the Town's license.<sup>16</sup> In this regard, we note that Section 316(a) of the Act allows the Commission to modify a license "if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with."<sup>17</sup> The Commission has modified licenses to correct an erroneous grant of an application even when no timely petition for reconsideration of the grant was filed.<sup>18</sup> Indeed, reconsideration under the Section 316 modification provision has been fundamentally predicated on a lapse of this 30-day period.<sup>19</sup> However, the Commission does not have formal procedures recognizing "petitions to modify" submitted by third parties. Rather, we treat such requests as informal requests for Commission action, pursuant to Section 1.41 of the Commission's Rules.<sup>20</sup> Thus, we are granting the Petition in part and will consider the Request on the merits pursuant to Section 1.41 of the Commission's Rules.<sup>21</sup>

6. Turning to the merits of the Request, we find that JPJ has shown that the Town's license was probably granted in error in 1996. Nonetheless, we further find that JPJ has not established that the public interest would be served by modifying the Town's license, as requested. First, we note that JPJ's factual claims of harmful interference are unsubstantiated. For example, JPJ has not provided any affidavits, documents, or engineering showings to support its interference claims. Moreover, even assuming that JPJ's statements were substantiated (that significant interference was experienced after construction of both systems at the authorized transmitter sites),<sup>22</sup> we note that the two licenses in question were issued in 1995-96. Thus, construction and operation of these stations commenced no later than one-year thereafter, *i.e.*, early 1997.<sup>23</sup> The record before us, however, provides no explanation why JPJ waited until December 23, 1999, to file the Request.<sup>24</sup> Furthermore, the Request seeks to have us delete Channel 22 from the Town's license without considering that when the Commission granted the Town's 1997 modification application,<sup>25</sup> Geib was only licensed for two mobile units and, thus, held Channel 22 on a shared, nonexclusive basis. Thus, we find that the Request provides no basis for *deleting* Channel 22 from the Town's license.

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<sup>16</sup> See, e.g., Petition at 3 citing Comtex Communications, Inc., *Order*, 15 FCC Rcd 11,730 (PSPWD, 2000).

<sup>17</sup> 47 U.S.C. § 316(a).

<sup>18</sup> See, e.g., *License Communications Services, Inc.*, 13 FCC Rcd 23781, 23794-23795 (1998).

<sup>19</sup> See, e.g., *Radio Para La Raza*, 40 FCC 2d 1102, 1105 ¶ 8 (1973).

<sup>20</sup> See *Danbury Cellular Telephone Company, Inc.*, 6 FCC Rcd. 4186, 4188 n.2 (1991).

<sup>21</sup> To clarify, while the Request is permissible under Section 1.41, on the merits it must overcome the strong public interest in preserving the finality of actions.

<sup>22</sup> See Petition at 2.

<sup>23</sup> See 47 C.F.R. § 90.631 (1996) (must timely construct and operate station or license cancels automatically).

<sup>24</sup> While JPJ took assignment of Station WPHM952 in 1998, it cannot enlarge the rights assigned to it by Geib, who apparently did not file any pleading to challenge the Town's license.

<sup>25</sup> See Application File No. 9709A006937.

7. Our finding that JPJ has not shown that the public interest would be served by granting the Request considers the Town's status as a public safety licensee along with the Town's statement that it "committed no error leading to the situation in which it now finds itself."<sup>26</sup> Specifically, we credit the inherent public interest in the Town's use of the radio facilities, authorized under the captioned license, to support its provision of services to protect the safety of life, health, or property within the Town of Clay. We also consider that, based on the record before us, it appears that the Town acted in good faith, *i.e.*, it was unaware of a possible error in connection with its 1996 grant for more than several years after it first received the captioned license. Based on the record before us, we find that JPJ has not shown that the public interest would be served by commencing a proceeding to modify the Town's license as sought in the Request.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Sections 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 JPJ Electronic Communications, Inc. on July 12, 2000, IS GRANTED IN PART, to the extent indicated above, and IS OTHERWISE DENIED.

9. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Request for License Modification filed by JPJ Electronic Communication, Inc. on December 23, 1999, IS DENIED.

10. 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

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<sup>26</sup> Town of Clay, Opposition to Request for License Revocation, 4 (filed January 18, 2000).