

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

In the Matter of)	
)	
RF DATA, INC.)	
)	File No. 0000451110
Petition to Reconsider Grant of License for)	
Trunked Radio Station WPST296,)	
Houston, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: December 17, 2001

Released: December 19, 2001

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

I. INTRODUCTION

1. On July 31, 2001, RF Data, Inc. (RF Data) submitted a petition seeking reconsideration of the above-captioned authorization granted to RF Data.¹ RF Data applied for six frequency pairs in its license application, but it was assigned only one frequency pair for its operation of Station WPST296, Houston, Texas. For the reasons set forth below, we dismiss RF Data's Petition.

2. *Introduction.* Sections 90.187 and 90.313 of the Commission's Rules require applicants for Industrial/Business (I/B) Radio Pool trunked systems in the 450-512 MHz band to demonstrate loading of ninety mobile units on each channel in order to be authorized for multiple channels.² On May 2, 2001, RF Data, Inc. applied for authority to operate a trunked radio station in Houston, Texas using six 470-512 MHz I/B frequency pairs.³ To demonstrate sufficient loading warranting assignment of six channels, RF Data stated, "RF Data's current customer base and the projected need for the next eight-month[s] shall exceed 600 unit[s]. RF Data certify [sic] that RF Data will construct the six channel trunked system and will load more than 600 mobile transmitter-receiver units within eight month[s] of the grant of the license . . ."⁴ On June 21, 2001, the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) returned the application to RF Data, requesting loading justification "in full detail" for grant of the six channel pairs sought in the application.⁵

¹ Letter from Thomas K. Kurian, President, RF Data, to Secretary, Federal Communications Commission (dated July 30, 2001 and filed July 31, 2001) (Petition).

² 47 C.F.R. §§ 90.187(b)(1) (requiring applicants for trunked systems in the 470-512 MHz band to satisfy the loading requirements in 47 C.F.R. § 90.313), 90.313(a)(2) (setting a channel loading standard of 90 mobile units for I/B systems).

³ See FCC File No. 000451110.

⁴ *Id.* at Attachment.

⁵ See Petition at Attachment B.

3. On July 23, 2001, RF Data responded as follows:

RF Data holds [a] number of other station licenses in various states. RF Data has constructed all licensed YG trunked stations till date and are loaded with 4000 or more radios Houston, TX has grown rapidly over the past five years [and] has a population over half million. As such we have a large customer base as well as numerous potential customers which we do not have the necessary frequency allocations to provide service for We propose to use the applied frequenc[ies] to provide communication service to the local government and the school district and to the general public.⁶

On July 27, 2001, the Branch granted the application, but for only one frequency pair.⁷

4. On July 31, 2001, RF Data filed its Petition seeking reconsideration of the decision to authorize only one frequency pair.⁸ RF Data did not reject the partial grant in its original Petition. On September 25, 2001, RF Data filed a motion for leave to supplement its Petition in order to reject the grant and return the authorization to the Commission, and to make additional arguments as to why its application should have been granted in full.⁹

5. *Discussion.* Section 1.945(e) of the Commission's Rules, 47 C.F.R. § 1.945(e) states:

The FCC may grant applications in part, and/or subject to conditions other than those normally applied to authorizations of the same type. When the FCC does this, it will inform the applicant of the reasons therefor. Such partial or conditional grants are final unless the FCC revises its action in response to a petition for reconsideration. Such petitions for reconsideration must be filed by the applicant within thirty days after the date of the letter or order stating the reasons for the partial or conditional grant, and must reject the partial or conditional grant and return the instrument of authorization.

In this case, while RF Data filed its Petition within thirty days of the partial grant of its application, it failed to reject the partial grant therein. When an applicant fails to timely reject a partial grant of its application, the applicant is deemed to have accepted the partial grant and has waived the right to contest the failure to grant the application in full.¹⁰

6. We also deny as untimely RF Data's request to supplement its Petition to expressly reject the grant. Section 1.106(f) of the Commission's Rules states that any supplement to a petition for

⁶ *Id.* at Attachment C.

⁷ *See* license for Station WPST296.

⁸ *See* Petition.

⁹ *See* Letters from Dennis C. Brown, Esq. to Secretary, Federal Communications Commission (dated Sep. 18, 2001, filed Sep. 25, 2001).

¹⁰ *See Central Television, Inc. and WTWV, Inc. v FCC*, 834 F.2d 186, 190 (D.C. Cir. 1987) (acceptance of a partial grant forecloses the opportunity to contest the partial grant by rejecting the entire grant and requesting reconsideration); *Peninsula Communications, Inc.*, 16 FCC Rcd 11364, 11368-9 ¶ 11 (2001).

reconsideration must be filed within thirty days of public notice of the action in question.¹¹ In this case, public notice of the partial grant of RF Data's application was given on July 27, 2001, the date appearing on the license for Station WPST296.¹² The deadline for a filing a supplement was therefore August 27, 2001.¹³ RF Data states that it did not reject the grant in its original Petition because the original Petition was filed *pro se* and it was unaware of that requirement.¹⁴ We do not find RF Data's ignorance of the requirement to constitute good cause for acceptance of its untimely supplement.¹⁵ Accordingly, we reject the supplement and dismiss the Petition for failure to timely reject the partial grant.

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 Sections 1.106 and 1.945(e) of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.945(e), that the Petition for Reconsideration filed by RF Data, Inc. on July 30, 2001 IS DISMISSED.

8. IT IS FURTHER 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(f) of the Commission's Rules, 47 C.F.R. § 1.106, that the request for leave to file a supplement filed by RF Data, Inc., on September 25, 2001 IS DENIED.

¹¹ 47 C.F.R. § 1.106(f).

¹² 47 C.F.R. § 1.4(b)(5).

¹³ Since the thirtieth day after July 27 was a Sunday, the deadline was extended until the next business day, Monday, August 27. 47 C.F.R. § 1.4(j).

¹⁴ See Letter from Dennis C. Brown, Esq. to Secretary Federal Communications Commission (dated Sep. 18, 2001, filed Sep. 25, 2001) at 1.

¹⁵ See *Ameriflight, Inc.*, 16 FCC Rcd 5414, 5417 ¶ 8 (WTB PSPWD 2001), *Supercom, Inc.* 15 FCC Rcd 4604, 4607 ¶ 8 (2000) and *Empire Broadcasting Corp.*, 25 FCC 2d 68, 69 (1970). See also *HS Communications, Inc., et al.*, 6 FCC Rcd 3452 ¶5 (1991) (an applicant's decision to proceed without counsel is a matter within the applicant's control and therefore, it will not excuse a failure to comply with the rules and orders of the Commission).¹⁵ 47 C.F.R. § 1.106(f).

¹⁵ 47 C.F.R. § 1.4(b)(5).

¹⁵ Since the thirtieth day after July 27 was a Sunday, the deadline was extended until the next business day, Monday, August 27. 47 C.F.R. § 1.4(j).

¹⁵ See Letter from Dennis C. Brown, Esq. to Secretary Federal Communications Commission (dated Sep. 18, 2001, filed Sep. 25, 2001) at 1.

¹⁵ See *Ameriflight, Inc.*, 16 FCC Rcd 5414, 5417 ¶ 8 (WTB PSPWD 2001), *Supercom, Inc.* 15 FCC Rcd 4604, 4607 ¶ 8 (2000) and *Empire Broadcasting Corp.*, 25 FCC 2d 68, 69 (1970). See also *HS Communications, Inc., et al.*, 6 FCC Rcd 3452 ¶5 (1991) (an applicant's decision to proceed without counsel is a matter within the applicant's control and therefore, it will not excuse a failure to comply with the rules and orders of the Commission).

9. 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, 0331.

FEDERAL COMMUNICATIONS COMMISSION.

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