

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

In the Matter of )  
 )  
Automobile Club of Southern California )  
 )  
For Reconsideration of Dismissal of Informal )  
Request to Rescind Grant of Station WPOZ617, )  
Licensed to Metro Wireless Communications, )  
Walnut, California )

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. We have before us a petition for reconsideration (Petition) filed by the Automobile Club of Southern California (ACSC) on July 7, 2000.<sup>1</sup> ACSC requests reconsideration of the decision by the Chief, Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division, dismissing ACSC's informal request to rescind the license for Station WPOZ617, which is licensed to Metro Wireless Communications (Metro).<sup>2</sup> For the reasons discussed herein, we grant the Petition in part and deny it in part.

II. BACKGROUND

2. ACSC is licensed to operate on 150.965 MHz.<sup>3</sup> On September 14, 1999, the Commission granted Metro Wireless Communications (Metro) the captioned license to operate a centralized trunked relay station (FB8) on two frequencies including 150.9725 MHz, which is 7.5 kHz removed from 150.965 MHz. On May 23, 2000, ACSC filed an informal request for relief (Request)<sup>4</sup> in which it requested that the Commission rescind the captioned license. Because it was filed more than thirty days after the date of the license grant, the Branch dismissed the Request as an untimely filed petition for reconsideration.<sup>5</sup>

<sup>1</sup> Automobile Club of Southern California, Petition for Reconsideration filed July 7, 2000.

<sup>2</sup> Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Automobile Club of Southern California, dated June 7, 2000 (Branch Letter).

<sup>3</sup> See License for Stations KEF892, WRL989.

<sup>4</sup> Automobile Club of Southern California, Informal Request for Relief filed May 23, 2000.

<sup>5</sup> Branch Letter at 1.

Subsequently, ACSC timely filed the instant Petition seeking reconsideration of the Branch's action, and on November 9, 2000 ACSC filed a Supplement to Petition for Reconsideration (Supplement).<sup>6</sup>

### III. DISCUSSION

3. As a preliminary matter, we note that ACSC's Supplement is not authorized under the Commission's Rules, which provide that no supplement or addition to a petition for reconsideration will be considered after the thirty-day filing deadline "except upon leave granted upon a separate pleading for leave to file, which shall state the grounds therefore."<sup>7</sup> ACSC filed no such separate pleading with its Supplement, which was filed after the thirty-day filing deadline. Accordingly, the Supplement is defective and thus will not be considered.

4. In the Petition, ACSC argues that the Branch erred in dismissing the Request as untimely, under Section 1.106(f) of the Commission's Rules because it was filed under Section 1.41 of the Rules<sup>8</sup> and thus not governed by the thirty-day filing deadline of Section 1.106(f).<sup>9</sup> Alternatively, ACSC avers that it is an "affected person" under Section 1.4(b)(5) of the Commission's Rules,<sup>10</sup> which provides that the first day to be counted for the thirty-day deadline is the date appearing on the document sent to persons affected by the action.<sup>11</sup> Because the Commission only sent the license to Metro, ACSC contends that its thirty-day filing period has not even begun to run.<sup>12</sup> Moreover, ACSC avers that the grant to Metro modified ACSC's license, and that when the Commission modifies a license it must give notice to the licensee and a reasonable opportunity to protest an action.<sup>13</sup>

5. Additionally, ACSC states that it should not be punished for Metro's failure to: (1) give ACSC notice of the application, which ACSC contends was required by Section 90.187(b)(2) of the Commission's Rules;<sup>14</sup> and (2) obtain a recommendation from the Automobile Association of America (AAA) (an FCC-certified frequency coordinator), which ACSC avers was required by Sections 90.35(b)(2)(ii) and 90.173(f) of the Commission's Rules.<sup>15</sup> ACSC further contends that the public interest

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<sup>6</sup> Automobile Club of Southern California, Supplement to Petition for Reconsideration filed Nov. 9, 2000.

<sup>7</sup> 47 C.F.R. § 1.106(f) (Petitions for reconsideration).

<sup>8</sup> 47 C.F.R. § 1.41 (Informal requests for Commission action).

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

<sup>10</sup> 47 C.F.R. § 1.4(b)(5) (Computation of time).

<sup>11</sup> Petition at 3-4.

<sup>12</sup> *Id.*

<sup>13</sup> Petition at 5 citing 47 U.S.C. § 316 "No such order [found to be in the public interest] of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor." Petition at 5 quoting 47 U.S.C.

<sup>14</sup> 47 C.F.R. § 90.187(b)(2)

<sup>15</sup> Petition at 5-6 citing 47 C.F.R. §§ 90.35(b)(2)(ii), 90.173(f).

requires that we consider the merits of the Request,<sup>16</sup> which asserts that Metro's license grant was defective and should be set aside.<sup>17</sup>

6. We need only address the Petition's first contention—that the Branch erred in dismissing the Request as untimely under Section 1.106 of the Rules—because we agree with ACSC that the Request was not subject to dismissal under the thirty-day filing deadline of Section 1.106(f). The Request was filed under Section 1.41 of the Rules, which allows for informal requests for Commission action and does not specify a time limit for submitting such requests.<sup>18</sup> In this connection, we find ACSC's argument persuasive and therefore, we will grant ACSC's Petition to the extent that it asks that we vacate the Branch Letter and reinstate the Request. We note, however, that ACSC is incorrect in claiming that the Commission “is obligated to consider the merits of an informal pleading.”<sup>19</sup> Rather, we may consider informal pleadings, though we are not required to consider them.<sup>20</sup> In the instant case, as a matter of our discretion, we are reinstating the Request because the Branch erroneously dismissed it on procedural grounds.

#### IV. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.41 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.106, the Petition for Reconsideration filed by the Automobile Club of Southern California, filed July 7, 2000, IS GRANTED IN PART to the extent indicated above and IS OTHERWISE DENIED.

8. IT IS FURTHER ORDERED that the Informal Request filed by the Automobile Club of Southern California on May 23, 2000, IS REINSTATED—returned to pending status for the Licensing and Technical Analysis Branch to take appropriate action.

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, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>16</sup> *Id.* at 6-7.

<sup>17</sup> *Id.* at 7-9.

<sup>18</sup> 47 C.F.R. § 1.41. “Except where formal procedures are required under this chapter, requests for action may be submitted informally.” *Id.*

<sup>19</sup> Petition at 2.

<sup>20</sup> See Colorado RSA 7B(2) Limited Partnership, *Order*, 13 FCC Rcd 22079, 22081, n.17 (CWD 1998).