

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

In the Matter of)
)
CALIFORNIA METRO MOBILE)
COMMUNICATIONS, INC.)
)
Modification of Industrial/Business Pool Trunked)
Station WPOY920 frequency 153.1625 MHz)

MEMORANDUM OPINION AND ORDER AND ORDER OF MODIFICATION

Adopted: December 27, 2001

Released: December 31, 2001

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

I. INTRODUCTION

1. On September 12, 2001, the California Metro Mobile Communications, Inc. filed a Petition for Reconsideration of the August 17, 2001, action by the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Division), proposing to modify Station WPOY920 by deleting frequency 153.6125 MHz.¹ For the reasons set forth below, we deny the Petition and modify the license for Station WPOY920 by deleting frequency 153.6125 MHz.

II. BACKGROUND

2. On September 8, 1999, the California Metro Mobile Communications, Inc. ("CMMC") was granted a license for trunked Station WPOY920, Twin Peaks, California, in the Industrial/Business Radio Pool.² The authorization listed five frequencies, including frequency 153.6125 MHz.³ The CMMC application was coordinated and submitted to the Commission by the Personal Communications Industry Association ("PCIA"), an FCC-certified frequency coordinator for the private land mobile radio services.⁴

3. The Commission received a Petition for Revocation from Pacific Gas and Electric Company ("PG&E") on September 19, 2000 requesting revocation of CMMC's license because frequency 153.6125 MHz potentially would interfere with PG&E's operation of various I/B trunked stations in the Twin Peaks, California area.⁵ In this connection, PG&E alleged that the license was granted in violation of Section 90.187 of the Commission's Rules, 47 C.F.R. § 90.187, because PG&E

¹ Petition for Reconsideration filed by California Metro Mobile Communications on Sept. 12, 2001 (Petition).

² See License for Station WPOY920.

³ *Id.* The five frequencies are 151.5270 MHz, 153.2850 MHz, 153.4325 MHz, 153.4550 MHz and 153.6125 MHz.

⁴ See FAC # 990270014:992150507.

⁵ Letter from Marilou Ehrenberg, PG&E, to Office of the Secretary, Federal Communications Commission, dated Sept. 19, 2000.

had a prior and exclusive right to operate on an adjacent channel under Section 90.187 that was abrogated by grant of the CMMC license.⁶

4. The Commission sought information from the PCIA as to whether the PCIA had erred in its recommended frequencies in the CMMC application.⁷ PCIA confirmed that the coordination effort on its part was deficient and sought to remedy the situation by requesting modification of the CMMC license to remove frequency 153.6125 MHz.⁸ CMMC responded that the PG&E petition was nothing more than a petition for reconsideration and argued that the Commission lacked authority to act after thirty days from the date of the license grant.⁹ CMMC cited cases for the proposition that the Commission is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration.¹⁰

5. On August 17, 2001, the Chief, Public Safety Private Wireless Division, Wireless Telecommunications Bureau released an order denying PG&E's Petition but proposing to modify the license for Station WPOY920 by deleting frequency 153.6125 MHz.¹¹ On September 12, 2001, CMMC filed its Petition.¹²

III. DISCUSSION

6. In the Petition, CMMC argues that the Commission is without authority to take any action to modify the license for Station WPOY9820.¹³ CMMC contends that there was no objection prior to the license grant, no actual interference and no showing by PG&E as to why it failed to file a petition for reconsideration within the thirty-day filing period for such petitions.¹⁴ CMMC also argues that the petition was actually a petition for reconsideration and should be treated as one.¹⁵ It further argues that Section 1.106 is a formal procedure that had to be met and would preclude an informal objection under 1.41 of the Commission's Rules.¹⁶ In addition, CMMC argues that Section 1.113(a) of the Commission's Rules¹⁷ prohibits the Bureau from considering any revocation or modification of the license it issued under delegated authority more than thirty days after the license is granted.¹⁸

7. We conclude that CMMC's arguments are without merit and must be rejected. In

⁶ *Id.*

⁷ Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety Private Wireless Division, to PCIA, dated Feb. 15, 2001.

⁸ Letters from Don Andrew, Communications Specialist, PCIA to Branch (Mar. 12, 2001).

⁹ See Letter from Christopher D. Imlay, Esq. of Booth, Freret, Imlay & Tepper, P.C. to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, dated Apr. 18, 2001.

¹⁰ See *Mobile Relay Associates, Inc.*, 15 FCC Rcd 18 855 (2,000); *Reuters, Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); *Panola Broadcasting Co.*, 68 FCC 2d 533 (1978); *MetroMedia, Inc.*, 56 FCC 2d 909, 909-910 (1975).

¹¹ California Metro Mobile Communications, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 15419 (2001). (*Order*).

¹² See Petition.

¹³ *Id.* at 2, 3.

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

¹⁷ 47 C.F.R. § 1.113(a).

¹⁸ Petition at 6.

proposing to modify CMMC's license, we did not act pursuant to Section 1.113 of the Commission's Rules. Rather, we acted pursuant to Section 316(a)(1) of the Communications Act of 1934, as amended,¹⁹ and Section 1.87(a) of the Commission's Rules.

Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with. No such order 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, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification; except that, where safety of life or property is involved, the Commission may by order provide, for a shorter period of notice.

Section 1.87(a) of the Commission's Rules states:

Whenever it appears that a station license or construction permit should be modified, the Commission shall notify the licensee or permittee in writing of the proposed action and reasons therefor, and afford the licensee or permittee at least thirty days to protest such proposed order of modification, except that, where safety of life or property is involved, the Commission may by order provide a shorter period of time.

The Commission has regularly acted pursuant to these provisions to modify licenses that had been granted more than 30 days previously.²⁰ CMMC neither acknowledges the relevant provisions nor recognizes that the proposed modification is consistent with precedent. While CMMC is correct that under Section 405 of the Act, petitions for reconsideration must be filed within thirty days of public notice of the action taken,²¹ our action proposing to modify CMMC's license was taken on our own motion.²²

8. Pursuant to our August 17, 2001 *Order* proposing the subject modification, CMMC was required to have filed any protest of the proposed modification within thirty days after release of the order proposing modification.²³ Thus, CMMC had until September 16, 2001 to file a protest thereto. In the Petition, which was filed on September 12, 2001, CMMC states that it would file separately its statement of reasons why the proposed modification should not take place.²⁴ However, to date, our records do not reflect that CMMC filed any such statement on or before September 16, 2001. Accordingly, we find that CMMC has waived its right to protest the proposed modification.²⁵ Further, we conclude that it would be in the public interest to modify CMMC's license for the reasons stated in the *Order*. We therefore modify CMMC's license to delete the frequency 153.6125 MHz.

¹⁹ 47 U.S.C. § 316(a)(1).

²⁰ See, e.g., Peninsula Communications, Inc., *Memorandum Opinion and Order and Order to Show Cause*, 16 FCC Rcd 11364 (2001); Rayfield Communications, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 19513 (WTB PSPWD 2001).

²¹ 47 U.S.C. § 405.

²² *Order*, ¶ 1.

²³ 47 C.F.R. § 1.87(a); *Order*, ¶ 11.

²⁴ Petition at 2.

²⁵ *Id.*

IV. ORDERING CLAUSES

9. IT IS ORDERED, pursuant to Section 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 filed on August 17, 2001 by California Metro Mobile Communications, Inc. IS DENIED.

10. IT IS FURTHER ORDERED, pursuant to Section 4(i) and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316 and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Station WPOY920 IS MODIFIED by deleting frequency 153.6125 MHz.

11. 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 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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