

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

In the Matter of Applications of)	
)	
RACOM CORPORATION)	FCC File Nos. 0001221946, 0001197030,
)	0001209233, 0001215098, 0001217007,
)	0001211248, 0001209234, 0001209235,
Applications for new 800 MHz Private Land)	0001218574, 0001215077, 0001215075,
Mobile Non-Profit Cooperative Radio Stations)	0001215082, 0001212655, 0001212670,
)	0001212682, 0001217011, 0001215074,
)	0001218578, 0001215080, 0001395967,
)	0001412633

ORDER ON RECONSIDERATION

Adopted: December 21, 2004

Released: December 21, 2004

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

1. On June 2, November 10, and December 2, 2003, Racom Corporation (Racom or Applicant) filed requests for reconsideration (herein Petition I, Petition II and Petition III, respectively, or collectively, Petitions)¹ of the dismissals of its applications to operate on various 800 MHz frequencies (Dismissals).² Racom asks that the Dismissals be reversed and its license applications be reinstated and

¹ See Racom Corporation (Racom), Petition for Reconsideration (filed June 2, 2003) (Petition I); Racom Corporation (Racom), Petition for Reconsideration (filed Nov. 10, 2003) (Petition II); and Racom Corporation (Racom), Petition for Reconsideration (filed Dec. 2, 2003) (Petition III) (Petitions).

² See FCC File No. 0001221946, Automated Dismissal Letter, Ref. No. 1887868, effective May 21, 2003, generated May 22, 2003; FCC File No. 0001197030, Automated Dismissal Letter, Ref. No. 1850517, effective May 7, 2003, generated May 8, 2003; FCC File No. 0001209233, Automated Dismissal Letter, Ref. No. 1842743, effective May 2, 2003, generated May 5, 2003; FCC File No. 0001215098, Automated Dismissal Letter, Ref. No. 1856032, effective May 9, 2003, generated May 12, 2003; FCC File No. 0001217007, Automated Dismissal Letter, Ref. No. 1853024, effective May 8, 2003, generated May 9, 2003; FCC File No. 0001211248, Automated Dismissal Letter, Ref. No. 1853023, effective May 8, 2003, generated May 9, 2003; FCC File No. 0001209234, Automated Dismissal Letter, Ref. No. 1840584, effective May 2, 2003, generated May 2, 2003; FCC File No. 0001209235, Automated Dismissal Letter, Ref. No. 1840496, effective May 1, 2003, generated May 2, 2003; FCC File No. 0001218574, Automated Dismissal Letter, Ref. No. 1859747, effective May 13, 2003, generated May 13, 2003; FCC File No. 0001215077, Automated Dismissal Letter, Ref. No. 1850567, effective May 7, 2003, generated May 8, 2003; FCC File No. 0001215075, Automated Dismissal Letter, Ref. No. 1869183, effective May 15, 2003, generated May 16, 2003; FCC File No. 0001215082, Automated Dismissal Letter, Ref. No. 1853021, effective May 8, 2003, generated May 9, 2003; FCC File No. 0001212655, Automated Dismissal Letter, Ref. No. 1847650, effective May 6, 2003, generated May 7, 2003; FCC File No. 0001212670, Automated Dismissal Letter, Ref. No. 1847690, effective May 6, 2003, generated May 7, 2003; FCC File No. 0001212682, Automated Dismissal Letter, Ref. No. 1847691, effective May 6, 2003, generated May 7, 2003; FCC File No. 0001217011, Automated Dismissal Letter, Ref. No. 1853022, effective May 8, 2003, generated May 9, 2003; FCC File No. 0001215074, Automated Dismissal Letter, Ref. No. 1850566, effective May 7, 2003, generated May 8, 2003; FCC File No. 0001218578, Automated Dismissal Letter, Ref. No. 1859745, effective May 13, 2003, generated May 13, 2003; FCC File No. 0001215080, Automated Dismissal Letter, Ref. No. 1853020, effective May 8, 2003, generated May 9, 2003; FCC File No. 0001395967, Automated Dismissal Letter, Ref. No. 2365034, effective Oct. 27, 2003, generated Oct. 27, 2003; and FCC File No. 0001412633, Automated Dismissal Letter, Ref. No. 2381500, effective Nov. 5, 2003, generated Nov. 6, 2003 (Dismissals).

granted.³ For the reasons set forth below, we deny all three Petitions.

2. *Background.* During the months of February, March, July, and August in 2003, Racom filed a total of twenty-one license applications to operate on numerous private land mobile radio channel pairs, including certain frequencies allocated for Industrial/Land Transportation (I/LT) use in the 800 MHz frequency band.⁴ Racom, a common carrier entity, submits that it filed these applications in order to serve its former customers, *i.e.*, entities displaced by the auctioning of the “Upper 200” channels in the 800 MHz Specialized Mobile Radio (SMR) Pool.⁵ At various times, on or between May 2 and May 22, 2003, and on October 27, 2003, the Licensing and Technical Analysis Branch (LTAB), of the former Public Safety and Private Wireless Division, of the Wireless Telecommunications Bureau (Bureau)⁶ dismissed each of the subject applications⁷ on the basis that there was no evidence that Racom, as a common carrier, was eligible in the I/LT Pool of frequencies,⁸ as required by Section 90.617 of the

³ Petitions at 2.

⁴ See FCC File No. 0001221946, filed Mar. 5, 2003; FCC File No. 0001197030, filed Feb. 12, 2003, amended Feb. 28, 2003; FCC File No. 0001209233, filed Feb. 24, 2003, amended Apr. 3, 2003; FCC File No. 0001215098, filed Feb. 27, 2003; FCC File No. 0001217007, filed Mar. 3, 2003; FCC File No. 0001211248, filed Feb. 25, 2003; FCC File No. 0001209234, filed Feb. 24, 2003; FCC File No. 0001209235, filed Feb. 24, 2003; FCC File No. 0001218574, filed Mar. 3, 2003; FCC File No. 0001215077, filed Feb. 27, 2003; FCC File No. 0001215075, filed Feb. 27, 2003, amended Mar. 6, 2003; FCC File No. 0001215082, filed Feb. 27, 2003; FCC File No. 0001212655, filed Feb. 26, 2003; FCC File No. 0001212670, filed Feb. 26, 2003; FCC File No. 0001212682, filed Feb. 26, 2003; FCC File No. 0001217011, filed Mar. 3, 2003; FCC File No. 0001215074, filed Feb. 27, 2003; FCC File No. 0001218578, filed Mar. 3, 2003; FCC File No. 0001215080, filed Feb. 27, 2003; FCC File No. 0001395967, filed July 28, 2003; and FCC File No. 0001412633, filed Aug. 11, 2003.

⁵ See Petitions at 2. In 1995, the Commission restructured the licensing framework that governs the 800 MHz SMR service. It designated the upper 200 channels of 800 MHz SMR spectrum for geographic licensing. The Commission concluded that mutually exclusive applications for these licenses would be awarded through competitive bidding. See Amendment of Part 90 of the Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making*, 11 FCC Rcd 1463 (1995). The Commission also granted the new SMR licensees the right to relocate incumbent licenses out of the upper 200 channels to comparable facilities. See Amendment of Part 90 of the Commission’s Rules Governing Extended Implementation Periods, PR Docket No. 92-210, *Report and Order*, 8 FCC Rcd 3975 (1993).

⁶ The Commission reorganized the Bureau, effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414 ¶ 2 (2003).

⁷ See Dismissals at 1.

⁸ LTAB determined that Racom was not eligible to operate on the following channels: 854.8875 MHz, 857.3625 MHz, 858/859.3375 MHz, and 860.3875 MHz for FCC File No. 0001221946; 855.0625, 857/858.3625 MHz, 858.3375 MHz, 860.3875 MHz, and 860.4125 MHz for FCC File No. 0001197030; 855.1625 MHz for FCC File No. 0001209233; 854.8875 MHz, 859.4125 MHz, 860.3875 MHz, and 860.4125 MHz for FCC File No. 0001215098; 856/857.3125 MHz, 860.3125 MHz, 860.3875 MHz, and 860.4125 MHz for FCC File No. 0001217007; 858/859.3125 MHz, and 858/859.3375 MHz for FCC File No. 0001211248; 854.8875 MHz, 855.1125 MHz, 856.3625 MHz, 856.4125 MHz, 859.3375 MHz, and 859.4125 MHz for FCC File No. 0001209234; 858.3125 MHz for FCC File No. 0001209235; 856/857/858.3125 MHz, 860.4125 MHz, and 860.3875 MHz for FCC File No. 0001218574; 857.3125 MHz, 858.3625 MHz, 860.3125 MHz, 860.4125 MHz, and 858.2875 MHz for FCC File No. 0001215077; 854.8875 MHz, 856.4125 MHz, 857.3125 MHz, 859.4125 MHz, 860.3125 MHz, 860.3875 MHz, and 860.4125 MHz for FCC File No. 0001215075; 855.0875 MHz, 855.6375 MHz, and 857/858/859.2875 MHz for FCC Application File No. 0001215082; 854.9375 MHz for FCC File No. 0001212655; 854.8875 MHz, 855.3625 MHz, 856.3125 MHz, 858/859.3125 MHz, and 859/860.3375 MHz for FCC File No. 0001212670; 855.3625 MHz, 858/859.3125 MHz, and 859/860.3375 MHz for FCC File No. 0001212682; 855.5125 MHz, and 856/857/858/859.4125 MHz for FCC Application File No. 0001217011; 854.7875 MHz, 855.3125 MHz, 855.8375 MHz, 860.3375 MHz, and 860.3625 MHz for FCC File No. 0001215074; 855.6875 MHz, 855.1875 MHz, 857.9125

(continued...)

Commission's Rules.⁹ After being apprised of the license dismissals, Racom filed the Petitions seeking reconsideration of LTAB's actions.

3. In the Petitions, Racom submits that LTAB erred in finding its license applications defective and dismissing them.¹⁰ It asserts that its applications clearly state that the system will operate as a non-profit cooperative system.¹¹ In each application, the Applicant also submits that no portion of the application states that the system will operate as a for-profit system.¹² Therefore, Racom argues, it is eligible to file for the subject frequencies.¹³ Furthermore, Racom contends that Section 90.617 of the Rules permits it, as a Telephone Maintenance Radio Service eligible, to use I/LT frequencies.¹⁴ As discussed in further detail below, we conclude that Racom has failed to demonstrate that LTAB's actions dismissing the subject license applications were incorrect.

4. *Discussion.* We find Racom's arguments regarding the non-profit nature of its proposal to be unpersuasive. Also, we conclude that its eligibility for I/LT channels as a Telephone Maintenance Radio Service user, does not warrant the numerous channels requested for I/LT use.¹⁵ Pursuant to Section 90.603(b) of the Commission's Rules,¹⁶ a person or entity providing communications service to any eligible person on a not-for-profit, cost-shared basis, may operate on the subject channels. However, Racom's mere assertion that it is a non-profit venture does not justify such a finding. More than a mere characterization of the proposed system as non-profit is necessary for such a determination.¹⁷ It is the Commission's definition of non-profit, rather than the applicant's, that is the governing standard.¹⁸ For common and private carrier services, the Commission has interpreted the term "for profit" to include any mobile service that is provided with the intent of receiving compensation or monetary gain, whether there is the actual realization of profit or not.¹⁹ Where a system is only used for internal communications and is not offered to other entities for compensation, it is neither subscriber-based nor for-profit.²⁰ However, the latter is not the case here. Racom will almost exclusively use the requested channels to serve the

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MHz, and 855.4125 MHz for FCC File No. 0001218578; 858.3125 MHz, 855.5125 MHz, 854.9125 MHz, 855.1625 MHz, and 857.3125 MHz for FCC File No. 0001215080; 855.6625 MHz, and 860.3875 MHz for FCC File No. 0001395967; and 854.8875 MHz, 860.3875 MHz, 809.8875 MHz, and 815.3875 MHz for FCC File No. 0001412633.

⁹ 47 C.F.R. § 90.617.

¹⁰ See Petitions at 3.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ See Petitions at 3-4.

¹⁵ See *supra* note 8.

¹⁶ 47 C.F.R. § 90.603(b).

¹⁷ See Viking Dipatch Services, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 18814, 18817 ¶ 6 (1999) (*Viking*).

¹⁸ *Id.*

¹⁹ Implementation of Sections 3(n) and 332 of the Communications Act – Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1427 n.68 (1994). (*Implementation of §§3(n) and 332*).

²⁰ See *Implementation of §§3(n) and 332*, 9 FCC Rcd at 1428 ¶ 44.

communications requirements of other entities.²¹ Only to a limited extent does the Applicant allege it will use the subject channels for its own internal needs, *i.e.*, for telephone maintenance operations.²²

5. Racom is the operator of an interconnected, wide-area 800 MHz system that covers six states.²³ It describes its system as having approximately 11,000 mobile units in operation, including public safety agencies, large industrial users and utilities.²⁴ Racom states that part of its infrastructure includes a network control center which houses Racom's interconnection switch and controls switching for the system's eighty-four transmitter sites.²⁵ In filing the subject license applications, the Applicant indicates that it seeks to serve its former customers. Racom contends that it sold to Nextel Partners the "Upper 200" channels it formerly used to serve its customers.²⁶ Racom asserts that Nextel is unable to meet the communications needs of Racom's former customers.²⁷ The facts of this situation raise a substantial question of whether the Applicant has proposed a *bona fide* not-for-profit cost-shared system, or whether this system is inherently commercial in nature.²⁸ The provision of a list of potential users by Racom in its applications is not sufficient supporting data to alleviate our concerns regarding the nature of the proposal.²⁹ As noted by the Commission, when internal communications are not envisioned, greater scrutiny as to the validity of non-profit status is often warranted.³⁰ In short, Racom's assertion that it has converted its former for-profit SMR operation into a non-profit cooperative is unsupported by the record and is inherently incredible. Given the totality of the circumstances of this case, we are not persuaded that Racom proposes to operate a non-profit radio system.³¹

6. As to its own eligibility, Racom argues that pursuant to Section 90.617 of the Commission's Rules, it is eligible for licensing on I/LT frequencies under the Telephone Maintenance Radio Service,³² one of the services included in the I/LT Pool.³³ This enables its eighty employees to communicate with one another to meet the system's operational needs.³⁴ The numerous I/LT channels requested by Racom, however, far exceeds the frequencies realistically needed to meet these communications demands. Little of its requested communications capacity would be used for Racom's internal communications needs.

²¹ Racom indicates that it requests the subject I/LT frequencies, amongst others, to serve its former customers' communications needs. Petitions at 2.

²² See *infra* para. 6.

²³ See Petition I at 1.

²⁴ See Petitions at 1.

²⁵ *Id.* at 2.

²⁶ *Id.* See also note 5 *supra*.

²⁷ *Id.*

²⁸ See J&W Mobile Radio Association *et al.*, Order, 15 FCC Rcd 1893, 1896 ¶ 7 (WTB PSPWD 2000).

²⁹ See *supra* note 4.

³⁰ See *Viking*, 14 FCC Rcd at 18817-18 ¶ 7.

³¹ Racom submits that only eligibles for each particular set of frequencies will be programmed for those channels. Petitions at 2-3. While this reveals details of operation, it in no way confers eligibility on Racom under 47 C.F.R. § 90.603(b).

³² Telephone Maintenance Radio licensees are communications common carriers engaged in the provision of landline local exchange telephone service, or inter-exchange communications service, or who provide wire-telegraph service, and radio communications common carriers authorized in the Point-to-Point Microwave Radio Service. See Section 90.7 of the Commission's Rules, 47 C.F.R. § 90.7.

³³ See Petitions at 3.

³⁴ *Id.*

Furthermore, it is inconsistent for Racom to contend that these I/LT channels are being requested for “Telephone Maintenance” purposes³⁵ when it has indicated its intention to use the requested I/LT frequencies to serve its former customers.³⁶ If Racom intends to share the use of the requested I/LT channels with its former customers under Section 90.179(f) of the Commission’s Rules,³⁷ it would have to operate on a non-profit basis or on a for-profit private carrier basis. As we have indicated above, Racom has failed to demonstrate that its proposed system would be a non-profit venture. Moreover, assuming *arguendo* that Racom were actually using its extensive system to communicate with eighty employees, thereby being eligible as a Telephone Maintenance Radio licensee, it cannot bootstrap that limited eligibility to the users of approximately 11,000 mobiles, whom, we may safely assume, are not engaged in Telephone Maintenance. Consequently, we affirm LTAB’s decision and deny the reconsideration requests to reinstate the subject license applications.³⁸

7. IT IS ORDERED that, 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, 90.603(b) and 90.617 of the Commission’s Rules, 47 C.F.R. §§ 1.106, 90.603(b), 90.617, the Petitions for Reconsideration filed by Racom Corporation on June 2, November 10, and December 2, 2003, ARE DENIED, as indicated herein.

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

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

³⁵ *Id.*

³⁶ *Id.* at 2.

³⁷ 47 C.F.R. § 90.179(f).

³⁸ Racom’s former I/LT customers are eligible in their own right to be licensed on the channels in question.

