

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

In the Matter of	)	
	)	
AMALGAMATED SUGAR, GORDON PAVING	)	FCC File Nos. 0001062961, 0001062814,
COMPANY, INC., S&N, DESERT RIDGE	)	0001062971, 0001061093, 0001061095,
FARMS INC., DESERT VIEW FARMS, INC.,	)	0001062151, 0001061310, 0001061096,
EAMES ACRES INC., HARMAN LAND	)	0001061637, 0001061228, 0001062156,
RANCH, HARPER FARMS, JACKSON	)	0001061570, 0001061453, 0001062085,
TRUCKING, JETZSCH KEARL FARMS,	)	0001062150, 0001061632, 0001061619,
LANDVIEW FERTILIZER, MAGIC VALLEY	)	0001062148, 0001062345
TOWING, ROCKY RIDGE FARMS, INC.,	)	
RUSTIC AG INC., SCHAFFER FARMS, INC.,	)	
TAZ LLC, TRIPLE ACE, INC., WINDY ACRES,	)	
INC., MCCAIN FOOD	)	
	)	
Applications for New 800 MHz Business Radio	)	
Service Stations	)	
	)	
BANNOCK PAVING COMPANY	)	FCC File No. 0001062805
	)	
Application to Modify License for 800 MHz	)	
Industrial/Land Transportation Station WPUP620,	)	
Pocatello, Idaho	)	

**ORDER**

**Adopted: February 17, 2004**

**Released: February 18, 2004**

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

1. *Introduction.* On February 5, 2003, Gem State Communications, Inc. (Gem State) filed an Informal Petition to Deny (Petition) the above-captioned applications.<sup>1</sup> On February 19, 2003, Auto Phone Communication (Auto Phone) filed an opposition to the Petition.<sup>2</sup> For the reasons set forth below, we deny the Petition.

<sup>1</sup> Informal Petition to Deny (filed Feb. 5, 2003) (Petition). Gem State originally filed the Petition on January 13, 2003 as a supplement to an informal petition to deny certain applications filed by Greg Newberry d/b/a Pahsimeroi Agriculture (Newberry) and Chevas Peak Associates (Chevas). See Supplement to Informal Petition to Deny (filed Jan. 13, 2003). The Newberry/Chevas applications were dismissed on other grounds, and the informal petition to deny those applications was dismissed as moot by *Order* released January 16, 2003. See Greg Newberry d/b/a Pahsimeroi Agriculture, *Order*, 18 FCC Rcd 198 (WTB PSPWD 2003), *recon. pending*. Consequently, the supplement to the petition regarding the Newberry/Chevas applications also was moot. Cf. Amendment of the Commission's Rules Concerning Maritime Communications, *Third Memorandum Opinion and Order*, PR Docket No. 92-257, 18 FCC Rcd 24391, 24399 ¶ 18 (2003). We note, however, that the arguments Gem State raised in the January 13, 2003 supplement also are raised in the February 5, 2003 Petition, and thus will be addressed herein.

<sup>2</sup> Opposition to Informal Petition to Deny (filed Feb. 19, 2003) (Opposition).

2. *Background.* Gem State contends that the above-captioned applications constitute an abuse of the Commission's processes, because the intent is to obtain licenses for more spectrum than that to which the real parties in interest are entitled under the Commission's Rules. Gem State suggests that the applications, which seek licenses in the 800 MHz Business Radio Service, are intended to procure spectrum for the purpose of providing communications services to third parties, rather than for internal systems.<sup>3</sup> As evidence, Gem State notes that the applications originally all listed the same address, to the attention of Joe Shelton of Auto Phone.<sup>4</sup> In addition, it notes that many of the applicants have overlapping corporate officers.<sup>5</sup> Gem State also notes that the corporate status of three of the applicants has expired or been forfeited.<sup>6</sup> Gem State argues that these "glaring similarities and logistical questions" call into question the applicants' eligibility for the requested frequencies.<sup>7</sup>

3. Auto Phone responds that the applications seek authorization to operate a legitimate community repeater system, which Auto Phone will manage.<sup>8</sup> Consequently, Auto-Phone contends that the use of identical information in the applications is "unremarkable."<sup>9</sup>

4. *Discussion.* Abuse of process is a broad concept that includes use of this agency's processes to achieve a result that the process was not intended to achieve.<sup>10</sup> The Commission considers the possibility of sanctions only in egregious cases where the abusive nature of the action is clear.<sup>11</sup>

5. Based on our review and analysis of the information before us, we conclude that the record in this proceeding does not support a prima facie finding that the applicants have abused the Commission's processes. The use of common addresses, officers, and contact persons does not itself demonstrate wrongdoing.<sup>12</sup> Such an allegation must be accompanied by specific evidence of the applicants' ineligibility.<sup>13</sup> Gem State has not offered evidence that the applicants do not have legitimate land mobile radio operations; instead, it merely "raises questions" regarding the applicants' eligibility for the requested spectrum.<sup>14</sup> We find that the information presented is not sufficient to justify the requested action.

6. Finally, the fact that the corporate status of three of the applicants has expired or been forfeited does not affect their eligibility, for businesses in any form (*i.e.*, corporation, partnership, or sole

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<sup>3</sup> Petition at 4, 6.

<sup>4</sup> *Id.* at 4. Most of the applications subsequently were amended to list a different address for each business, but to list Shelton as the contact person. Auto Phone states that the initial listing of its address in the licensee address field instead of the contact address field was a clerical error. Opposition at 4.

<sup>5</sup> Petition at 5.

<sup>6</sup> Specifically, Harper Farms, Inc., Jackson Trucking, Inc., and Rocky Ridge Farms. *Id.* at 4-5.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> Opposition at 4.

<sup>9</sup> *Id.*

<sup>10</sup> Thomas K. Kurian, *Order*, 18 FCC Rcd 21949, 21951 ¶ 7 (WTB PSPWD 2003) (*Kurian*) (citing Ronald Brasher, *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing*, 15 FCC Rcd 16326, 16331 ¶ 9 (2000)).

<sup>11</sup> *Id.* (citing Litigation Recovery Trust, *Memorandum Opinion and Order*, 17 FCC Rcd 21852, 21857-58 ¶ 11 (2002)).

<sup>12</sup> *Id.* at 21951-52 ¶¶ 8-10.

<sup>13</sup> *See id.* at 21953-54 ¶¶ 12-15.

<sup>14</sup> Petition at 6.

proprietorship) may use Business Radio Service channels.<sup>15</sup> Thus, the applicants' incorrect description of themselves as corporations on their applications<sup>16</sup> is not a material error, and does not rise to the level of misrepresentation.<sup>17</sup> That the applicants' corporate status under state law has lapsed does not establish that the entities are no longer conducting eligible business activities. Thus, we are not persuaded that these facts alone warrant a different funding.

7. *Conclusion.* After careful consideration of the record, we conclude that the Gem State has not demonstrated that Auto Phone and the applicants have abused the Commission's processes or are ineligible for the requested frequencies. In view of the generalized, unfounded, and speculative nature of the abuse of process allegations, we must deny the Petition. Nonetheless, we will not hesitate to scrutinize applications that merit further attention, and request additional information from applicants as appropriate to ensure that the letter and spirit of the Commission's licensing rules and policies are being followed.<sup>18</sup>

8. 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 Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Informal Petition to Deny filed by Gem State Communications, Inc. on February 5, 2003 IS DENIED, and the above-captioned applications SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

9. This action is taken under delegated authority pursuant to Section 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 Critical Infrastructure Division  
Wireless Telecommunications Bureau

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<sup>15</sup> See 47 C.F.R. § 90.35(a).

<sup>16</sup> See FCC File Nos. 0001060196 (Harper Farms), 0001061453 (Rocky Ridge Farms), and 0001061637 (Jackson Trucking).

<sup>17</sup> See S&L Teen Hospital Shuttle, *Memorandum Opinion and Order*, 16 FCC Rcd 8153, 8157-58 ¶ 9 (2001).

<sup>18</sup> See *Kurian*, 18 FCC Rcd at 21954 ¶ 16 (citing Samuel Moses PR, *Order on Reconsideration*, 18 FCC Rcd 2512, 2514 ¶ 7 (WTB PSPWD 2003)).