

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

In the Matter of Application of)	
)	
JOSE N. FRANCIS)	File No. 0001546558
)	
Industrial/Business Pool Station in Los Gatos,)	
California)	

ORDER ON RECONSIDERATION

Adopted: January 17, 2007

Released: January 19, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. On April 23, 2004, Jose N. Francis (Francis) filed a petition for reconsideration¹ of the dismissal of the above-captioned application by the Wireless Telecommunications Bureau's Public Safety and Critical Infrastructure Division (Division).² Francis requests reinstatement of his application for authorization of an Industrial/Business Pool Station in Los Gatos, California. For the reasons set forth below, we deny Francis's petition for reconsideration.

2. Section 90.305(a) of the Commission's Rules states that base stations operating in the 470-512 MHz band "shall be located not more than 80 km. (50 mi.) from the geographic center of the urbanized areas listed in Section 90.303."³ On December 15, 2003, Francis filed the above-captioned application for authorization of an Industrial/Business Pool Station operating on frequency pair 484/487.9875 MHz in Los Gatos, California. Francis's proposed transmitter site is 80.267 kilometers from the geographic center of the San Francisco area set forth in Section 90.303.⁴ Because the application did not comply with Section 90.305, the Division dismissed it on April 8, 2004.⁵

3. On April 23, 2004, Francis requested reconsideration of the dismissal. Francis notes that while the location of his proposed base station is more than 80 kilometers from the geographic center of San Francisco, it is less than 50 miles (specifically, 49.875 miles).⁶ He argues that the application therefore complied with Section 90.305.⁷ We disagree. This matter is governed by Section 1.19 of the Commission's Rules, which states, "where parenthesized English units accompany metric units throughout this chapter, and the two figures are not precisely equivalent, the metric unit shall be

¹ Petition for Reconsideration (filed Apr. 23, 2004) (Petition).

² Pursuant to a Commission reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. *See* Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

³ 47 C.F.R. § 90.305(a). The purpose of the restrictions on land mobile stations operating in the 470-512 MHz band is to protect over-the-air broadcast operations from harmful interference. *See* Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, *Notice of Proposed Rulemaking*, Gen. Docket No. 85-172, 101 F.C.C. 2d 852 (1985).

⁴ *See* 47 C.F.R. § 90.303(a).

⁵ *See* Dismissal Letter 2681980 (Apr. 8, 2004).

⁶ *See* Petition at 1.

⁷ *Id.*

considered the sole requirement.”⁸ Because the application did not meet the 80-kilometer requirement, the Division properly dismissed it. We therefore deny Francis’s petition for reconsideration.⁹

4. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed on April 23, 2004 by Jose N. Francis IS DENIED.

13. 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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁸ 47 C.F.R. § 1.19.

⁹ This action is without prejudice to the filing of a new application accompanied by a request for waiver of Section 90.305. Our preliminary engineering analysis suggests that the proposed facility would satisfy the standard that the Commission adopted in its *Goosetown* decision, *Goosetown Enterprises, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 12792 (2001). Under *Goosetown*, an applicant seeking a waiver in order to operate outside the 80-mile area delineated in Section 90.305 (*i.e.*, the 50-mile limit in Section 90.305(a) combined with the 30-mile limit on mobile operations in Section 90.305(b)) must demonstrate that it would provide full protection to any existing television (TV) station, including allotments and pending applications for such stations, at the time the waiver request is filed. *Id.* at 12797 ¶ 13. The applicant also must state that it is willing to accept a license on the basis of not interfering with existing and future TV stations, or the application will be dismissed. *Id.* at 12798 n.46.