

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

In the Matter of
RF DATA, INC.
Application for Modification of Authorization for
Station WPMN889, Good Springs, Nevada
FCC File No. 0001743928

ORDER

Adopted: January 26, 2007

Released: January 29, 2007

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

1. On May 20, 2004, RF Data, Inc. (RF Data) filed an application to modify the license for Station WPMN889, Good Springs, Nevada, to change its authorized emission from 20K0F3E (frequency-modulated, single-channel digital voice with a 20.0 kHz bandwidth) to 20K2F9W (frequency-modulated, multi-channel digital and analog voice and data with a 20.2 kHz bandwidth).1 For reasons discussed below, we dismiss the modification application.

2. The WPMN889 license authorizes operation on frequencies between 150.935 MHz and 159.765 MHz. Section 90.209(b)(5) of the Commission's Rules, however, provides for a maximum authorized bandwidth of 20 kHz for Private Land Mobile Radio Service stations operating in the 150-174 MHz band.2 Thus, it would violate Section 90.209(b)(5) to authorize a 20.2 kHz emission bandwidth for Station WPMN889, as requested in the modification application. RF Data did not request a waiver of Section 90.209(b)(5) in conjunction with the modification application.

3. Section 1.934(d) of the Commission's Rules specifies that an application is defective, and as such subject to dismissal, if, inter alia, it "requests an authorization that would not comply with one or more of the Commission's rules and does not contain a request for waiver of these rule(s),..." We find that the captioned modification application from RF Data requests authorization of operational parameters that would not comply with Section 90.209(b)(5) of the Commission's Rules and does not contain a request for waiver of that rule. We therefore dismiss the modification application without prejudice3 pursuant to Section 1.934(d).4

1 See FCC File No. 0001743928. Emission designators are listed in Section 2.201 of the Commission's Rules, 47 C.F.R. § 2.201.

2 See 47 C.F.R. § 90.209(b)(5).

3 Our action herein is without prejudice to RF Data filing a new modification application seeking authority for Station WPMN889 to use the 20K2F9W emission as proposed in the subject application, provided that such new application is accompanied by a sufficient request for waiver of Section 90.209(b).

4 See 47 C.F.R. § 1.934(d). We note that on August 9, 2004, the California State Automobile Association (CSAA) filed a Request for Dismissal of the modification application, arguing that the modification application should be dismissed for a number of reasons, including the failure to request a waiver of Section 90.209(b)(5). See Letter dated August 6, 2004, from John A. Prendergast and D. Cary Mitchell, Counsel to CSAA, to Marlene H. Dortch, Secretary, FCC (Request for Dismissal), as supplemented by Letter dated September 10, 2004 (and filed September 13, 2004), from John A. Prendergast and D. Cary Mitchell, Counsel to CSAA, to Marlene H. Dortch, Secretary,

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4. For reasons set forth above, IT IS ORDERED, pursuant to the authority of Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.934 of the Commission's Rules, 47 C.F.R. § 1.934, that the application for modification of authorization for Station WPMN889 filed by RF Data, Inc. on May 20, 2004 IS DISMISSED without prejudice.

5. IT IS FURTHER ORDERED that, pursuant to the authority of Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Request for Dismissal filed by the California State Automobile Association on August 9, 2004, and supplemented by Supplement to Request for Dismissal filed the California State Automobile Association on September 13, 2004, IS GRANTED TO THE EXTENT STATED HEREIN.

6. 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

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FCC. Having determined that the modification application is subject to dismissal as defective, pursuant to Section 1.934(d), because the requested authorization would violate Section 90.209(b)(5), we need not, and do not, reach those other issues discussed in the request for Request for Dismissal and responsive pleadings. We note that CSAA makes allegations in its Request for Dismissal that it also has made elsewhere regarding RF Data's basic qualifications to be a Commission licensee and an alleged discontinuance of operation at Station WPMN889. *See* Request for Dismissal at 2-3. Our action here is not intended to prejudice the resolution of any such issue still pending before the Commission. We also note that CSAA's request that the Commission revoke any conditional temporary authority under which RF Data may be operating Station WPMN889 with emission 20K2F9W is moot. Section 90.159(b) of the Commission's Rules authorizes such conditional temporary operation only for a period of 180 days upon the filing of a properly completed application. *See* 47 C.F.R. § 90.159(b). It has been well over 180 days since the modification application was filed and, in any event, we have now determined that it was not a properly completed application, but rather a defective one. Any continuing operation of Station WPMN889 with the digital emission designator proposed in the modification application would therefore constitute unauthorized operation. In sum, we grant the CSAA Request for Dismissal to the extent indicated above.