

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

In the Matter of)	
)	
FALLS AMATEUR RADIO CLUB, INC.)	File No. 0003272664
Application to Modify License for Amateur Station)	
K9RHH to Call Sign W9CQ)	
)	
QRQ CW AND CONTEST GROUP)	File No. 0003449529
Application to Modify License for Amateur Station)	
KC9MWH to Call Sign W9CQ)	

ORDER OF MODIFICATION

Adopted: May 7, 2009

Released: May 8, 2009

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

1. *Introduction.* In this *Order of Modification*, we modify the amateur service club station license for QRQ CW and Contest Group (QRQ) by changing the call sign from W9CQ to KC9MWH, which was the call sign assigned to the club station prior to the grant of its above-captioned application. In addition, we reinstate and grant the above-captioned application of Falls Amateur Radio Club, Inc. (Falls),¹ to modify its license to change the call sign from K9RHH to W9CQ. As explained in further detail below, we take these actions pursuant to an earlier order proposing to modify QRQ's license.²

2. *Background.* Pursuant to the procedures governing the vanity call sign system,³ a call sign associated with an amateur service station license that expires, is canceled due to the licensee's death, or is surrendered, revoked, set aside, or voided, is not available to the vanity call sign system for reassignment to another amateur station for two years.⁴ Certain licensees, including close relatives of a

¹ Falls is now known as Wisconsin Amateur Radio Club, Inc. See FCC File No. 0003736332 (updating licensee name for Station K9RHH). For clarity, we will refer herein to the licensee as Falls.

² See Falls Amateur Radio Club, Inc., *Order on Reconsideration and Order Proposing Modification*, 23 FCC Rcd 13848 (WTB MD 2008) (*Modification Proposal*).

³ Some of the procedures governing the vanity call sign system are set forth in Part 97 of the Commission's Rules, 47 C.F.R. Part 97, while others are detailed in various public announcements by the Commission. See Amendment of the Amateur Service Rules to Implement a Vanity Call Sign System, *Report and Order*, PR Docket No. 93-305, 10 FCC Rcd 1039 (1995); Amendment of the Amateur Service Rules to Implement a Vanity Call Sign System, *Memorandum Opinion and Order*, PR Docket No. 93-305, 10 FCC Rcd 11135 (1995); Amendment of the Amateur Service Rules to Implement a Vanity Call Sign System, *Second Memorandum Opinion and Order*, PR Docket No. 93-305, 11 FCC Rcd 5283 (1996); Amateur Station Vanity Call Sign System Filing Gate 1 Opens May 31, 1996, *Public Notice* (rel. May 1, 1996); Amateur Station Vanity Call Sign System Filing Gate 1A Opens July 22, 1996, *Public Notice* (rel. June 21, 1996); Amateur Station Vanity Call Sign System Filing Gate 2 Opens September 23, 1996, *Public Notice* (rel. Aug. 22, 1996); Amateur Station Vanity Call Sign System Filing Gate 3 Opens August 6, 1997, *Public Notice* (rel. July 3, 1997) (*Gate 3 Public Notice*); Amateur Station Vanity Call Sign System Filing Gate 4 Opens December 2, 1997, *Public Notice* (rel. Oct. 30, 1997) (*Gate 4 Public Notice*).

⁴ See 47 C.F.R. § 97.19(c).

deceased former holder of the call sign and club station trustees acting with the written consent of such a relative, are exempt from the two-year waiting period.⁵

3. Paul Kent (Kent), to whose amateur station call sign W9CQ was assigned, died on January 1, 2006, so the call sign was due to become available to the vanity call sign system on January 2, 2008. The application of Robert C. Moldenhauer (Moldenhauer) for call sign W9CQ was granted in 2007, less than two years following Kent's death, because Moldenhauer stated that he was Kent's in-law.⁶ Later that year, the Commission granted an application from Moldenhauer to modify his license to show a different call sign, resulting in his license for call sign W9CQ being surrendered and canceled.⁷ Moldenhauer subsequently informed the Commission's Enforcement Bureau that he had surrendered call sign W9CQ after realizing that he was related to a different Paul Kent and therefore was not eligible for the call sign prior to the end of the two-year waiting period.

4. Falls filed the above-captioned application for call sign W9CQ on January 2, 2008, but it was dismissed on the grounds that the call sign was not available (because it was less than two years since Moldenhauer had surrendered it). Falls filed a timely petition for reconsideration, arguing that the call sign should have been made available to the vanity call sign system on January 2, 2008 because Moldenhauer was not eligible for the call sign. While the petition was pending, QRQ submitted its above-captioned application to modify its license by changing the call sign from KC9MWH to W9CQ, which was granted on June 10, 2008.⁸

5. In the *Modification Proposal*, we agreed with Falls that call sign W9CQ should have been made available to the vanity call sign system on January 2, 2008 (*i.e.*, after the two-year period following Kent's death, despite the intervening assignment to Moldenhauer), because "[w]here a vanity call sign for which the most recent recipient was ineligible is surrendered, canceled, revoked or voided, the two year requirement does not apply."⁹ We were unable to set aside the grant of QRQ's above-captioned application at that time, however, because the grant was a final action. Consequently, we proposed to modify QRQ's license pursuant to Section 316(a) of the Communications Act of 1934, as amended,¹⁰ by changing the call sign back to KC9MWH.¹¹ We also concluded that because Falls was the only applicant for call sign W9CQ on January 2, 2008, the call sign should have been assigned to Falls.

6. *Discussion.* QRQ protested the proposed modification of its license within the requisite thirty-day time frame.¹² In its protest,¹³ QRQ states that its trustee spoke by telephone in 2007 and 2008 with

⁵ See 47 C.F.R. § 97.19(c)(3).

⁶ See File No. 0002978247.

⁷ See File No. 0003129629.

⁸ QRQ's application was granted even though it was filed less than two years after Moldenhauer had surrendered the call sign because QRQ had the written consent of Kent's nephew.

⁹ *Modification Proposal*, 13 FCC Rcd at 13849 ¶ 7 (quoting *Gate 3 Public Notice* at 2; *Gate 4 Public Notice* at 2).

¹⁰ 47 U.S.C. § 316(a). Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.

¹¹ See *Modification Proposal*, 13 FCC Rcd at 13849-50 ¶ 8. We concluded that the proposed modification would serve the public interest by ensuring that the procedures of the vanity call sign system are followed. See *id.* at 13850 ¶ 8.

¹² See 47 C.F.R. § 97.27(b).

¹³ See Protest of QRQ CW and Contest Group to Proposed Modification of Call Sign (filed Oct. 24, 2008) (Protest); see also Reply and Protest of QRQ CW and Contest Group to Proposed Modification of Call Sign (filed Jan. 6,

(continued....)

Commission staff who stated that call sign W9CQ would not be available to the vanity call sign system until two years after Moldenhauer surrendered it.¹⁴ It states that it applied for the call sign in 2008 in reliance on those representations, and because the public record regarding the call sign did not indicate that the two-year waiting period still ran from Kent's death.¹⁵ QRQ also appears to suggest that the policy whereby the surrender of a call sign by an ineligible holder does not reset the two-year waiting period should apply only when the public is informed of the intervening holder's ineligibility.¹⁶ Finally, QRQ contends that it should be permitted to retain Kent's former call sign because the club was founded by Kent's friends and family "to memorialize Mr. Kent's life and spread his love for the Amateur Radio Service,"¹⁷ while Falls has no connection to Kent and is less active in the amateur community.¹⁸

7. We find QRQ's arguments unavailing. First, the Commission has consistently held that parties who rely on informal staff advice or interpretations do so at their own risk.¹⁹ Additionally, "[w]hen the staff advice is contrary to the Commission's rules, the Commission may still enforce its rules despite any reliance by the public."²⁰ Next, at the time that QRQ filed its application, the public record contained sufficient information to put interested parties on notice that Moldenhauer had not been eligible for call sign W9CQ: Moldenhauer's written admission of ineligibility was posted to the record in the Universal Licensing System (ULS) for his license for that call sign; and Falls's petition for reconsideration of the dismissal of its application, which explained in great detail that Moldenhauer was not related to Kent, also was viewable on ULS. Finally, we note that the reason a licensee requests a particular vanity call sign is not a sufficient basis to grant a licensee a call sign that is otherwise unassignable to the licensee's station,²¹ or to prefer one claimant over another.²²

8. QRQ does not dispute that Moldenhauer was ineligible to apply for call sign W9CQ prior to the end of the two-year period following Kent's death. Under the Commission's long-standing procedures, the assignment of a vanity call sign to an ineligible applicant does not reset the two-year waiting period. Therefore, a two-year waiting period based on the date Moldenhauer surrendered the call sign did not apply, and call sign W9CQ should have been made available to the vanity call sign system on January 2,

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2009) (QRQ Reply). Falls filed an opposition. *See* Reply and Motion of Course (filed Nov. 4, 2008); *see also* Reply (filed Jan. 18, 2009); Petition for Clarification (filed Feb. 12, 2009).

¹⁴ *See* Protest at 2.

¹⁵ *Id.* at 2-4, 6.

¹⁶ *Id.* at 4-8.

¹⁷ *Id.* at 3; *see also id.* at 8-9.

¹⁸ *Id.* at 8-9. QRQ also suggests that Moldenhauer and Falls may have collaborated in order to deter other interested parties from applying for call sign W9CQ prior to January 2, 2008. *See id.* at 8, 9. We decline to pursue this unsupported allegation.

¹⁹ *See, e.g.,* Allen Leeds, *Order on Reconsideration*, 22 FCC Rcd 1508, 1513 ¶ 11 (WTB 2007) (citing Hinton Telephone Co., *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 11625, 11637 ¶ 42 (1995) (*Hinton*)).

²⁰ *See Hinton*, 10 FCC Rcd at 11637 ¶ 42 (citing *Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir 1991)).

²¹ *See, e.g.,* Jerry D. Janow, *Letter*, 22 FCC Rcd 11546, 11546 (WTB MD 2007) (affirming dismissal of application by Saucer Ridge Amateur Radio Association, Roswell, New Mexico, for call sign NM5UFO, because the call sign was not available to the sequential call sign system, and therefore unavailable to the vanity call sign system).

²² *Cf., e.g.,* Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Services, *Report and Order*, WT Docket No. 04-140, 21 FCC Rcd 11643, 11658 ¶ 32 (2006) ("When multiple processable applications requesting the same vanity call sign as their first choice are received by the Commission on the same day, we use a lottery mechanism to select the first application to be processed.").

2008. Because Falls was the only applicant for the call sign on that date, the call sign should be assigned to Falls. The call sign should not subsequently have been assigned to QRQ's station, because, had the procedures of the vanity call sign system been followed, call sign W9CQ would not have been available when QRQ submitted its application. We regret any inconvenience that this error has caused QRQ. Based on the record in this matter, however, we conclude that it would be in the public interest to modify the QRQ's amateur station club license by replacing call sign W9CQ with call sign KC9MWH. We also conclude that the Falls application should be granted, and call sign W9CQ assigned to Falls.

9. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), and Section 97.27 of the Commission's Rules, 47 C.F.R. § 97.27, that the station license of QRQ CW and Contest Group for Amateur Radio Station W9CQ BE MODIFIED by changing the call sign to KC9MWH.

10. IT IS FURTHER ORDERED, pursuant to Sections 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 application 0003272664 filed by Falls Amateur Radio Club, Inc., SHALL BE REINSTATED TO PENDING STATUS and GRANTED, and that the station license of Wisconsin Amateur Radio Club, Inc., for Amateur Radio Station K9RHH BE MODIFIED by changing the call sign to W9CQ.

11. IT IS FURTHER ORDERED that this *Order of Modification* shall be sent by certified mail, return receipt requested to Phillip L. Smith, 1602 Audubon Road, Vincennes, IN 47591, trustee of QRQ CW and Contest Group; and to Glenn B. Schulz, 20585 W. Good Hope Road, Lannon, WI 53046, trustee of Wisconsin Amateur Radio Club, Inc.

12. 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 COMMUNICATION COMMISSION

Scot Stone
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