

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

In the Matter of)
FRANKLIN REGIONAL COUNCIL OF)
GOVERNMENTS) FCC File Nos. 0004333196, 0004333198,
Informal Objections Filed by Central Station) 0004338901
Alarm Association)

ORDER

Adopted: November 5, 2010

Released: November 9, 2010

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

1. Introduction. We have before us informal petitions, filed by the Central Station Alarm Association (CSAA), to deny the above-captioned applications filed by the Franklin Regional Council of Governments (Franklin) for new Industrial/Business Pool stations at various locations in Massachusetts. For the reasons indicated below, we grant the petitions, and will dismiss the applications.

2. Background. In July 2010, Franklin filed the above-captioned applications to operate on frequency 461.000 MHz at various locations in Massachusetts. Frequency 461.000 MHz is subject to Section 90.35(c)(66) of the Commission's Rules, which states, "This frequency may be assigned only to persons rendering a central station commercial protection service, which is defined in paragraph (c)(63) of this section, within the service area of the radio station utilizing the frequency." Section 90.35(c)(63) of the Commission's Rules defines "a central station commercial protection service" as "an electrical protection and supervisory service rendered to the public from and by a central station accepted and certified by one or more of the recognized rating agencies, or the Underwriters Laboratories' (UL), or Factory Mutual System." Section 90.35(c)(63) also provides that frequencies to which it applies may be used by other licensees outside of specified urbanized areas.

3. CSAA filed informal petitions to deny the applications. CSAA argues, inter alia, that

1 FCC File Nos. 0004333196 (filed July 23, 2010), 0004333198 (filed July 23, 2010), 0004338901 (filed July 29, 2010).

2 See 47 C.F.R. § 90.35(c)(66).

3 See 47 C.F.R. § 90.35(c)(63).

4 See id.

5 CSAA filed an informal petition to deny applications FCC File Nos. 0004333198 and 0004338901 on August 16, 2010. See Letter dated Aug. 16, 2010 from John A. Prendergast, counsel for CSAA to Marlene H. Dortch, Secretary, Federal Communications Commission (August Petition); see also Letter dated Sept. 10, 2010 from John A. Prendergast, counsel for CSAA to Marlene H. Dortch, Secretary, Federal Communications Commission.

Application FCC File No. 0004333196 was granted on August 11, 2010, but the grant was rescinded and the application returned to pending status on August 31, 2010. See Letter dated Aug. 31, 2010 from Terry Fishel, Associate Chief, Mobility Division, Wireless Telecommunications Bureau to Franklin Council of Governments. CSAA filed a petition for reconsideration of the grant on September 10, 2010. See Petition for Reconsideration (filed Sept. 10, 2010) (September Petition). In light of the prior set-aside of the grant, we will treat the September Petition as an informal petition to deny the application.

Franklin does not meet the definition of central station commercial protection service because it does not use a certified central station, and it does not render alarm service to the public.⁶

4. Franklin does not dispute that it does not meet the definition of central station commercial protection service. Instead, it notes that Section 90.35(c)(66) refers back to Section 90.35(c)(63), and frequencies subject to Section 90.35(c)(63) may be used by other entities outside the specified urbanized areas, so it concludes that its proposed operations are permitted because they would be outside the specified urbanized areas.⁷ Franklin also suggests that the Commission's recent amendment of Section 90.35(a) of the Commission's Rules⁸ to clarify that governmental entities are eligible for Industrial/Business Pool spectrum makes it eligible for the requested frequency.⁹

5. *Discussion.* We disagree with Franklin's interpretations of Section 90.35. First, Section 90.35(c)(66) does not incorporate every provision of Section 90.35(c)(63); rather, the only part of Section 90.35(c)(63) that is incorporated into Section 90.35(c)(66) is the definition of central station commercial protection service. Therefore, a frequency that is subject to Section 90.35(c)(66) but not to Section 90.35(c)(63) – like frequency 461.000 MHz – is designated exclusively for central station commercial protection service operations nationwide, even outside the specified urbanized areas.¹⁰

6. With respect to Section 90.35(a), the Commission only clarified that government entities that engage in commercial activities, like the operation of a utility or golf course, are eligible for Industrial/Business Pool spectrum on the same basis as private entities that engage in such activities.¹¹ It did not relieve them of any eligibility requirements for particular Industrial/Business Pool frequencies.

7. Accordingly, IT IS ORDERED that the informal petitions to deny filed by Central Station Alarm Association on August 16 and September 10, 2010 ARE GRANTED, and applications FCC File Nos. 0004333196, 0004333198, and 0004338901 SHALL BE DISMISSED.

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

Scot Stone
Deputy Chief, Mobility Division
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⁶ See August Petition at 1-2; September Petition at 3-4.

⁷ See Supplemental Statement at 1.

⁸ 47 C.F.R. § 90.35(a).

⁹ See Supplemental Statement at 2.

¹⁰ See, e.g., Amendment of Section 91.554 of the Commission's Rules to prohibit the operation of base or control stations on the frequencies 460.900/465.900, 460.925/465.925, and 460.950/465.950 MHz by non-central station commercial protection entities within 75 miles from the city centers of urbanized areas of 200,000 or more population (1960 U.S. Census); and to permit alarm signalling and other fixed point-to-point operations on a secondary basis for central station electrical protection entities on the frequencies 460.900/465.900, 460.925/465.925, 460.950/465.950, 460.975/465.975, and 461.000/466.000 MHz, *Notice of Proposed Rulemaking*, SS Docket No. 78-27, 67 F.C.C. 2d 518, 518 ¶ 3 (1978) (“two additional frequency pairs available exclusively to the central station electrical protection industry nationwide (460.975 MHz and 461.000 MHz)”).

¹¹ See Amendment of Part 90 of the Commission's Rules, *Second Report and Order and Second Further Notice of Proposed Rule Making*, WP Docket No. 07-100, 25 FCC Rcd 2479, 2485 ¶ 27 (2010).