

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

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| In the Matter of |) | |
| |) | |
| FRANKLIN REGIONAL COUNCIL OF |) | FCC File Nos. 0004333196, 0004333198, |
| GOVERNMENTS |) | 0004338901 |
| |) | |
| Petition for Reconsideration |) | |

ORDER ON RECONSIDERATION

Adopted: April 7, 2011

Released: April 8, 2011

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a petition¹ filed by the Franklin Regional Council of Governments (Franklin) for reconsideration of an *Order*² dismissing Franklin's above-captioned applications for new Industrial/Business Pool stations at various locations in Massachusetts. For the reasons indicated below, we deny the petition.

2. *Background.* In July 2010, Franklin filed the above-captioned applications to operate on frequency 461.000 MHz at various locations in Massachusetts.³ 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."⁴ 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."⁵ Section 90.35(c)(63) also provides that frequencies to which it applies may be used by other licensees more than seventy-five miles from the center of specified urbanized areas.⁶

3. Franklin filed a "Supplemental Statement" with two of the applications, and a "Supplemental Statement and Request for Waiver" with the third application. In all three filings, Franklin noted 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 entities other than central station commercial protection service providers outside the specified urbanized areas, so Franklin concluded that other operations were permitted on

¹ Letter dated Dec. 3, 2010 from Linda Dunlavy, Executive Director, Franklin Council of Governments to Federal Communications Commission (Petition). The Central Station Alarm Association (CSAA) filed an opposition. Franklin filed a reply. CSAA submitted a supplement to its opposition, and requested leave to file it.

² Franklin Regional Council of Governments, *Order*, 25 FCC Rcd 15890 (WTB MD 2010).

³ FCC File Nos. 0004333196 (filed July 23, 2010), 0004333198 (filed July 23, 2010), 0004338901 (filed July 29, 2010). 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.

⁴ See 47 C.F.R. § 90.35(c)(66).

⁵ See 47 C.F.R. § 90.35(c)(63).

⁶ See *id.*

frequency 461.000 MHz more than seventy-five miles from the center of specified urbanized areas.⁷ In the “Supplemental Statement and Request for Waiver,” Franklin then requested a waiver of the distance separation requirement, because the fixed sites proposed in that application were within seventy-five miles of the center of Boston.⁸

4. The Wireless Telecommunications Bureau’s Mobility Division (Division) rejected Franklin’s interpretation of Section 90.35. It explained that Section 90.35(c)(66) incorporates from Section 90.35(c)(35) only the definition of central station commercial protection service, so frequencies that are subject to Section 90.35(c)(66) but not to 90.35(c)(63) – like frequency 461.000 MHz – are designated exclusively for central station commercial protection services operations nationwide, even outside the specified urban areas.⁹

5. *Discussion.* On reconsideration, Franklin asserts that the Division failed to address its waiver request, and requests a decision on the merits.¹⁰ We disagree. Franklin’s waiver request was premised on its view that Section 90.35 authorizes use of frequency 461.000 MHz for other than central station commercial protection services in areas more than seventy-five miles from specified urban areas. The Division explained why this view was incorrect. We hereby clarify that, when it rejected Franklin’s interpretation of Section 90.35, the Division implicitly rejected the prayer for relief premised on that interpretation. Having rejected the premise underlying Franklin’s request for waiver of the inapplicable distance separation requirement in Section 90.35(c)(63), the Division was not required to address the merits of a waiver of the nationwide prohibition in Section 90.35(c)(66), which Franklin did not request. We therefore deny Franklin’s petition for reconsideration.¹¹

6. Accordingly, IT IS ORDERED that the petition for reconsideration filed by Franklin Council of Governments on November 6, 2010 IS DENIED.

7. 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

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

⁷ See FCC File No. 0004333196, Supplemental Statement at 1; FCC File No. 0004333198, Supplemental Statement at 1; FCC File No. 0004338901, Supplemental Statement and Request for Waiver at 1.

⁸ See FCC File No. 0004338901, Supplemental Statement and Request for Waiver at 2. Franklin argued that a waiver of the distance separation requirement was warranted because its signal would be weak within seventy-five miles of Boston, so its operations would not affect co-channel operations in or near Boston. *Id.* at 3.

⁹ See *Order*, 25 FCC Rcd at 15891 ¶ 5.

¹⁰ See Petition at 1. Franklin also requests that a waiver be granted with respect to all three applications. *Id.*

¹¹ Franklin may reapply for frequency 461.000 MHz, and seek (with appropriate justification) a waiver of the nationwide designation of the frequency exclusively for central station commercial protection services operations nationwide. Alternatively, Franklin may investigate whether any frequency that is subject to Section 90.35(c)(63) but not to 90.35(c)(66) – and therefore is available for other uses more than seventy-five miles from the center of Boston – is available, and seek a waiver of the distance separation requirement for that frequency.