

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

In the Matter of Application of)
)
THE CONLEY GROUP, INC.) File No. 0006534952
)
Petition for Reconsideration)

ORDER ON RECONSIDERATION

Adopted: February 23, 2015

Released: February 23, 2015

By the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION.

1. On December 12, 2014, the Public Safety and Homeland Security Bureau's (PSHSB or Bureau) licensing staff dismissed the above-captioned application¹ filed by the Conley Group, Inc., (the Conley Group or the Company) to license the five nationwide VHF interoperability channels² throughout the State of Iowa.³ On January 9, 2015, the Conley Group filed a Petition for Reconsideration (Petition) of the dismissal of its application.⁴ In its Petition, the Conley Group argues that it is eligible to license the VHF interoperability channels under Section 90.20(a)(2)(iv)⁵ of the Commission's rules because it provides "emergency rescue services."⁶ For the reasons stated below, we deny the Petition.

II. BACKGROUND.

2. On November 6, 2014, the Conley Group filed an application to license the five VHF interoperability channels statewide in Iowa.⁷ The Conley Group claimed it is necessary to use these channels on a statewide basis so that it can establish communication with all affected law enforcement agencies during times of imminent threat to safety-of-life or property in connection with mutual activities.⁸ The Conley Group added that the "[t]he ability to communicate with emergency personnel from outside of Polk County[, Iowa] is critical in case emergency response is required in another area of the state."⁹ The Conley Group also submitted (1) five certificates for

¹ See FCC File No. 0006534952 (filed Nov. 6, 2014).

² 47 C.F.R. § 90.20(d)(80) (the VHF interoperability channels are 151.1375 MHz, 154.4525 MHz, 155.7525 MHz, 158.7375 MHz, and 159.4725 MHz).

³ See Notice of Dismissal Reference No. 5912353(Dismissal Notice)(dated Dec. 12, 2014) *re* FCC File No. 0006534952.

⁴ See Petition for Reconsideration filed by the Conley Group, Inc. at 2-4 (Jan. 9, 2015) (Petition).

⁵ 47 C.F.R. § 90.20(a)(2)(iv).

⁶ Petition at 2-4.

⁷ FCC File No. 0006534952.

⁸ See Justification for Statewide Use attached to FCC File No. 0006534952.

⁹ *Id.*

“Authorized Emergency Vehicles” issued by the Iowa Department of Transportation¹⁰ and (2) a certificate from the Iowa Homeland Security and Emergency Management Administrator acknowledging that the Company has incorporated the National Incident Management System (NIMS).¹¹

3. As part of its application, the Conley Group submitted a letter from the Polk County Sheriff’s Department (Polk County) to the Association of Public Safety Communications Officials-International, Inc. (APCO).¹² Polk County there noted that the Conley Group provides “force protection for governmental and non-government critical infrastructure and key resource entities.”¹³ Additionally, Polk County notes that the Iowa Department of Public Safety (Iowa DPS) provided the Conley Group authorization to use the 8CALL and 8TAC (*i.e.* 800 MHz mutual aid channels) frequencies in conjunction with Call Sign WPLZ962, which is licensed to Iowa DPS.¹⁴ Polk County states that the Iowa DPS does not possess its own FCC license for the VCALL and VTAC (VHF interoperability) frequencies requested by the Conley Group, but believes that Iowa DPS would provide the Conley Group access to those channels if the Iowa DPS were to license the VCALL and VTAC frequencies.¹⁵

4. The Conley Group also submitted a letter from the Iowa DPS authorizing the Conley Group to use the 800 MHz mutual aid frequencies licensed to Iowa DPS to communicate with law enforcement during times of “IMMINENT” safety-of-life or property mutual aid events.¹⁶ In granting the Conley Group limited authority to operate on the mutual aid channels, the Iowa DPS emphasized certain restrictions applicable to “non-law enforcement entities”.¹⁷ Specifically, the Iowa DPS noted that Section 90.403(g) of the Commission’s rules “requires that ‘for transmission concerning the imminent safety of life or property, the transmissions shall be suspended as soon as the emergency is terminated.’”¹⁸ “Also, the safety of life provision of [Section] 90.417(a) [of the Commission’s rules] makes it clear that the exception applies only when the communications involved ‘relate directly’ to the ‘imminent’ safety of life or property.”¹⁹

5. On December 12, 2014, the PSHSB licensing staff dismissed the Conley Group’s application. The staff found that “[p]rivate security firms are not listed in [Section] 90.20 [of the Commission’s rules] as eligible to hold a public safety authorization.”²⁰ The staff noted that the Conley Group “already has authority to operate on

¹⁰ “Certificates for Emergency Vehicles” attached to FCC File No. 0006534952.

¹¹ “Certificate from HSEMD” attached to FCC File No. 0006534952.

¹² Letter to Derek K Poarch, Executive Director, APCO International, Inc., from Bill McCarthy, Polk County Sheriff (dated July 5, 2013) (Polk County Letter) attached to FCC File No. 0006534952.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Letter to Tom M. Conley, President and CEO, The Conley Group, Inc., from K. Brandon Lawson, Iowa Department of Public Safety (IDPS Letter) attached to FCC File No. 0006534952. (Capitalization in original.)

¹⁷ IDPS Letter. It appears that the Iowa DPS invoked the provisions of Section 90.421 of the Commission’s rules to authorize the Conley Group to operate mobiles on the mutual aid channels. IDPS letter citing 47 C.F.R. § 90.421 (operation of mobiles not under the control of the licensee).

¹⁸ IDPS Letter citing 47 C.F.R. § 90.403(g).

¹⁹ IDPS Letter citing 47 C.F.R. § 90.417(a).

²⁰ Dismissal Notice.

public safety interoperability channels consistent with [Section] 90.421 [of the Commission's rules] and the agreement of the State of Iowa."²¹

6. On January 9, 2015, the Conley Group filed a Petition for Reconsideration of the staff's decision and seeks to clarify its eligibility to license the interoperability channels. The Conley Group submits that it "provides emergency rescue services for communities in Polk County and the surrounding areas in the state of Iowa, as well as for critical infrastructure and key resource entities for critical incidents and natural disasters."²² Additionally "[t]he Company works closely with local law enforcement, fire service, emergency management and other governmental entities as well as non-governmental organizations to provide operational services or support services to incident commanders."²³ The Petitioner emphasizes that "Conley's emergency rescue services range from search and rescue operations, to recovery missions and more."²⁴ Further, "[t]he Company provides the equipment and capabilities necessary to search for and deliver aid to people who are in distress or imminent danger, as well as ground search and rescue for persons who are lost or in distress on land or inland waterways."²⁵ Conley states that it "operates five emergency vehicles that are equipped with trauma kits, EMS equipment, and fire extinguishers for all types of rescue operations."²⁶ Thus, the Conley Group claims that it is eligible to hold a license in the Public Safety Pool pursuant to Section 90.20(a)(2)(iv) of the Commission's rules.²⁷ In support of that argument, the Conley Group relies on our 2011 *YSADA* decision.²⁸

III. DISCUSSION

7. Section 1.106 sets forth the procedures, requirements and standards for a petition for reconsideration.²⁹ Section 1.106(c)³⁰ states that a petition for reconsideration which relies on facts not previously presented to the Commission or to the designated authority may be granted only under the following circumstances: (1) the facts fall within one or more of the categories set forth in Section 1.106(b)(2),³¹ or (2) the Commission or the designated authority determines that consideration of the facts relied on is required in the public interest.³² Section 1.106(d)(2) requires the petitioner to cite the findings of fact and or conclusions of law which petitioner believes to be erroneous.³³ The Conley Group's Petition seeks to "clarify" its previous eligibility claims and reasserts its position that using the requested frequencies is necessary to establish communication with law enforcement during emergencies. Because the Petition does not allege either new facts

²¹ *Id.* 47 C.F.R. § 90.421(a) permits operation of mobile station units not under the control of the public safety licensee subject to certain restrictions.

²² Petition at 2.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* citing 47 C.F.R. § 90.20(a)(2)(iv). In a footnote, the Conley Group suggests that its rescue operations could be eligible under 47 C.F.R. § 90.20(a)(2)(iii)(D) (rescue organizations for the limited purpose of participation in providing medical services). Petition at note 2.

²⁸ *Id.* at 3 citing Yuba Sutter Domestic Animal Disaster Assistance, *Letter*, 26 FCC Rcd 9465 (PSHSB 2011) (*YSADA Letter*).

²⁹ 47 C.F.R. § 1.106.

³⁰ 47 C.F.R. § 1.106(c).

³¹ 47 C.F.R. § 1.106(c)(1).

³² 47 C.F.R. § 1.106(c)(2).

³³ 47 C.F.R. § 1.106(d)(2).

that the Conley Group could not have known before, or changed circumstances that have occurred since it presented the underlying application to the licensing staff, our analysis turns on whether, in consideration of the totality of the facts before us, grant of the Petition is in the public interest. Based on the record before us, we conclude it is not.

8. First, the Commission allocated the VHF interoperability channels principally to promote *governmental* interoperability nationwide. In the context of exploring “solutions to the lack of interoperability between and among government public safety entities” the Commission, for example, identified these five VHF channels for nationwide interoperability.³⁴ Certain non-governmental entities are eligible to hold licenses for public safety frequencies provided such entities submit a statement from the governmental entity having legal jurisdiction over the area to be served supporting the request.³⁵ Since the Conley Group seeks to license the VHF interoperability channels statewide, the State of Iowa would have jurisdiction over the licensing of the interoperability channels. The Conley Group, however, has not provided a statement from any State entity supporting the Conley Group’s request to license the VHF interoperability channels.³⁶

9. Second, the Conley Group is a private business entity that provides armed guard, private investigation, alarm response, consulting services and “rescue” services in the Polk County area.³⁷ Additionally, the Conley Group is the licensee of three Industrial/Business (I/B) licenses.³⁸ In establishing its eligibility to license I/B Pool frequencies under Section 90.35³⁹ of the Commission’s rules, the Conley Group represented to the Commission that “is in the security business and radios are used to protect, citizens, property and provide similar services for hire.”⁴⁰

10. Third, non-governmental rescue squads are typically volunteer, non-profit organizations serving a specific rescue mission, incorporated under state law, governed by their own board of directors and by-laws. In *YSADA*, for example, we found on reconsideration that a volunteer animal evacuation group organized under California law was eligible to license a single VHF frequency under Section 90.20(a)(2)(iv).⁴¹ The Conley Group has cited no instance in which the Commission has licensed, on public safety channels, a commercial “security business” which has, as a subsidiary activity, the asserted provision of rescue services.

11. Fourth, the frequency (*i.e.* 155.160 MHz) at issue in *YSADA* was formerly allocated to the Special Emergency Radio Service (SERS).⁴² Frequencies previously allocated to the former SERS, while now technically part of the Public Safety Pool, are different than the “traditional” public safety radio services (*e.g.* Police, Fire)

³⁴ See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010, WT Docket 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152, 235, ¶ 185; 237 ¶ 191 (1998).

³⁵ 47 C.F.R. § 90.20(a)(2) (When requesting frequencies not designated by a “PS” (*i.e.* Special Emergency Coordinator), persons or organizations other than governmental entities are eligible to hold authorizations in the Public Safety Pool to operate radio stations provided such entities submit an application accompanied by a statement from the relevant governmental jurisdiction).

³⁶ See also ¶ 13 *infra*.

³⁷ See <http://www.theconleygroup.com> (accessed Jan. 23, 2015).

³⁸ See Call Signs WPWY904, WQUW987, WQJW561.

³⁹ 47 C.F.R. § 90.35.

⁴⁰ See, *e.g.*, WPWY904. See also WQJW561 (the Conley Group “operates a large security service and property management service”).

⁴¹ *YSADA*, 26 FCC Rcd at 9466.

⁴² *Id.* citing 47 C.F.R. § 90.20(c)(3).

and the nationwide interoperability channels. Indeed, the former SERS channels were principally reserved for non-governmental groups, often volunteers, whose sole or principal purpose was to save lives. Thus, we note here that the Conley Group's "sole or principal purpose" is not lifesaving; it is the provision of commercial security and property management services.⁴³ In that respect, the Conley Group's status is similar to that of the Central Station Electrical Protection Licensees, whose attempts to demonstrate that they were eligible for SERS channels, were rebuffed by the Commission because the home and business alarm services they offered were "profoundly different" than those performed by *bona fide* SERS licensees.⁴⁴ Further, it was the volunteer nature of "rescue squads" that helped persuade the Commission to permit secondary, one-way alert-paging signals to ambulance and rescue squad personnel on frequency 155.160 MHz, the same frequency at issue in the *YSADA* case.⁴⁵

12. Even assuming *arguendo* that the Conley Group did qualify as a "rescue squad", the number of mobile units (400) it requests on its application is excessive relative to the number of mobile units typically allowed under the rules for rescue squad operations. For example, rescue squads will normally be authorized two mobile units for each radio-equipped vehicle that is actually used in rescue operations.⁴⁶ Here, the Conley Group claims to have only five emergency vehicles for all types of rescue operations, not 200 vehicles.

13. Sixth, the Conley Group's application for a statewide, temporary fixed site and the large number of mobiles illustrates that licensing the VHF interoperability channels to private security, for-profit, entities could make coordination between such systems difficult and potentially seriously interfere with governmental interoperability. The record does not substantiate Polk County's claim that Iowa DPS would authorize the Conley Group to use the VHF interoperability channels for mobiles, much less authorize the Conley Group to license the VHF interoperability channels statewide for a temporary fixed station. Stated otherwise, there is no evidence that the Iowa DPS assumes oversight responsibility for the Conley Group's request to license these channels or that the Conley Groups' request is consistent with the Iowa state interoperability plan. The Iowa DPS, however, made clear that the Conley Group's use of 800 MHz mutual aid channels must adhere to strict limitations to ensure that the Conley Group's use does not result in a mix of business and public safety use.

14. We share concerns similar to those of the Iowa DPS when it sanctioned the Conley Group's use of 800 MHz mutual aid channels. If we license private security and property management firms on the interoperability channels based on a claim of providing "emergency rescue" services, then the interoperability channels could become overrun with multiple private security and property management companies also claiming to be "rescue squads." Further, such firms would hold licenses on a primary basis, potentially outside state supervision. Such a result could alter the specialized nature of the interoperability channels and thus undermine the Commission's goal of promoting nationwide governmental interoperability.

⁴³ See *supra* n.40.

⁴⁴ See Amendment of Parts 89 and 91 of the Commission's Rules to Transfer Central Station Electrical Protection Industry Licensees and Certain Frequencies Allocated for Their Use From the Business Radio Service to the Special Emergency Radio Service, RM-2698, *Memorandum Opinion and Order*, 64 F.C.C.2d 892, 893 (1977) (in denying a request by central station electrical protection companies to become eligible for the SERS frequencies, the Commission observed that SERS service was established principally to accommodate activities oriented towards life protection, such as hospitals, ambulances, rescue and disaster organizations, and physicians and that protection services offered by the central station protection industry are "profoundly different").

⁴⁵ See Amendment of Part 89 of the Commission's Rules and Regulations Concerning One-Way Paging Operations in the Special Emergency Radio Service, Docket No. 21399, *Notice of Proposed Rulemaking*, 66 F.C.C.2d 203-204 ¶ 3 (1977); *Report and Order*, 67 F.C.C.2d 1588 (1978).

⁴⁶ 47 C.F.R. § 90.20(a)(2)(iv)(A) and (B).

15. Finally, the Conley Group has an alternative means of communicating with law enforcement during interoperable events. As noted above, Iowa DPS has authorized the Conley Group to use the 800 MHz mutual aid channels. We note also that the Iowa Statewide Interoperable Communications Systems Board (ISICSB)⁴⁷ currently holds a license for use of the interoperability channels in temporary communications trailers.⁴⁸ The Iowa Department of Corrections (DOC) also holds a license for these interoperability channels.⁴⁹ Both Iowa DPS and Iowa DOC are represented on the ISCSB. Accordingly, similar to the Conley Group's permissive use of 800 MHz mutual aid channels, the Conley Group could request limited use of the VHF interoperability channels from the ISICSB or Iowa DOC for the Conley Group's mobiles pursuant to Section 90.421 of the Commission's rules. Such permissive use of the interoperability channels would ensure that a governmental public safety licensee retains ultimate control over the licensed interoperability spectrum.⁵⁰

IV. CONCLUSION.

16. The Conley Group fails to present new facts or changed circumstances demonstrating that grant of the Petition would serve the public interest. Additionally, the Conley Group fails to demonstrate that the staff's findings of fact or conclusions of law were erroneous. Specifically, the Conley Group fails to establish that private security and property management firms fall within the meaning of the term "rescue squad." Contrary to the Conley Group's claim, *YSADA* does not stand for the proposition that a private security and property management firm alleging that it also provides "emergency rescue services," qualifies as a "rescue squad" eligible to license the VHF interoperability channels. The Conley Group does not cite any Commission precedent that establishes that a private security and property management firm falls within the scope of the term "rescue squad" (or "rescue organizations providing medical services") or is otherwise eligible to license the VHF interoperability channels. Therefore, based on the record before us, we deny the Conley Group's Petition.

⁴⁷ See Iowa Code 80.28 and 80.29 (2015) and Iowa Administrative Code Rule 661.600.10 (establishing the ISICSB to develop, implement and oversee policy of interoperability efforts at the state and local level and defining interoperability as the ability of public safety and public services personnel to communicate and to share data on an immediate basis, on demand, when needed, and when authorized.)

⁴⁸ See Call Sign WQUI619.

⁴⁹ See, e.g., Call Sign WQTZ649. The City of Des Moines, Iowa is also licensed on these channels under call sign WQNB553.

⁵⁰ 47 C.F.R. § 90.421.

V. ORDERING CLAUSE

17. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section and 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Request for Reconsideration filed by the Conley Group on January 9, 2015 IS DENIED.

18. This action is taken under delegated authority pursuant to Sections 0.191(a) and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191(a), 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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