

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

In the Matter of Application of
Hardrock Concrete Placement Company
To Operate a 900 MHz Industrial/Business Radio
Station in Phoenix, Arizona
FCC File No. D091737

MEMORANDUM OPINION AND ORDER

Adopted: January 11, 2001

Released: January 22, 2001

Before the Commission:

I. INTRODUCTION

1. In this Order, we address the Application for Review filed by Hardrock Concrete Placement Company (Hardrock Concrete) on February 4, 2000. Hardrock Concrete asks the Commission to reverse the Order on Reconsideration (Order) in which the Public Safety and Private Wireless Division (Division) overturned the decision of its Licensing and Technical Analysis Branch (Branch) to grant the application of Hardrock Concrete to operate on 900 MHz Industrial/Business frequencies. For the reasons discussed herein, we grant the Application for Review.

II. BACKGROUND

2. On August 29, 1997, Hardrock Concrete filed the above-captioned application for authorization to operate a 900 MHz Industrial/Business station at Phoenix, Arizona. Robert Kenney purportedly signed the application. On February 26, 1998, Creative Airtime Services (Creative Airtime) requested that the Branch stop processing the Hardrock Concrete application because it was part of a fraudulent scheme by the Kenney family to obtain more 900 MHz frequency assignments than the Commission's Rules permitted. Creative Airtime also noted that the signature of Robert Kenney on the Hardrock Concrete application differed from the signature of Robert Kenney on other Hardrock Concrete

1 Hardrock Concrete Placement Company Application for Review (filed Feb. 4, 2000) (Application for Review).

2 Hardrock Concrete Placement Company, Order on Reconsideration, DA 00-4 (WTB PSPWD rel. Jan. 5, 2000) (Order).

3 Application for Review at 1; Application of Hardrock Concrete Placement Company to Operate a 900 MHz Industrial/Business Radio Station in Phoenix, Arizona, FCC File No. D091737, (filed Aug. 29, 1997).

4 Order, ¶ 2 & n.3.

5 Id. ¶ 3.

6 Id. ¶ 2; Letter from Russ Taylor of Gardner, Carton & Douglas to Rita Warner, FCC (dated Feb. 26, 1998).

900 MHz applications.⁷ Hardrock Concrete responded that Robert Kenney had approved and authorized the signature on the application at the time it was made.⁸

3. On August 10, 1998, the Branch concurred with Creative Airtime's contention that the applicant did not properly sign the application.⁹ As a result, the Branch returned the application to Hardrock Concrete for correction in accordance with the former Private Radio Bureau's policy of waiving Section 1.958 of the Commission's Rules¹⁰ for the limited purpose of permitting applicants who failed to sign their applications an opportunity to do so without forfeiting their fee.¹¹ The Branch concluded that the policy applied to the Hardrock Concrete application because the improper signature resulted in the application being unsigned.¹²

4. On August 27, 1998, Creative Airtime requested reconsideration of the Branch's decision to return the application to allow Hardrock Concrete to properly sign it.¹³ On October 16, 1998, Hardrock Concrete resubmitted its application with the correct signature, and on October 21, 1998, a license for Station WPMP273, Phoenix, Arizona was issued.¹⁴

5. On January 5, 2000, the Division released its *Order* reversing the Branch decision. The Division concluded that the policy of the former Private Radio Bureau applied only to applications missing signatures, not to applications with improper signatures.¹⁵ Consequently, the Division dismissed the application as "defective on its face."¹⁶ On February 4, 2000, Hardrock Concrete requested review of the Division's decision.

III. DISCUSSION

6. The Application for Review states that the Division's action in this matter is in error procedurally and substantively and should be reversed on both legal and policy grounds.¹⁷ It requests also that, in the alternative, the Commission grant a waiver of the application signature requirements.¹⁸

⁷ *Order*, ¶ 3; Letter from Russ Taylor and Laura C. Mow of Gardner, Carton & Douglas to Terry L. Fishel, FCC (dated May 11, 1998).

⁸ *Order*, ¶ 4; Letter from Albert J. Catalano of Day, Catalano & Plache to Terry L. Fishel, FCC (dated June 25, 1998).

⁹ *Order*, ¶ 6; Letter from Mary Shultz, FCC to Russ Taylor of Gardner, Carton & Douglas and Albert J. Catalano of Day, Catalano & Plache (dated Aug. 10, 1998) (Branch Letter).

¹⁰ 47 C.F.R. § 1.958(a)(4), (b)(1998) provided that applications not signed in accordance with the Rules would be dismissed.

¹¹ Branch Letter at 1-2; see Private Radio Bureau Announces New Policy on Signature Dismissals, *Public Notice*, Mimeo No. 10297 (PRB rel. Oct. 24, 1990) (PRB Public Notice).

¹² Branch Letter at 1 n.1.

¹³ *Order*, ¶ 7; Letter from Russ Taylor of Gardner, Carton and Douglas to Steve Linn, Deputy Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (dated Aug. 27, 1998).

¹⁴ *Order*, ¶ 11.

¹⁵ *Id.* ¶ 19.

¹⁶ *Id.* ¶¶ 19, 22.

¹⁷ Application for Review at 1.

¹⁸ *Id.*

Specifically, Hardrock Concrete makes the following arguments. First, because the Division acted on the Petition past the 90-day statutory deadline, as delineated in Section 405 of the Communications Act and Section 1.106(j) of our Rules, its action is *ultra vires*. Consequently, the Division action must be overturned.¹⁹ Second, dismissal of the application is not in the public interest and is unfair due to Hardrock Concrete's reliance on the license grant and its consequent expenditure of "\$20,000 in 900 MHz radio facilities."²⁰ Third, the signature in the original application was valid because the Commission's rules do not require that handwritten applications be signed "personally" by the applicant.²¹ Fourth, the Commission should have allowed the signature defect to be cured in accordance with the former Private Radio Bureau's policy of allowing correction of signature defects.²² Fifth, the Commission should have allowed the signature defect to be cured in accordance with past precedent.²³

7. We need only address this last argument to resolve this matter. Hardrock Concrete is correct that *Jane A. Roberts*²⁴ is on point, and we therefore grant the instant Application for Review.²⁵ In *Jane A. Roberts*, the applicant, Mrs. Roberts, did not personally affix her signature to an application for construction permit.²⁶ Instead, her husband signed "Jane A. Roberts."²⁷ We found in that case that such an application could be amended should the equities so dictate and directed the applicant to file with the Commission a *nunc pro tunc* amendment conforming the application to our signature rules.²⁸

8. While we believe that *Jane A. Roberts* is controlling in the instant case, we also take this opportunity to prospectively overrule that decision with respect to the consequences applicants face when their application is not signed in accordance with our Rules.²⁹ As a result of this action, we will in the future adhere strictly to the signature requirements set forth in our Rules.³⁰ The Commission has repeatedly explained that an original signature on an application is critical because "[t]he original signature requirement provides assurance that the applicant has personally reviewed the application and can be held responsible for the truthfulness and accuracy of the statements therein."³¹ The potential for abuse and uncertainty would be too great were we to accept applications that were not signed by the applicant. An applicant could easily deny making such signatures, and there would be no accountability in such a system. Therefore, we reiterate that in accordance with the Commission's Rules, applicants

¹⁹ *Id.* at 3.

²⁰ *Id.* at 5.

²¹ *Id.* at 6.

²² *Id.* at 8-9.

²³ *Id.* at 9.

²⁴ *Jane A. Roberts*, 29 FCC 141, 150 ¶ 24 (1960).

²⁵ Petition at 9.

²⁶ 29 FCC at 143 ¶ 3.

²⁷ *Id.*

²⁸ *Id.* ¶ 25.

²⁹ See Public Notice, FCC Overrules Caldwell Television Associates, Ltd., 58 Rad. Reg.2d 1706 (P & F) (1984).

³⁰ 47 C.F.R. § 1.917.

³¹ Mary Ann Salvatoriello, 6 FCC Rcd 4705, 4706 (1991).

must sign their applications themselves.³²

IV. CONCLUSION

9. For the reasons set forth above, we grant the Application for Review. We believe that this result squares with past Commission precedent, although we proscriptively overrule that precedent. Effective with the release of this *Memorandum Opinion and Order*, applicants must comply with Section 1.917 of our Rules or the applications are subject to dismissal.

V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(5), and Section 1.115(g) of the Commission's Rules, 47 C.F.R. § 1.115(g), the Application for Review filed by Hardrock Concrete Placement Company on February 4, 2000, IS GRANTED.

11. IT IS FURTHER ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), the Wireless Telecommunications Bureau shall reinstate the license of Hardrock Concrete Placement Company for Station WPMP273 in Phoenix, Arizona.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

³² Where applicable, applicants may continue to file the electronic signature of the applicant and manual signatures must be signed by the applicants themselves.