

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

In the Matter of	)	
	)	
RUSSELL WARNER, INC. d/b/a	)	
ROTO-ROOTER	)	FCC File No. D134628
	)	
Application for license for a conventional	)	
Industrial/Business Pool station at Palmdale,	)	
California, Montrose, California, and Corona,	)	
California	)	

**ORDER ON RECONSIDERATION**

**Adopted: December 7, 2000**

**Released: December 11, 2000**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On May 5, 2000, Russell Warner, Inc. d/b/a Roto-Rooter Service and Plumbing (Roto-Rooter) filed a petition for reconsideration<sup>1</sup> of the April 5, 2000, dismissal of the above-captioned application by the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division.<sup>2</sup> For the reasons set forth below, we grant the Petition.

2. *Background.* Roto-Rooter was awarded a dispositive preference under the Finder's Preference program for a private land mobile radio channel that was formerly licensed to Kane Communications (Kane) for operation of Station WIK209, Los Angeles, California.<sup>3</sup> Kane petitioned for reconsideration and Roto-Rooter's award did not become a final action until October 1999.<sup>4</sup> Thereafter, Roto-Rooter timely filed the above-captioned application, pursuant to its finder's preference award, on November 30, 1999.<sup>5</sup>

3. On April 5, 2000, the Branch dismissed the captioned application after determining that the proposed transmitter sites were different than the locations authorized under former Station WIK209.

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<sup>1</sup> Russell Warner, Inc. d/b/a Roto-Rooter Service and Plumbing Petition for Reconsideration and Motion for Reacceptance of Application *Nunc Pro Tunc*, filed May 5, 2000 (Petition).

<sup>2</sup> See File No. D134628, Notice of Application Dismissal (April 5, 2000) from Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, FCC, to the above-captioned applicant (Branch Letter).

<sup>3</sup> See Finder's Preference Request of Roto Rooter Service and Plumbing Co., File Nos. 93F513 & 93F514, *Letter* from William H. Kellett, FCC, to Dale Kane, d/b/a Kane Communications (March 10, 1993, as corrected May 25, 1993) (Award Letter), *recon. denied*, Dale Kane d/b/a Kane Communications, *Order*, 14 FCC Rcd 14,052 (WTB PSPWD 1999).

<sup>4</sup> See, e.g., *Order*, 14 FCC Rcd 14,052 (WTB PSPWD 1999).

<sup>5</sup> FCC File No. D134628.

Based on this determination, the Branch dismissed the application stating that Roto-Rooter failed to provide the requisite frequency coordination.<sup>6</sup>

4. On May 5, 2000, Roto-Rooter filed the instant Petition requesting reconsideration of the Branch's dismissal of the captioned application. Roto-Rooter argues that the Branch erred in determining that the proposed transmitter sites differed from the locations authorized to former Station WIK209. Consequently, Roto-Rooter avers that its application was exempt from the frequency coordination requirement.<sup>7</sup>

5. *Discussion.* Under the finder's preference program, Section 90.175(i)(15) of the Commission's Rules exempted successful finders' applications from frequency coordination if the applicant proposed to operate at the same site location, and with the same technical parameters, as the prior licensee.<sup>8</sup> We agree with Roto-Rooter that the instant application "specified precisely the same facilities referenced in the finder's preference award."<sup>9</sup> We further agree that the determination in the Branch Letter was erroneous and thus we are granting the Petition and returning the captioned application to pending status.

6. Finally, we note that the Commission deleted Section 90.175(i)(15) in the *Report and Order* that eliminated the finder's preference program in 1998, wherein the Commission also decided to process, rather than dismiss, finder's preference requests pending as of July 29, 1998.<sup>10</sup> The captioned application is the end result of a finder's preference request that was filed and initially granted in 1993, and that remained pending on reconsideration until 1999. Thus, the Branch correctly concluded that the captioned application is entitled to processing under the former finder's preference program, including former Section 90.175(i)(15).

7. Accordingly, IT IS ORDERED that pursuant to Section 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, the Petition for Reconsideration and Motion For Reacceptance of Application *Nunc Pro Tunc* filed by Russell Warner, Inc. d/b/a/ Roto-Rooter Service and Plumbing IS GRANTED, as set forth herein, and otherwise IS REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch, for further processing consistent with this *Order*.

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<sup>6</sup> Branch Letter at 1. The Branch Letter indicates that Roto-Rooter's application specified "new" sites different from those contemplated in the finder's preference award, and that in such instances, frequency coordination is required as part of the application.

<sup>7</sup> See Petition at 1 citing 47 C.F.R. § 90.175(i)(15).

<sup>8</sup> 47 C.F.R. § 90.175(i)(15) (1997).

<sup>9</sup> Petition at 1.

<sup>10</sup> See Amendment of Part 90 Concerning the Commission's Finder's Preference Rules, *Report and Order*, WT Docket No. 96-199, 13 FCC Rcd 23,816 (1998).

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

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau