

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

In the Matter of Licenses of)	
)	
RURAL METRO CORPORATION)	
)	Call Sign No. KNNR223
To operate a Conventional Business)	
Radio Service Station in Maricopa County, Arizona)	
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)	
AMY ZAK & ASSOCIATES)	
)	File No.018704
To operate Business Radio Service Trunked Station)	
WPM777 on Frequency 936.6625 MHz at)	
Litchfield, Arizona)	
)	
)	
AMERICAN INDUSTRIAL MAINTENANCE)	
)	File No. A018705
To operate Business Radio Service Trunked)	
Station call sign WPMF782 on Frequency)	
936.6625 MHz at Litchfield, Arizona)	
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)	
ACE REPROGRAPHICS, INC.,)	
)	File No. A018706
To operate Business Radio Service Trunked)	
Station call sign WPMF786 on Frequency)	
936.6625 MHz at Litchfield, Arizona)	
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CAREFREE HOMES)	
)	File No. A018707
To operate Business Radio Service Trunked)	
Station call sign WPMF791 on Frequency)	
936.6625 MHz at Litchfield, Arizona)	
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)	
CEI-CLOLA ENTERPRISES, INC.)	
)	File No. A018708
To operate Business Radio Service Trunked)	
Station call sign WPMF793 on Frequency)	
936.6625 MHz at Litchfield, Arizona)	
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BLUCOR CONTRACTING, INC.)
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To operate Business Radio Service Trunked) File No. A018709
Station call sign WPMF800 on Frequency)
936.6625 MHz at Litchfield, Arizona)
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NORTHLAND TRUCKING) File No. A018689
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To operate a Business Radio Service Trunked)
Station WPMF901 on Frequency 936.6625 MHz)
at Litchfield, Arizona)
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NOAH WEBSTER BASIC SCHOOL) File No. A018690
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To operate a Business Radio Service Trunked)
Station WPMF907 on Frequency 936.6625 MHz)
at Litchfield, Arizona)
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MESA VERDE LANDSCAPE CO.) File No. A018691
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To operate a Business Radio Service Trunked)
Station WPMF922 on Frequency 936.6625 MHz)
at Litchfield, Arizona)
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MAGNA ELECTRIC CONTRACTING CO.) File No. A018693
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To operate a Business Radio Service Trunked)
Station WPMF923 on Frequency 936.6625 MHz)
at Litchfield, Arizona)
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LUCAS OJEDA) File No. A018693
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To operate a Business Radio Service Trunked)
Station WPMF924 on Frequency 936.6625 MHz)
at Litchfield, Arizona)
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HUNTWOOD INDUSTRIES) File No. A018694
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To operate a Business Radio Service Trunked)
Station WPMF925 on Frequency 936.6625 MHz)
at Litchfield, Arizona)
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)

HEALTHCOR)

File No. A018695

To operate a Business Radio Service Trunked)
Station WPMF928 on Frequency 936.6625 MHz)
at Litchfield, Arizona)

DVC CONSTRUCTION)

File No. A018696

To operate a Business Radio Service Trunked)
Station WPMF929 on Frequency 936.6625 MHz)
at Litchfield, Arizona)

DIAMOND MECHANICAL CO)

File No. A018697

To operate a Business Radio Service Trunked)
Station WPMF930 on Frequency 936.6625 MHz)
at Litchfield, Arizona)

DIAMOND BACK YARD DESIGN)

File No. A018697

To operate a Business Radio Service Trunked)
Station WPMF933 on Frequency 936.6625 MHz)
at Litchfield, Arizona)

DAVID FRANK COMPANY, INC.)

File No. A018699

To operate a Business Radio Service Trunked)
Station WPMF937 on Frequency 936.6625 MHz)
at Litchfield, Arizona)

CROMALLOY OF ARIZONA, INC.)

File No. A018700

To operate a Business Radio Service Trunked)
Station, WPMF941 on Frequency 936.6625)
MHz at Litchfield, Arizona)

BLACK ROSE INVESTIGATIONS,)	
To operate a Business Radio Service Trunked)	File No. A018701
Station WMPF943 on Frequency 936.6625 MHz)	
at Litchfield, Arizona)	
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BILL LUKE DODGE, INC.)	File No. A018702
To operate a Business Radio Service Trunked)	
Station WMPF946 on Frequency 936.6625 MHz)	
at Litchfield, Arizona)	
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ARIZONA CAREER & TECHNOLOGY)	File No. A018703
To operate a Business Radio Service Trunked)	
Station WMPF948 on Frequency 936.6625 MHz)	
at Litchfield, Arizona)	
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SATURN OF GLENDALE)	File No. A018712
To operate a Business Radio Service Trunked)	
Station WMPF981 on Frequency 936.6625 MHz)	
at Litchfield, Arizona)	
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WESTERN AIR CONDITIONING & HEATING)	File No. A018711
To operate a Business Radio Service Trunked)	
Station WMPF984 on Frequency 936.6625 MHz)	
at Litchfield, Arizona)	
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VALLEY TOWING & LIMOUSINE SERVICE)	File No. A018639
To operate a Business Radio Service Trunked)	
Station WMPF996 on Frequency 936.6625 MHz)	
at Litchfield, Arizona)	
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WILMA LOMBARDI)	File No. A018710
To operate a Business Radio Service Trunked)	
Station WMPF997 on Frequency 936.6625 MHz)	
at Litchfield, Arizona)	
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PHOENIX BAPTIST HOSPITAL & MEDICAL CENTER)
) File No. A018716
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 To operate a Business Radio Service Trunked)
 Station WMPF998 on Frequency 936.6625 MHz)
 at Litchfield, Arizona)
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 REED EXPRESS DELIVERY) File No. A018713
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 To operate a Business Radio Service Trunked)
 Station WMPG202 on Frequency 936.6625 MHz)
 at Litchfield, Arizona)
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 PRO GRADE SERVICES) File No. A018714
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 To operate a Business Radio Service Trunked)
 Station WMPG208 on Frequency 936.6625 MHz)
 at Litchfield, Arizona)
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 EXPEDITE HANDLERS, INC.) File No. A019839
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 To operate a Business Radio Service Trunked)
 Station WMPI933 on Frequency 936.6625 MHz at)
 Litchfield, Arizona)
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 PHOENIX ECONOMY SUPPLY OF ARIZONA) File No. A018715
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 To operate a Business Radio Service Trunked)
 Station WMPG209 on Frequency 936.6625 MHz)
 at Litchfield, Arizona)
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 WOUDENBERG ENTERPRISES) File No. A023559
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 To operate a Business Radio Service Trunked)
 Station WPML205 on Frequency 936.6625 MHz)
 at Litchfield, Arizona))
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 SUPERSHUTTLE OF ARIZONA) File No. A023560
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 To operate a Business Radio Service Trunked)
 Station WPML227 on Frequency 936.6625 MHz)
 at Litchfield, Arizona)

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SECURITY ROOFING AND CONSTRUCTION)	File No. A023561
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To operate a Business Radio Service Trunked)	
Station WPML233 on Frequency 936.6625 MHz)	
at Litchfield, Arizona)	
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ARROWHEAD TOWING)	D111794
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To operate a Business Radio Service Trunked)	
Station WPML558 on Frequency 936.6625 MHz)	
at Litchfield, Arizona)	
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BOBS BARRICADE, INC.)	D111791
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To operate a Business Radio Service Trunked)	
Station WPML562 on Frequency 936.6625 MHz)	
at Litchfield, Arizona)	
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AKAI SECURITY, INC.)	D111792
)	
To operate a Business Radio Service Trunked)	
Station WPML205 on Frequency 936.6625 MHz)	
at Litchfield, Arizona)	

ORDER ON RECONSIDERATION

Adopted: February 24, 2000

Released: February 29, 2000

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

I. INTRODUCTION

1. In this *Order on Reconsideration*, we resolve four petitions for reconsideration (collectively, petitions) filed by Rural Metro Corporation (Rural Metro).¹ For the following reasons, we deny the petitions and affirm the decisions of the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau (Bureau) denying Rural Metro's waiver request and granting the above-captioned applications.

¹ Rural Metro Petition for Reconsideration filed on Mar. 9, 1998 (Petition I); Rural Metro Petition for Reconsideration filed on Aug. 7, 1998 (Petition II); Rural Metro Petition for Reconsideration filed on Aug. 10, 1998 (Petition III); Rural Metro Petition for Reconsideration filed on September 30, 1998 (Petition IV).

II. BACKGROUND

2. Rural Metro was granted a new Conventional Business license for frequency 936.6625 MHz at Usery Mountain, Arizona on May 10, 1996. Rural Metro was assigned call sign KNNR223 for this station. On February 24, 1997, the Bureau's Consumer Assistance Branch requested information from Rural Metro concerning the construction and operational status of Station KNNR223.² On June 24, 1997, Rural Metro responded that it constructed and commenced operation of station KNNR223 on June 10, 1997.³ On July 2, 1997, the Bureau's Informal Complaints and Public Inquiry Branch requested confirmation that Rural Metro did not place Station KNNR223 in operation until June 10, 1997.⁴

3. On July 17, 1997, Rural Metro notified the Bureau's Informal Complaints and Public Inquiry Branch that Station KNNR223 was placed in operation on June 10, 1997.⁵ In addition, Rural Metro requested to retain the authorization for Station KNNR223.⁶ Rural Metro explained that it was unaware of its authority for Station KNNR223 "until well into the term of the license."⁷ Rural Metro asserts that although it took immediate steps to construct and operate the system, it was unable to complete construction in a timely manner.⁸ Rural Metro further stated that it provides communications for public safety entities of the City of Scottsdale, Arizona.⁹ Specifically, Rural Metro indicates that it provides communications for the Scottsdale Fire Department and the Enhanced 911 center for Maricopa County.¹⁰

4. On October 7, 1997, the Branch notified Rural Metro that it was in violation of the Commission's Rules because it failed to place its station in operation within eight months from the date of the license grant and could not provide a commercial service to third parties for profit as a private mobile radio services licensee.¹¹ On November 14, 1997, Rural Metro requested a waiver of Section 90.633 of the

² Letter from Kathryn M. Garland, Chief, Consumer Assistance Branch, Customer Service Division to Mike Enos, Rural Metro Corp. on Feb. 24, 1997 (Status of Operation Inquiry).

³ *Id.* Rural Metro completed the form letter and returned it to the Commission, dated June 18, 1997.

⁴ Letter from Sharon Bowers, Acting Chief, Informal Complaints & Public Inquiry Branch, Wireless Telecommunications Bureau to Rural Metro Corp., Attn. Mike Enos, July 2, 1997.

⁵ Letter from Kathleen A. Kaercher, Brown & Schwanninger, counsel to Rural Metro Corp to Susan A. Miller, , Informal Complaints & Public Inquiry Branch, Wireless Telecommunications Bureau, July 17, 1997 (July 17 Letter).

⁶ *Id.* at 1.

⁷ *Id.* at 2; *see also* Petition I at 2.

⁸ July 17 Letter at 1; *see also* Petition I at 2. Rural Metro states that it was unaware of the licensing of Station KNNR223 until after the deadline for constructing the station had passed. Petition IV at 2.

⁹ July 17 Letter at 1.

¹⁰ *Id.*

¹¹ Letter from Michael Regiec, Acting Chief, Licensing and Technical Branch, to Rural Metro Corp., ATTN: Mike Enos, Oct. 7, 1997.

Commission's Rules.¹² On February 5, 1998, the Branch effectively denied Rural Metro's request by canceling the license for Station KNNR223 for failure to construct.¹³ On February 12, 1998, the Branch deleted Station KNNR223 from the Commission's database.

5. On March 9, 1998, Rural Metro requested reconsideration of the cancellation of its license for Station KNNR223.¹⁴ In the alternative, Rural Metro requested that the effectiveness of the Branch's decision be stayed and that it be permitted to assign the license for Station KNNR223 to the City of Scottsdale or a related entity.¹⁵ On March 16, 1998, Rural Metro notified the Licensing Division that it is a "fire department which serves the fire safety needs of the City of Scottsdale."¹⁶ Rural Metro further stated that it was not using its license to "provide service to a third party;" rather it was providing emergency services on a contract basis to the City of Scottsdale.¹⁷ As a result, Rural Metro requested to retain the license for Station KNNR223.¹⁸

6. On July 9, 1998, eight applications for Business Radio licenses were granted for frequency 936.6625 in Litchfield, Arizona.¹⁹ On August 7, 1998, Rural Metro sought reconsideration of the license grants and dismissal of the applications.²⁰ On July 10, 1998, thirteen applications for Business Radio licenses were granted for frequency 936.6625 in Litchfield, Arizona.²¹ On July 13, 1998, nine applications for Business

¹² Rural Metro Request for Waiver filed Nov. 14, 1997.

¹³ Letter from Michael J. Regiec, Acting Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division to Kathleen A. Kaercher, Brown and Schwaninger, counsel to Rural Metro, dated Feb. 5, 1998.

¹⁴ Petition I.

¹⁵ *Id.* at 5.

¹⁶ Rural Metro Supplement to Petition for Reconsideration filed Mar. 16, 1998.

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ Amy Zak & Associates (ZAK) call sign WPMF777, File No. A018704; American Industrial Maintenance (AIM), call sign WPMF782, File No. A018705; Ace Reprographics, Inc. (Ace), call sign WPMF786, File No. A018706; Carefree Homes (Carefree), call sign WPMF791, File No. A018707; CEI-Clola Enterprises, Inc. (CEI-Clola), call sign WPMF793, File No. A018708; Blucor Contracting, Inc. (Blucor), call sign WPMF800, File No. A018709; Northland Trucking, call sign WPMF901, File No. A018689; Noah Webster Basic School, call sign WPMF907, File No. A018690.

²⁰ Petition II at 4.

²¹ Mesa Verde Landscape Co., call sign WPMF922, File No. A018691; Magna Electric Contracting Co., call sign WPMF923, File No. A018693; Lucas Ojeda, call sign WPMF924, File No. A018693; Huntwood Industries, call sign WPMF925, File No. A018694; Healthcor, call sign WPMF928, File No. A018695; DVC Construction., call sign WPMF929, File No. A018696; Diamond Mechanical Co., call sign WPMF930, File No. A018697; Diamond Back Yard Design, call sign WPMF933, File No. A018697; David Frank Company, Inc., call sign WPMF937, File No. A018699; Cromalloy of Arizona, Inc., call sign WPMF941, File No. A018700; Black Rose Investigations, call sign WPMF943, File No. A018701; Bill Luke Dodge, Inc., call sign WPMF946, File No. A018702, Arizona Career & Technology, call sign WPMF948, File No. A018703, Phoenix Economy Supply of (continued....)

Radio licenses were granted for frequency 936.6625 in Litchfield, Arizona.²² On August 7, 1998, one application for a Business Radio license was granted for frequency 936.6625 in Litchfield, Arizona.²³ On August 10, 1998, Rural Metro sought reconsideration of the grant of licenses for frequency 936.6625 MHz in Litchfield, Arizona from July 13, 1998 through August 10, 1998 and the dismissal of the applications.²⁴ Between August 31, 1998 and September 4, 1998, six applications were granted for frequency 936.6625 in Litchfield, Arizona.²⁵ On September 30, 1998, Rural sought reconsideration of the grant of licenses for frequency 936.6625 in Lichtfield, Arizona between August 31, 1998 and September 4, 1998.²⁶

III. DISCUSSION

7. Rural Metro requests reconsideration of the Branch determination that its license cancelled automatically.²⁷ In 1997, section 90.633(c) of the Commission's Rules required licensees of conventional systems to place their authorized facilities in operation not later than eight months after the date of grant of the license for the system.²⁸ The license for Station KNNR223 was granted on May 10, 1996, thus the station was required to be placed in operation no later than January 10, 1997. Clearly, Rural Metro did not place Station KNNR223 into operation within eight months. In fact, Rural Metro itself indicates that it did not place Station KNNR223 into operation until over a year after the grant of the Station's license. When construction is not timely completed, the authorization cancels automatically and must be returned to the Commission.²⁹ Even if the license is not returned, it is still cancelled.³⁰ Thus, Rural Metro's license cancelled due to its failure to timely construct the authorized facilities.

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Arizona, call sign WPMG209, File No. A018715; Phoenix Baptist Hospital & Medical Center, call sign WPMF998, File No. A018716.

²² Saturn of Glendale, call sign WMPF981, File No. A018712; Western Air Conditioning and Heating, call sign WMPF984, File No. A018711; Valley Towing & Limousine Service, call sign WMPF996, File No. A018639; Wilma Lombardi, call sign WMPF997, File No. A018710; Phoenix Baptist Hospital & Medical Center, call sign WMPF997, File No. A018716; Reed Express Delivery, call sign WMPG202, File No. A018713; Pro Grade Services, call sign WMPG208, File No. A018714.

²³ Expedite Handlers, Inc., call sign WMPI933, File No. A019839.

²⁴ Petition III at 7. An Opposition to Petition III was filed by Zak, AIM, Ace, Carefree, CEI-Clola, and Blucor (jointly respondents). See Respondents Opposition to Petition for Reconsideration filed on Aug. 20, 1998.

²⁵ Woudenberg Enterprises, call sign WPML205, File No. A023559; Supershuttle of Arizona, call sign WPML227, File No. A023560; Security Roofing and Construction, call sign WPML233, File No. A023561; Arrowhead Towing, call sign WPML233, File No. D111794; Bobs Barricade, Inc., call sign WPML562, File No. D111791; Akai Security, Inc., call sign WPML564, File No. D111792.

²⁶ Petition IV.

²⁷ Petition I at 1.

²⁸ 47 C.F.R. § 90.633(c) (1997).

²⁹ See Amendment of Part 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, PR Docket No. 90-481, 5 FCC Rcd. 6401 (1990).

³⁰ *Id.* at 6408 n.10.

8. Further, the Commission has determined that a licensee who seeks an extension of time to construct must file its waiver request prior to the cancellation of its license because the license cancels at the end of the original construction deadline.³¹ In this proceeding, Rural Metro did not request a waiver of its construction deadline until November 14, 1997. By such date, Rural Metro's license already had automatically cancelled on January 10, 1997. Consequently, we find that the Branch properly denied Rural Metro's waiver request.

9. In addition, Rural Metro asserts that the public interest will be served by allowing it to retain the license for station KNNR223.³² Although Rural Metro asserts that it provides communications for public safety entities of the City of Scottsdale, Arizona, Rural Metro fails to demonstrate that unique circumstances are involved or that there is no reasonable alternative solution within the existing rules in support of its waiver request.³³ Further, the purpose of the eight-month construction requirement is to ensure that licensees actually use the spectrum that they are assigned.³⁴ Based on the record in this proceeding, it appears that this spectrum laid fallow from May 10, 1996, when Rural Metro received its grant, until June 10, 1997, when Rural Metro finally constructed its facilities.

10. Rural Metro also objects to the deletion of Station KNNR223 from the licensing database while its petition for reconsideration was pending.³⁵ We are not persuaded by this argument. A stay of an action pending the disposition of a petition for reconsideration lies within the discretion of the delegated authority.³⁶ In this context, the Branch decided not to stay the effectiveness of its decision. Rural Metro has not persuaded us that the Branch's decision was improper.

11. By deleting Station KNNR223 from the licensing database, the subject frequencies became available for assignment to other applicants. As a result, thirty-seven licenses on the subject frequencies in the Lichtfield, Arizona were granted between July 9, 1998 and September 4, 1998. Rural Metro argues that its petitions should have been resolved before the subject frequencies were made available for assignment. However, as previously stated, Section 1.102 of the Commission's Rules gives the Branch the discretion to stay an action. Because the Branch did not order a stay of the denial of Rural Metro's waiver request, the deletion of Station KNNR223 from the licensing database was proper. Consequently, the grant of the licenses was proper. Accordingly, we affirm the grant of the licenses issued between July 9, 1998 and September 4, 1998 for frequency 936.6625 MHz in Lichtfield, Arizona and deny the petitions.

³¹ Cf. Daniel R. Goodman, Receiver; Dr. Robert Chan, *Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd. 21,944, 21,972 & n.185 (1998).

³² July 17 Letter at 1.

³³ 47 C.F.R. § 90.151 (1997).

³⁴ See Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, Report and Order, RM-6910, 6 FCC Rcd. 7297, 7299 ¶ 8 (1991).

³⁵ Rural Metro Reply to Opposition to Petition II filed on Sept. 2, 1998.

³⁶ 47 C.F.R. § 1.102(b)(2).

IV. ORDERING CLAUSES

9. IT IS ORDERED, pursuant to Sections 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, that the petition for reconsideration filed by Rural Metro Corporation on March 8, 1998, IS DENIED.

10. IT IS FURTHER ORDERED, pursuant to Sections 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, that the petition for reconsideration filed by Rural Metro Corporation on August 7, 1998, IS DENIED.

11. IT IS FURTHER ORDERED, pursuant to Sections 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, that the petition for reconsideration filed by Rural Metro Corporation on August 10, 1998, IS DENIED.

12. IT IS FURTHER ORDERED, pursuant to Sections 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, that the petition for reconsideration filed by Rural Metro Corporation on September 30, 1998, IS DENIED.

13. 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