

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

In the Matter of)
)
VALLEY INDUSTRIAL COMMUNICATIONS,) FCC File No. A023000
INC.)
)
Petition for Reconsideration of Grant of License)
for Station WPPV640, Redding, California)

ORDER ON RECONSIDERATION

Adopted: August 7, 2000

Released: August 8, 2000

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

1. Introduction. We have before us a petition submitted by Valley Industrial Communications, Inc. (Valley Industrial) requesting reconsideration of a decision by the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) regarding the grant of an Industrial/Business Radio Service license to Valley Industrial for Station WPPV640, Redding, California. For the reasons stated below, the petition is dismissed.

2. Background. On March 24, 1999, Valley Industrial applied for twenty-eight 800 MHz Industrial/Business frequency pairs. On February 1, 2000, the Branch partially granted Valley Industrial's application, authorizing ten channel pairs under Call Sign WPPV640. The Branch premised its partial grant on Section 90.187(e) of the Commission's Rules which limits applicants to ten trunked channels per application. Valley Industrial requested reconsideration of this partial grant in a March 9, 2000 letter to the Chief of the Branch, addressed to the FCC's Gettysburg, Pennsylvania location.

3. Section 405 of the Communications Act, as amended (Act), sets forth the requirements that a petitioner must satisfy before we may consider a petition for reconsideration. Section 405(a) of the Act, as implemented by Section 1.106(f) of the Commission's Rules, requires a petition for reconsideration to be filed within thirty days from the release date of the Commission's action. Computation of the thirty-day

1 Letter dated March 9, 2000, from Eric Marler, Valley Industrial Communications, Inc. to Mary Shultz, Chief, Licensing And Technical Analysis Branch, Public Safety and Private Wireless Division.

2 Letter dated March 24, 1999, from Eric Marler, President, Valley Industrial Communications, Inc. to FCC.

3 See 47 C.F.R. § 90.187(e). See also Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Third Memorandum Opinion and Order, PR Docket No. 92-235, 14 FCC Rcd 10922 (1999) (Third MO&O). The Branch also cited Section 90.35(e) of the Commission's Rules, which, absent a showing of need, limits applicants to one frequency pair. See 47 C.F.R. § 90.35(e).

4 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

period is determined in accordance with Section 1.4 of the Commission's Rules.⁵ As stated above, the subject application was granted on February 1, 2000. Thus, pursuant to Section 1.4(b)(5) of the Commission's Rules, Tuesday, February 1, 2000 is the day to be used in the computation of the thirty-day period.⁶ Therefore, the first day of the thirty-day period was February 2, 2000, and the last day for filing a timely petition for reconsideration was March 2, 2000.

4. The Commission received the petition on March 10, 2000, at the Commission's Gettysburg, Pennsylvania office. Therefore, we find that the petition was filed late.⁷ Moreover, we note that Valley Industrial failed to file a request for waiver to submit a reconsideration petition outside of the thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Act.⁸ The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.⁹ Consequently, absent a waiver, we conclude that Valley Industrial's request should be dismissed as untimely filed.¹⁰

⁵ 47 C.F.R. § 1.4.

⁶ Where a non-rulemaking document is neither published in the Federal Register nor released, and where a public notice is not released, the date appearing on the document mailed to the persons affected by the action is the day to be used in the computation of the thirty-day period. 47 C.F.R. § 1.4(b)(5). In this instance, that would be the date appearing on the station license.

⁷ In addition, we note that the petition was filed in the wrong location. The Commission's Rules require that petitions for reconsideration be filed with the Office of the Secretary in Washington, D.C., 47 C.F.R. § 1.106(i), and warn persons filing documents with the Commission that filings submitted to the wrong location will not be processed. 47 C.F.R. § 0.401; *see also* 47 C.F.R. § 1.7 ("documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission"). Thus, even if the petition were timely, it would be subject to dismissal as improperly filed. *See* In the Matter of Memorandum of Agreement Between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080, 5081 ¶ 3 (WTB 1999) (*Elkins*); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782, 2784-85 ¶ 9 (WTB PSPWD 1999), *aff'd*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000).

⁸ *See Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). *See also* Petition for Amendment of the Commission's Rules to Establish First and Second Class Radiotelephone Operator Licenses, *Order*, 10 FCC Rcd 3196 (1995).

⁹ *See, e.g.,* Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975); *Elkins*, 14 FCC Rcd at 5081 ¶ 3.

¹⁰ Moreover, we note that the Branch properly limited Valley Industrial to ten channel pairs. In the *Third MO&O*, the Commission imposed a limit upon the number of trunked channels that an applicant may apply for to allow for system growth while minimizing "warehousing" of shared private land mobile radio spectrum. *See Third MO&O*, 14 FCC Rcd 10922 at 10930-10931 ¶ 18. In neither its initial application nor its reconsideration request does Valley Industrial justify a waiver of this limitation, now codified in Section 90.187(e), 47 C.F.R. § 90.187(e). Under Section 1.925(b)(3) of the Commission's Rules, we may grant a request for waiver (a) when the underlying purpose of the rule would not be served by application to the instant case and a waiver is in the public interest; or (b) when in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. *See* 47 C.F.R. § 1.925(b)(3). Valley Industrial asserts that it needs twenty-eight channels to build out a narrowband trunking system which would support its current subscriber base of over five hundred users, to replace its existing systems that will be displaced as a result of the 800 MHz Specialized Mobile Radio Service (continued....)

5. Accordingly, IT IS ORDERED that, 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, the petition for reconsideration filed by Valley Industrial Communications, Inc., on March 10, 2000 IS DISMISSED.

6. 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

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auction, and to allow for future growth. We do not believe that this explanation alone provides sufficient justification to warrant a waiver of Section 90.187(e). We note that Valley Industrial will be able to request additional channels once the first ten are placed in operation. See 47 C.F.R. § 90.187(e).