

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

In the Matter of)	
)	
CUMULOUS COMMUNICATIONS)	FCC File No. A038480
CORPORATION)	
)	
Petition for Reconsideration of Grant of License)	
for Station WPPB889, Vacaville, California)	

ORDER ON RECONSIDERATION

Adopted: November 6, 2000

Released: November 8, 2000

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

1. *Introduction.* We have before us a petition submitted by GI Trucking Company (GI) requesting reconsideration of a decision by the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) regarding the grant of a Trunked Industrial/Business Radio Service license to Cumulous Communications Corporation (Cumulous) for Station WPPB889, Vacaville, California.¹ For the reasons stated below, the Petition is dismissed.

2. *Background.* On May 19, 1999, Cumulous filed an application for license for frequencies in the 450-470 MHz band (Industrial/Business Radio Service).² On October 13, 1999, the Branch granted Cumulous's application under Call Sign WPPB889. GI's Petition requested reconsideration of this grant, claiming that WPPB889 unlawfully interferes with GI's co-channel station WPGN723.³ The Petition was filed at the FCC's Gettysburg, Pennsylvania location on May 8, 2000.⁴

3. *Discussion.* Section 405 of the Communications Act of 1934, as amended (Act), and Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days from the date of public notice of the Commission's action.⁵ The date of public notice is determined in accordance with Section 1.4 of the Commission's Rules.⁶ In this case, the date of public notice of the Commission's action is October 13, 1999, the date the subject licensing action was taken,

¹ Letter dated May 2, 2000, from Patrick Lynch, GI Trucking Company to Mary Shultz, Chief, Licensing And Technical Analysis Branch, Public Safety and Private Wireless Division (Petition).

² Application File No. A038480.

³ Letter at 1.

⁴ *Id.*

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

⁶ 47 C.F.R. § 1.4.

because the grant to Cumulous was not published in the Federal Register, released, or placed on public notice.⁷ Thus, pursuant to Section 1.4(b)(5) of the Commission's Rules, the last day for filing a timely petition for reconsideration was November 12, 1999.

4. The Commission received the Petition on May 8, 2000, almost six months past the filing deadline. Therefore, we find that the Petition was untimely.⁸ Moreover, we note that GI failed to file a request for waiver to submit its Petition outside of the thirty-day filing period for filing petitions for reconsideration as specified in Section 405(a) of the Act and Section 1.106 of the Commission's Rules.⁹ The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹⁰ Consequently, absent a waiver, we conclude that GI's Petition should be dismissed as untimely filed.

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 GI Trucking Company on May 8, 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

⁷ See 47 C.F.R. § 1.4(b)(5).

⁸ 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). See also *Petition for Reconsideration Filing Requirements*, Public Notice, DA 00-2252 (WTB rel. Oct. 11, 2000).

⁹ 47 C.F.R. § 1.106; 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).

¹⁰ 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.