

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

In the Matter of Application of)
)
ENTERGY SERVICES, INC.) FCC File No. D144705
)
To Operate Industrial Land Transportation Station)
WPLZ380 in the Beaumont, Texas Area)

ORDER ON RECONSIDERATION

Adopted: February 15, 2002

Released: February 19, 2002

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

I. INTRODUCTION

1. On February 23, 2001, Entergy Services, Inc. (Entergy) filed a petition for reconsideration relating to Station WPLZ380, an 800 MHz Industrial/Land Transportation System operating in the Beaumont, Texas area.¹ Entergy's petition seeks reconsideration of the January 25, 2001 deletion of five frequencies from its authorization to operate Station WPLZ380.² For the reasons discussed below, we deny the petition.

II. BACKGROUND

2. Entergy's Station WPLZ380 was originally authorized to operate on eleven frequencies in the 800 MHz band.³ On June 21, 2000, the Industrial Telecommunications Association (ITA), a certified frequency coordinator, filed a modification application on behalf of Entergy, seeking the addition of five frequencies to Station WPLZ380's authorization.⁴ The June 2000 application listed sixteen frequencies (the eleven originally authorized frequencies, plus the five frequencies requested in the June 2000 application). On July 21, 2000, ITA filed another modification application on behalf of Entergy, seeking to add frequency 855.5875 MHz to Station WPLZ380's authorization.⁵ The July 2000 application listed twelve frequencies (the eleven authorized frequencies, plus the one frequency requested

¹ Petition for Reconsideration (filed Feb. 23, 2001) (Petition).

² Entergy seeks reinstatement of frequencies 851.7125, 851.9875, 852.7125, 853.2875 and 853.4375 MHz to its authorization to operate Station WPLZ380.

³ Station WPLZ380 is a private land mobile radio system, which is covered by a five-year "slow growth" authorization, issued by the FCC on March 17, 1999. The station authorization originally allowed Station WPLZ380 to operate on frequencies 855.0875, 855.1125, 855.1375, 855.4125, 855.4375, 855.5125, 855.6125, 855.6625, 855.8625, 855.8875 and 857.8375 MHz.

⁴ See FCC Application File No. D143059 (filed June 21, 2000) (June 2000 application).

⁵ See FCC Application File No. D144706 (filed July 21, 2000) (July 2000 application).

in the July 2000 application that was still pending). At the time the July 2000 application was filed, the June 2000 application was still pending. On September 21, 2000, the June 2000 application was granted, authorizing Entergy to operate Station WPLZ380 on sixteen frequencies (the original eleven frequencies, plus the five frequencies requested in the June 2000 application).⁶

3. On October 13, 2000, the July 2000 application was returned to Entergy with a request for additional construction information.⁷ Entergy provided the requested construction information on November 13, 2000.⁸ On the same date, Entergy filed an amendment to the July 2000 application.⁹ The November 2000 amendment specified the original eleven frequencies associated with Station WPLZ380, as well as the frequency requested by Entergy in the July 2000 pending application.¹⁰ The November 2000 amendment did not specify the five frequencies granted to Entergy on September 21, 2000¹¹ and did not indicate that Entergy sought to retain those five frequencies. The November 2000 amendment was granted on January 25, 2001, authorizing Entergy to operate on the twelve frequencies requested.¹² On February 23, 2001, Entergy filed the instant petition, seeking reinstatement of the five frequencies authorized to Station WPLZ380 on September 21, 2000, but deleted from the authorization granted on January 25, 2001.¹³

III. DISCUSSION

4. Entergy argues that the January 25, 2001 grant erroneously omitted the five frequencies awarded to Station WPLZ380 on September 21, 2000.¹⁴ Entergy argues that any erroneous omission of the five frequencies on the January 25, 2001, grant was made by the FCC, and was “the result of an administrative error related to the simultaneous processing of two applications” for the same station.¹⁵ Entergy further argues that the subject five frequencies were not listed in its July 2000 application, because Entergy had submitted its request to ITA for the frequency associated with the July 2000 application, *prior* to submitting a request to ITA for the five frequencies associated with the June 2000 application. Entergy alleges that additional confusion relating to this matter may be attributed to ITA’s failure to file Entergy’s applications with the FCC in the same order in which Entergy filed the applications with ITA.¹⁶ Entergy further argues that because it had not requested deletion of the five

⁶ See June 2000 application (filed June 21, 2000, and granted Sept. 21, 2000).

⁷ See Application Return Notice for the July 2000 application (dated Oct. 13, 2000).

⁸ See Response to Application Return Notice for the July 2000 application (filed Nov. 13, 2000).

⁹ See Amendment to the July 2000 application (filed Nov. 13, 2000) (November 2000 amendment).

¹⁰ The July 2000 application requested frequency 855.5875 MHz.

¹¹ The five frequencies granted to Entergy on September 21, 2000 were: 851.7125, 851.9875, 852.7125, 853.2875 and 853.4375 MHz.

¹² See FCC File No. D144705 (granted January 25, 2001).

¹³ See Petition.

¹⁴ *Id.* at 1.

¹⁵ *Id.*

¹⁶ *Id.* at 2 n.2.

subject frequencies in “Schedule D” of its July 2000 application, Commission staff should not have inferred that Entergy intended to delete the five frequencies.¹⁷

5. We deny Entergy’s Petition. The deletion of the subject five frequencies from Station WPLZ380’s authorization was proper because Entergy’s November 2000 amendment did not express a clear intent to retain the five frequencies in question. Entergy failed to specify the five frequencies in its November 2000 amendment. Section 1.923(a) of the Commission’s Rules states that applications must contain all requested information.¹⁸ The November 2000 amendment application failed to list frequencies 851.7125, 851.9875, 852.7125, 853.2875 and 853.4375 MHz, although the frequencies had been authorized for Entergy’s use under the authorization for Station WPLZ380 almost two months prior. In determining the nature of Entergy’s proposal, Commission staff properly limited its consideration to the information contained in the application.¹⁹ Moreover, the fact that Entergy’s response to the return notice mentioned that Entergy was currently licensed for the five channels²⁰ is not necessarily inconsistent with the November 2000 amendment because Entergy did not specifically state that it intended to keep the five frequencies.

6. We also reject Entergy’s argument that the deletion of the five frequencies from Station WPLZ380’s authorization was an administrative or clerical error.²¹ Administrative agencies have the authority to correct inadvertent, ministerial errors.²² Clerical or administrative errors are those types of errors that underlie or occur in the process of taking an action, such as a mathematical miscalculation,²³ a license that omits or misstates a frequency,²⁴ or a document that omits an intended party or provision.²⁵ In this case, there was no administrative or clerical error by Commission staff. The November 2000 amendment was processed in accordance with the Commission’s application processing procedures.

¹⁷ See Petition at 2.

¹⁸ 47 C.F.R. § 1.923(a).

¹⁹ See *DCT Greater Philadelphia, LLC et al.*, 16 FCC Rcd 5706, 5712-13, ¶ 14 (2001) (argument that designation of channel was a typographical error rejected because “there was no unmistakable evidence within the four corners of the application” that there was a typographical error).

²⁰ See Petition at Attachment A.

²¹ Petition at 1.

²² Robert Fetterman d/b/a RF Communications, *Memorandum Opinion and Order (Fetterman)*, 16 FCC Rcd 8221, 8223 (2001) (citing *American Trucking Ass’n v. Frisco Transp. Co.*, 358 U.S. 133, 145-46 (1958) (*American Trucking*); *Chlorine Inst. v. OSHA*, 613 F.2d 120, 123 (5th Cir.), cert. denied, 449 U.S. 826 (1980)).

²³ See ACS PCS LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 23750, 23751 ¶ 1 (1998); see also, e.g., *City of Long Beach v. Department of Energy*, 754 F.2d 379, 387 (Temp. Emer. Ct. App. 1985).

²⁴ See *Fetterman*, 16 FCC Rcd at 8222-8223 ¶¶ 3-5; *Hazle-Tone Communications, Inc., Order*, 13 FCC Rcd 1547, 1552 ¶ 11 (WTB 1997).

²⁵ See *Bell Atlantic-Pennsylvania, Inc., Order*, 13 FCC Rcd 13415, 13416 ¶ 4 (1999); see also, e.g., *Chicano Education and Manpower Services v. U.S. Department of Labor*, 909 F.2d 1320, 1328 (9th Cir. 1990); *American Trucking*, 358 U.S. at 146.

Entergy has not shown that the grant of the application as filed was erroneous.²⁶ In the instant matter, Entergy described its proposal as seeking authorization to operate on only twelve frequencies. Entergy did not mention the other five frequencies in its November 2000 amendment. Entergy received a license for the twelve frequencies that it requested. Therefore, the Commission did not make an administrative or ministerial error.

IV. CONCLUSION AND ORDERING CLAUSE

7. Based upon our review of this matter, we conclude that that Entergy's Petition must be denied because there was no error by Commission staff in this case. Entergy's November 2000 amendment failed to list frequencies 851.7125, 851.9875, 852.7125, 853.2875 and 853.4375 MHz, although Entergy had been authorized to operate on those frequencies two months earlier. Accordingly, we affirm the January 25, 2001 authorization to Entergy.

8. ACCORDINGLY, 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, the petition for reconsideration filed on February 23, 2001 by Entergy Services, Inc. IS DENIED.

9. 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

Barry J. Ohlson
Acting Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

²⁶ See generally Eastern Municipal Water District, *Order on Reconsideration*, 15 FCC Rcd 209 (2001) (applicant failed to describe its requested operations as itinerant (station class "MOI"). Thus, the grant was upheld for authorization to operate mobiles only (station class "MO"), although applicant asserted it meant to describe the requested operations as itinerant).