

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

In the Matter of Application of)
)
WALTER COMMUNICATIONS, INC.)
) File No. 15810-CM-P-83
For a New Multichannel Multipoint Distribution)
Service Station on the E Channel Group,)
Waterbury Connecticut)

ORDER ON RECONSIDERATION

Adopted: August 4, 2003

Released: August 8, 2003

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

1. Introduction. In this Order on Reconsideration, we consider a petition for reconsideration (Petition) filed on June 4, 1993, by Walter Communications, Inc. (Walter).1 Walter seeks reconsideration of the dismissal of the above-captioned application by the Domestic Facilities Division (Division) of the former Common Carrier Bureau on May 5, 1993.2 The subject application proposed a new Multichannel Multipoint Distribution Service (MMDS) station on the E Channel Group at Waterbury, Connecticut. For the reasons stated below, we grant Walter's Petition and reinstate its application.

2. Background. On September 9, 1983, Walter filed the above-captioned application.3 On October 7, 1986, Walter was named the tentative selectee for an MMDS lottery held August 29, 1986, for the Waterbury, Connecticut New England Club Managers Association (NECMA).4 Approximately two years after Walter was named as the tentative selectee, Walter's application was dismissed. On reconsideration, however, the Division on February 17, 1993, reinstated Walter's application nunc pro tunc.5 On May 5, 1993, the Division issued a public notice again dismissing Walter's application.6 It appears that the Division did not issue a letter or other written explanation as to why Walter's application was dismissed.

1 Petition for Reconsideration (filed June 4, 1993) (Petition).

2 See Public Notice released May 5, 1993, dismissing Walter's Application for a New MMDS station on the E Channel Group at Waterbury, Connecticut (File No. 15810-CM-P-83) (Dismissal PN).

3 See File No. 15810-CM-P-83.

4 See Letter from James R. Keegan, Chief, Domestic Facilities Division, Common Carrier Bureau to Walter Communications, Inc., File No. 15810-CM-P-83 (Oct. 7, 1986).

5 See Letter from James R. Keegan, Chief Domestic Facilities Division, Common Carrier Bureau to Walter Merrill, President Walter Communications, Inc., File No. 15810-CM-P-83 (Feb. 17, 1993) (Reinstatement Letter).

6 See Dismissal PN.

3. *Discussion.* Walter explains that upon inquiry to the Commission's staff as to the reason why its application was dismissed, Walter was told that the Commission had erred in holding a lottery for Waterbury and that the proper market for this geographic area is New Haven, Connecticut. Walter argues that the Waterbury NECMA includes New Haven, and thus the Commission acted properly in holding the original Waterbury lottery, but erred in holding a subsequent lottery for New Haven.⁷ Walter argues that its rights are prior and superior to those of a later applicant and therefore its Petition should be granted.⁸

4. Based upon our review of the record available to us, we agree with Walter that its application should be reinstated for two reasons. First, we believe that the Division's failure to provide a written statement of the reasons why Walter's application was dismissed renders that dismissal procedurally infirm.⁹ When an agency dismisses or denies a request for an authorization, it must "articulate a satisfactory explanation for its action."¹⁰ An oral explanation provided informally over the telephone does not comply with that requirement. Second, even if the Commission erred in holding a lottery for the Waterbury, Connecticut NECMA, it is unclear that the Commission's error provides a valid basis for dismissing Walter's application.¹¹ We therefore conclude that Walter's Petition should be granted and its application reinstated.

5. Accordingly IT IS ORDERED, pursuant to Section 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 405(a), Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by Walter Communications, Inc. on June 4, 1993 IS GRANTED.

6. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405(a), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Licensing and Technical Analysis Branch SHALL REINSTATE ANDPROCESS the application filed by Walter Communications, Inc. (File No. 15810-CM-P-83) in accordance with this *Order on Reconsideration* and the applicable Commission Rules.¹²

⁷ Petition at 1-2.

⁸ *Id.* at 2-3.

⁹ See, e.g., Alda Wireless Holdings, Inc. and Wayne State University, *Memorandum Opinion and Order*, 18 FCC Rcd 2572 (WTB PSPWD 2003).

¹⁰ *Adams Telecom, Inc. v. FCC*, 38 F.3d 576, 582 (D.C. Cir. 1994), quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

¹¹ See 47 C.F.R. § 21.902(d)(5) (1983) (stating that applications located near the borders of certain areas will be considered together, but not authorizing dismissal of such applications).

¹² If, after further review, it is determined that Walter's application, as reinstated, does not comply with applicable Commission Rules, the application could be subject to adverse action, including dismissal.

7. 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