

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

In the Matter of)	
)	
Communications and Control, Inc.)	
Request for Extension of Special Temporary)	File No. D026152
Authority and Modification of Authorization of)	
220 MHz System WPCX448)	

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 2003

Released: June 27, 2003

By the Commission:

I. INTRODUCTION

1. This order addresses the most recent application for review filed by Communications and Control, Inc. (CCI) with respect to the cancellation of its above-captioned 220 MHz license.¹ In two prior Commission orders, as well as two orders issued by the Commercial Wireless Division (Division) of the Wireless Telecommunications Bureau (Bureau) pursuant to delegated authority, the Commission has denied CCI's request that the Commission reverse the cancellation of this license. As discussed below, we find that the *CCI AFR* raises no new facts or circumstances that have not been previously considered by the Commission. We affirm the Division's determination in the *2002 Reconsideration Dismissal Order*² and deny CCI's application for review as repetitious.

II. BACKGROUND

2. Much of the history of this case is provided in detail in the *2000 MO&O*,³ the first Commission order regarding this license. On August 11, 1993, the Commission granted CCI a license to operate a 220 MHz facility under call sign WPCX448. While CCI's application identified the transmitter location as Mount Allison, Milpitas, California, the coordinates listed on the application in fact identified a location west of Mount Allison in the Pacific Ocean. The Commission staff was unaware of the discrepancy and granted the license at the specified coordinates.⁴ On February 3, 1995, CCI informed the Commission of this discrepancy, seeking to modify its license to reflect the actual Mount Allison coordinates. Bureau staff, however, determined that these coordinates placed CCI's facility less than 120 kilometers – the required minimum separation – from a co-channel license, call sign WPCX449, that had

¹ Application for Review, filed June 17, 2002 (*CCI AFR*).

² Communications and Control, Inc., *Order*, 17 FCC Rcd 9359 (WTB/CWD 2002) (*2002 Reconsideration Dismissal Order*).

³ Communications and Control, Inc., *Memorandum and Opinion and Order*, 15 FCC Rcd 5428 (2000) (*2000 MO&O*).

⁴ *Id.* at 5429-32 ¶¶ 2-11.

previously been awarded to ComTech Communications (ComTech).⁵ Accordingly, the Bureau denied CCI's application request and ordered CCI to submit its license for cancellation.⁶

3. CCI filed an application for review of the Bureau's decision to cancel CCI's license.⁷ In March 2000, in the *2000 MO&O*, the Commission denied CCI's application and upheld the Bureau's decision with respect to CCI's license.⁸ First, the Commission found that CCI's initial license was void *ab initio* because it was granted as a result of administrative error and would not have been granted had the Commission staff been aware that CCI had specified coordinates over the ocean.⁹ Second, the Commission concluded that even had the correct coordinates been provided in CCI's original application, the application would have been dismissed because it was mutually exclusive with ComTech's application and ComTech's application would have been entitled to grant based on higher filing priority.¹⁰

4. On April 14, 2000, CCI petitioned for reconsideration of the Commission's *2000 MO&O*, pursuant to section 1.106(b)(2).¹¹ CCI argued that the Commission had failed to consider the precedential effect of the *Ann Leggett* case, a Division decision involving another 220 MHz license that had specified incorrect coordinates on an application, issued after CCI had filed its application for review but before the Commission took action.¹² In response, in the *2000 Reconsideration Dismissal Order*, the Division concluded that CCI had not presented any facts or circumstances not previously considered by the Commission.¹³ The Division dismissed CCI's petition as repetitious pursuant to section 1.106(b)(3).¹⁴

5. On August 28, 2000, CCI filed an application for review of the Division's decision.¹⁵ CCI reasserted its argument that the *Ann Leggett* case was "factually indistinguishable" from CCI's case and contended that the Division had failed to explain its finding that CCI's arguments were repetitious.¹⁶ The Commission rejected CCI's arguments and found that the Division's dismissal of CCI's petition for

⁵ *Id.* at 5429 ¶ 4.

⁶ *Id.* at 5431 ¶ 10.

⁷ Application for Review, filed August 12, 1996.

⁸ *2000 MO&O*, 15 FCC Rcd 5428.

⁹ *Id.* at 5431 ¶ 9.

¹⁰ *Id.* ComTech, through its predecessor in interest Kitsap Cellular, had a higher filing priority than CCI because Kitsap Cellular was picked as the 319th application and CCI was picked as the 2777th application in the October 19, 1992 lottery. See FCC Public Notice, "Commission Announces Tentative Selectees for 220-222 MHz Private Land Mobile 'Local' Channels," DA 93-71 (Jan. 26, 1993). See also FCC Public Notice, "Update of Tentative Selectees Identified for 220-222 MHz Private Land Mobile 'Local' Channels," DA 93-287 (Mar. 12, 1993).

¹¹ Petition for Reconsideration, filed April 14, 2000.

¹² *Id.* See In the Matter of Ann Leggett, Request for Modification of Phase I Non-Nationwide 220 MHz License Station WPCV789, New London, Connecticut, *Order*, 15 FCC Rcd 2574 (WTB/CWD 2000) (*Ann Leggett*).

¹³ Communications and Control, Inc., *Memorandum and Opinion and Order*, 15 FCC Rcd 14969 ¶ 2 (WTB/CWD 2000) (*2000 Reconsideration Dismissal Order*). See 47 CFR § 1.106(b)(3) (if a petition for reconsideration of an order denying an application for review fails to rely on new facts or changed circumstances, it may be dismissed by the staff as repetitious).

¹⁴ *Id.*

¹⁵ Application for Review, filed August 28, 2000.

¹⁶ *Id.*

reconsideration was proper.¹⁷ Specifically, the Commission distinguished the underlying facts in *Ann Leggett* from the facts in CCI's case on two separate grounds:

[W]e find that the *Ann Leggett* decision is distinguishable and does not support a different result in CCI's case. In the *Ann Leggett* case, unlike CCI's case, the incorrect coordinates specified in the original application were for a grantable site, and therefore the license was not void *ab initio*. In addition, the modified site in *Ann Leggett* was also grantable because it did not conflict with any other application or license.¹⁸

Having analyzed and determined that different circumstances existed between CCI's case and the *Ann Leggett* case, the Commission concluded that no new issues were raised by CCI's petition warranting further review and denied the application for review.¹⁹

6. On November 19, 2001, CCI filed a petition for reconsideration of the Commission's 2001 *MO&O*, asserting that the Commission had incorrectly concluded that the *Ann Leggett* case did not present new facts or circumstances warranting reconsideration.²⁰ The 2002 *Reconsideration Dismissal Order* determined that CCI's most recent petition for reconsideration again presented no new facts or circumstances providing the basis for further Commission review.²¹ Accordingly, the Division dismissed CCI's petition as repetitious.²²

7. On June 17, 2002, CCI filed the subject application for review. In this most recent request for relief, CCI argues that the Commission erroneously determined that the *Ann Leggett* case did not present new facts or circumstances that would justify a different result than cancellation of CCI's license,²³ and that its arguments in support of that position in the petition for reconsideration should have been considered. As part of its claims, CCI argues that the Division failed in its 2002 *Reconsideration Dismissal Order* to explain why CCI's petition was repetitious.²⁴

III. DISCUSSION

8. The primary issue before us is whether the Division's most recent order dismissing CCI's November 19, 2001 petition for reconsideration as repetitious was proper, or whether CCI's petition for reconsideration raised new facts or circumstances that merited reconsideration of the Commission's 2001 *MO&O*. We find that the Division correctly concluded that no new facts or circumstances were raised.

9. Section 1.106(b)(2) authorizes a petition for reconsideration of a Commission denial of an application for review only if one or more of the following circumstances is met: (1) if the petition "relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters," or (2) if the petition "relies on facts unknown to petitioner until his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have

¹⁷ Communications and Control, Inc., *Memorandum and Opinion and Order*, 16 FCC Rcd 19155 (2001 *MO&O*).

¹⁸ *Id.* at 19156-57 ¶ 6.

¹⁹ *Id.*

²⁰ Petition for Reconsideration, filed November 19, 2001.

²¹ 2002 *Reconsideration Dismissal Order*, 17 FCC Rcd 9359.

²² *Id.*; see 47 C.F.R. § 1.106(b)(3).

²³ *CCI AFR* at 3-7.

²⁴ *Id.* at 2-3.

been learned prior to such opportunity.”²⁵ If the petitioner fails to rely on such new facts or changed circumstances, section 1.106(b)(3) authorizes Commission staff to deny that petition as repetitive.²⁶

10. We agree with the Division’s decision to dismiss CCI’s petition for reconsideration as repetitive pursuant to section 1.106(b)(3) of the Commission’s rules. CCI’s November 19, 2001 petition for reconsideration of the Commission’s 2001 *MO&O* raises no new facts, circumstances, or arguments that have not previously been considered by the Commission. As discussed above, the 2001 *MO&O* expressly rejected CCI’s arguments relating to *Ann Leggett*, determining that that case was factually distinguishable from CCI’s case and provided no basis for revisiting the Commission’s decision to cancel CCI’s license.²⁷ With each successive pleading, CCI has essentially reiterated the same basic points in support of its request for relief, and those claims have already been rejected twice by the Commission. The Commission does not grant reconsideration for the purpose of allowing a petitioner to reiterate arguments already presented.²⁸ This is particularly true where, as here, a petitioner advances arguments that the Commission previously considered and rejected in a prior order. It is settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.²⁹

11. In light of the foregoing, we deny CCI’s Application for Review pursuant to section 1.115(g).³⁰ We also note that the *CCI AFR* suffers from the same fatal deficiencies as the November 2001 petition for reconsideration. The *CCI AFR* attempts to resurrect CCI’s substantive claims for relief in addition to its assertions that its November 2001 petition for reconsideration was not repetitive. CCI, however, again presents no new arguments, no new facts, and no new circumstances that warrant the Commission re-opening the substantive determinations already made in this proceeding.

²⁵ 47 C.F.R. § 1.106(b)(2).

²⁶ 47 C.F.R. § 1.106(b)(3).

²⁷ See discussion in paragraph 5, *supra*.

²⁸ See In the Matter of Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Third Order on Reconsideration of the Report and Order and Memorandum Opinion and Order*, 17 FCC Rcd 8520, 8525 ¶ 15 (2002) (citing Policies Regarding Detrimental Effects of Proposed New Broadcasting Stations on Existing Stations, *Memorandum Opinion and Order*, 4 FCC Rcd 2276 (1989)).

²⁹ See In the Matter of S&L Teen Hospital, *Order on Reconsideration*, 17 FCC Rcd 7899, 7900 ¶ 3 (2002), citing Mandeville Broadcasting Corp. and Infinity Broadcasting of Los Angeles, *Order*, 3 FCC Rcd 1667 (1988); In re Applications of Warren Price Communications, Inc. Bay Shore, New York *et al* for a Construction Permit for a New FM Station on Channel 276 at Bay Shore, New York, *Memorandum Opinion and Order*, 7 FCC Rcd 6850 (1992), citing *WWIZ, Inc.*, 37 FCC 685 (1964), *aff’d sub nom. Lorain Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1964) (“it is well established that reconsideration will not be granted to debate matters upon which we have already deliberated and spoken”). See also In re Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation, *et al.*, *Order on Further Reconsideration*, DA 02-1291, at ¶ 7 (WTB rel. Apr. 28, 2003).

³⁰ 47 C.F.R. § 1.115.

12. Accordingly, IT IS ORDERED that, pursuant to section 5(c)(5) of the Communications Act, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Application for Review filed by Communications and Control, Inc. in the above-captioned proceeding is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary