

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

SEP 30 8 23 AM '03
FCC 03M-41
02633

In the Matter of Application of)	WT Docket No. 03-188
)	
RICHARD A. BURTON)	FCC File No. 0000920745
)	
For General Mobile Radio Service License)	
)	
)	

MEMORANDUM OPINION AND ORDER

Issued: September 26, 2003

Released: September 30, 2003

1. This is a ruling on Joint Motion to Dismiss filed on September 25, 2003, by Richard A. Burton ("Burton") and the Enforcement Bureau ("Bureau").

2. On June 11, 2002, Mr. Burton made application for a new General Mobile Radio Service ("GMRS") license. On August 7, 2003, the Chief, Public Safety and Private Wireless Division Wireless Telecommunications Bureau acting, pursuant to delegated authority, commenced this proceeding. *See Hearing Designation Order*, DA 03-2607, released August 7, 2003 ("*HDO*").

3. Mr. Burton's application must be subjected to a hearing because of substantial and material questions of fact concerning Mr. Burton's character. Those questions arose from criminal convictions involving transmitting radio signals without a license, administrative adjudications which found Mr. Burton unqualified to hold a Commission license, and possible unlicensed operations following his most recent conviction. As a result, the *HDO* designated issues to determine: (a) the effect of his criminal convictions and prior administrative adjudications on the pending application; and (b) whether any unlicensed operations following his October 2000 conviction would effect his qualifications to hold a GMRS license. Based on the evidence adduced, there would be a determination made after hearing and proposed findings as to whether Mr. Burton's captioned application should be granted.

4. By *Order* FCC 03M-32, released August 20, 2003, the case was assigned to the Presiding Judge, setting September 24, 2003, as the date for the first Prehearing Conference. Upon learning that for reasons of health Mr. Burton would be unable to attend the scheduled conference, on September 10, 2003, the Presiding Judge initiated a conference call with Mr. Burton and counsel for the Bureau. Mr. Burton stated that he no longer wanted to prosecute his application and that he had no intention of ever again applying for a GMRS authorization, including the GMRS license sought by the captioned application that is being dismissed here.

5. The Commission's rules [47 C.F.R. § 1.934(c)] permit dismissal of an application that seeks a license in the Wireless Radio Services for failure of the applicant to prosecute. Such dismissals may be without prejudice, particularly under circumstances of poor health which could impair or preclude a hearing, as well as possibly impose a severe hardship on the applicant. Moreover, inasmuch as Mr. Burton has stated that he no longer wishes to prosecute his application and that he has no intention of ever again applying for a license, under the present circumstances, the Bureau and Mr. Burton agree and the Presiding Judge concurs, that the appropriate course of action at this time is a dismissal without prejudice of the captioned application.

6. Mr. Burton has signed the Joint Motion to Dismiss in which he affirms that he understands and acknowledges that such dismissal of his application may not avoid the need to examine his qualifications in an administrative hearing, should he change his mind and apply for another license in the Wireless Radio Services at some point in the future.

7. Mr. Burton further confirms in the Joint Motion to Dismiss that he understands and acknowledges that dismissal of this application will have no effect on any action the Commission may take with respect to unlicensed operations should any have occurred subsequent to his most recent criminal conviction in October 2000.

Rulings

Accordingly, IT IS ORDERED that for the reasons set forth in the parties' Joint Motion to Dismiss, the application of Richard A. Burton (File No. 0000920745) for a new General Mobile Radio Service License IS DISMISSED without prejudice.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION¹



Richard L. Sippel
Chief Administrative Law Judge

¹ Courtesy copies of this Order were e-mailed to Mr. Richard A. Burton and to Mr. James Shook on date of issuance.