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FCC MAIL SECTION

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

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In the Matter of Application of)
RICHARD A. BURTON)
For General Mobile Radio Service License)
WT Docket No. 04-153
DISPATCH
FCC File No. 0001606053

MEMORANDUM OPINION AND ORDER

Issued: May 26, 2004

Released: May 28, 2004

Under consideration is a Motion to Delete Issues, Grant Application and Terminate Proceeding, filed on May 24, 2004, by the Enforcement Bureau.

By *Hearing Designation Order*, DA 04-1045, released April 19, 2004 (“HDO”), the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, acting pursuant to delegated authority, designated for hearing the application of Richard A. Burton (“Mr. Burton”) for a new General Mobile Radio Service license. The HDO stated that Mr. Burton had his amateur license revoked in 1981 for willful and repeated violations of the Commission’s regulations governing the amateur radio service; that Mr. Burton had been convicted on four separate occasions for the unlicensed operation of a radio transmission apparatus in violation of the Communications Act (“Act”); that Mr. Burton had been imprisoned on three separate occasions as a result those convictions; and that Mr. Burton’s application for new amateur radio station and operator licenses were designated for hearing in 1992 based on character qualifications issues arising from the 1981 license revocation and the first two of his four convictions for unlicensed radio operations.¹ HDO at paras. 1-7. Based on this history of repeated violations of the Act and the Commission’s Rules, the HDO concluded that substantial and material questions were raised as to whether Mr. Burton possessed the requisite character qualifications to be a Commission licensee. *Id.* at para. 1. The following issues were therefore specified:

- (a) To determine the effect of the criminal convictions of Richard A. Burton, and the prior administrative adjudications disqualifying Richard A. Burton to hold a license, on his qualifications to be a Commission licensee.
- (b) To determine whether Richard A. Burton has engaged in unlicensed operation of a radio transmission apparatus following his October 2000 conviction, and, if so, the effect of such conduct on his qualifications to be a Commission licensee.
- (c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether Richard A. Burton is qualified to be a Commission licensee.

¹ These applications were ultimately denied by Summary Decision. *Richard A. Burton*, 7 FCC Rcd 5481 (ALJ 1992), *aff’d* 7 FCC Rcd 7272 (Rev. Bd. 1992).

(d) In light of the evidence adduced pursuant to the foregoing issues, to determine whether the captioned application filed by Richard A. Burton should be granted.

Id. at para. 11.

In its Motion to Delete Issues, Grant Application and Terminate Proceeding, the Bureau represents that the *HDO* in this proceeding resulted from a case of mistaken identity. Consequently, the Bureau contends that this hearing should never have been commenced. In support, the Bureau states that the *HDO* assumed that the Richard A. Burton who filed the application at issue here was the same person described in a 2003 *Hearing Designation Order, Richard A. Burton*, 18 FCC Rcd 16301 (WTB 2003) (“2003 *HDO*”). However, the Bureau asserts that information recently provided to the Commission reveals that such is not the case. Specifically, in an affidavit, Richard Allen Burton, the individual whose application is under consideration in this proceeding, swears that he resides in Wyoming, has never resided in California, has never been convicted of any violation of the Communications Act, and has never been sentenced to a penal institution. By contrast, the applicant named in the 2003 *HDO*, Richard Allen Burton, resided in California, had his amateur radio license revoked in 1981, was convicted on four different occasions of violating the Communications Act by transmitting radio signals without a license, and was imprisoned on three separate occasions. *Id.* at 16302-03. Under these circumstances, the Bureau maintains that the issues in this proceeding should be deleted and the captioned application should be granted.

The Bureau’s motion will be granted. Section 1.229(d) of the Commission’s Rules provides that motions to delete issues shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by the affidavit of a person having personal knowledge thereof. In this case, Mr. Burton’s affidavit makes it plain that he is neither the person described in the instant *HDO* nor the one described in the 2003 *HDO*. Moreover, Mr. Burton’s affidavit shows that, unlike his California namesake, he has never been convicted of violating the Communications Act, and has never been sentenced to a penal institution. Inasmuch as the issues specified in the *HDO* in this proceeding were predicated on the mistaken belief that Mr. Burton was the same individual as the one described in the criminal and administrative proceedings discussed in both the instant *HDO* and the 2003 *HDO*, Issues (a) through (d) must be deleted. *Muncie Broadcasting Corp.*, 89 FCC 2d 123, 125-26 (Rev. Bd. 1982) (an issue designated through mistake of fact may properly be deleted); *Post-Newsweek Stations, Florida, Inc.*, 52 FCC 2d 883, 885 (Rev. Bd. 1975) (compelling circumstances warranting the deletion of an issue exist where the Commission, prior to designation, has overlooked or misconstrued pertinent information); *Southern Broadcasting Co.*, 40 FCC 2d 1109, 1113-14 (1973) (issue deleted where clear error was made as to the underlying facts); *New Era Broadcasting Co., Inc.*, 22 FCC 2d 172, 177-78 (Rev. Bd. 1970) (where new factual information is submitted which clearly eliminates the need for resolution of an issue through the hearing process, an issue may be deleted); *Lorain Community Broadcasting Co.*, 5 FCC 2d 808, 809 (Rev. Bd. 1966) (an issue may be deleted where the body designating the matter for hearing made some obvious error). Since no issues remain for resolution at a hearing and Mr. Burton is fully qualified to become a Commission licensee, the captioned application will be granted, and this proceeding will be terminated.

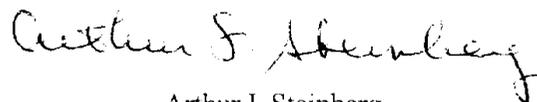
Accordingly, IT IS ORDERED that the Motion to Delete Issues, Grant Application and Terminate Proceeding, filed by the Bureau on May 24, 2004, IS GRANTED.

IT IS FURTHER ORDERED that Issues (a) through (d), specified in paragraph 11 of *Hearing Designation Order*, DA 04-1045, released April 19, 2004, ARE DELETED.

IT IS FURTHER ORDERED that the application of Richard A. Burton for a new General Mobile Radio Service license (FCC File No. 0001606053) IS GRANTED.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Arthur I. Steinberg".

Arthur I. Steinberg
Administrative Law Judge