

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

In the Matter of Application of )
ADF COMMUNICATIONS, INC. ) File No. A007179
Application for a New 470 MHz )
Radio Station in Boston, Massachusetts )

MEMORANDUM OPINION AND ORDER

Adopted: July 18, 2000

Released: July 27, 2000

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Bureau has before it a petition for reconsideration filed by ADF Communications, Inc. (ADF) on November 4, 1999. ADF requests reconsideration of an October 5, 1999, action by the Deputy Chief of the Wireless Telecommunications Bureau (Bureau). In such action, the Bureau granted a petition for reconsideration filed by the Police Department of the City of Revere, Massachusetts (Revere Police Department), and authorized the Revere Police Department to continue use frequency pair 470.8625/473.8625 MHz, in the Boston, Massachusetts area for public safety communications. For the reasons discussed below, we affirm the 1999 MO&O and deny the ADF Petition.

II. BACKGROUND

2. The Revere Police Department held an authorization to operate Station KCZ967 on an exclusive basis on frequency pair 470.8625/473.8625 MHz for a period in excess of twenty years. On August 29, 1997, the station authorization was automatically purged from the FCC's licensing database, because the Bureau had not received a timely-filed renewal application as of that date. On September 9, 1997, the Revere Police Department filed a renewal application with the FCC, followed by a request for special temporary authority (STA) to continue to operate on frequency pair 470.8625/473.8625 MHz. The Bureau granted the STA request, and returned the renewal application to the Revere Police

1Petition for Reconsideration (Nov. 4, 1999) (ADF Petition).

2See In the Matter of Application of ADF Communications, Inc., Memorandum Opinion and Order, 14 FCC Rcd 17,037 (1999) (1999 MO&O).

3See FCC File No. R244488 (filed Sept. 9, 1997).

4See Request for Special Temporary Authority (dated Sept. 8, 1997 & filed Sept. 11, 1997).

5The STA, with subsequent renewals, authorized the Revere Police Department to operate on frequency pair 470.8625/473.8625MHz, under call sign WQO519, until Mar. 19, 2000.

Department, on the basis that it had been filed after the thirty-day reinstatement period had lapsed.<sup>6</sup> The return notification instructed the Revere Police Department to file a FCC Form 600 application to obtain a new station license, and to obtain the necessary frequency coordination associated with such application. ADF subsequently filed an application on September 17, 1997, which was placed on public notice on September 23, 1997.<sup>7</sup> ADF's application proposed to provide commercial radio service in the same geographic area and on the same frequencies as those used by the Revere Police Department for public safety communications. Within thirty days of release of the September 23, 1997, Public Notice, the Revere Police Department filed an application with from the Associated Public Safety Communications Officers, Inc. (APCO)<sup>8</sup> for frequency pair 470.8625/473.8625 MHz, which APCO forwarded to the FCC.<sup>9</sup> The application was later returned to APCO as unacceptable for filing, on the basis that the location proposed by the Revere Police Department was only 2.96 kilometers from the location proposed by ADF.<sup>10</sup>

3. On November 19, 1997, ADF's application was granted under call sign WPLQ307, appearing on a Public Notice dated November 25, 1997, with a thirty-day reconsideration period ending on December 26, 1997.<sup>11</sup> Prior to the expiration of the thirty-day reconsideration period, the Revere Police Department filed its application for a new license directly with the Bureau.<sup>12</sup> Also within the thirty-day reconsideration period, the Revere Police Department filed a letter opposing ADF's authorization and requesting authority to continue operating on the frequency pair.<sup>13</sup> The Bureau released a Public Notice announcing that it was treating the Revere Letter as a petition for reconsideration of the November 19, 1997, action authorizing ADF to operate on the subject frequency.<sup>14</sup> In response to the Revere letter, ADF filed an Opposition and subsequent supplements.<sup>15</sup> To complete the record, the

---

<sup>6</sup>See Renewal Application Return Notice for Private Land Mobile and General Mobile Radio Services to the City of Revere (dated Sept. 12, 1997).

<sup>7</sup>Public Notice, Report Number: 1955, Sept. 23, 1997.

<sup>8</sup>*Id.* Note: APCO is now named the Association of Public Safety Communications Officials-International, Inc.

<sup>9</sup>See FCC File No. A007659, filed by APCO on behalf of the Revere Police Department on Sept. 29, 1997.

<sup>10</sup>See Application Return Notice for the Private Land Mobile Radio Services to APCO (dated Oct. 9, 1997).

<sup>11</sup>Public Notice, Report Number: 1964, Nov. 25, 1997.

<sup>12</sup>See FCC File No. A007659 (filed Dec. 8, 1997).

<sup>13</sup>See Letter to Michael Regiec, Federal Communications Commission, from James V. Russo, former Chief of Police, Revere, MA (dated Dec. 4, 1997) (Revere Letter).

<sup>14</sup>Public Notice, "Wireless Telecommunications Bureau Announces Comment Period on Petition of City of Revere, Massachusetts for Reconsideration of Authorization Granted to ADF Communications, Inc.," DA 98-225 (released Feb. 26, 1998) (Revere Public Notice).

<sup>15</sup>See ADF Opposition, filed on Mar. 13, 1998, and two separate ADF pleadings, both captioned "Supplement to Opposition," filed on Mar. 20, 1998, and Dec. 11, 1998, respectively.

Bureau sent a letter to the Revere Police Department requesting additional information regarding its public safety communications.<sup>16</sup>

4. On October 5, 1999, the Deputy Chief of the Bureau granted the Revere Petition on the basis that the Revere Police Department had explained the public safety need for the subject frequency pair, and demonstrated that unique circumstances were involved; further, the Bureau found that irreparable injury would result if the Revere Police Department were to lose exclusive access to such frequencies.<sup>17</sup> The *1999 MO&O* noted that the record indicated that there were no other public safety frequencies available in the Revere Police Department's geographic area.<sup>18</sup> The Bureau concluded that granting the Revere Petition and reinstating the Revere Police Department's license to operate Station KCZ967 was consistent with the public interest.<sup>19</sup> In fact, the Bureau determined that appreciable and irreparable harm would result if the Revere Police Department, serving a city with a population of 43,000 residents, no longer had exclusive access to the frequency pair it had designated as its primary channel for public safety communications.<sup>20</sup> The *1999 MO&O* additionally noted that all other radio channels licensed to various departments within the City of Revere were inadequate for primary emergency use.<sup>21</sup>

5. On November 4, 1999, ADF filed a petition for reconsideration of the *1999 MO&O*. In response to the ADF Petition, the Revere Police Department indicated that it forwarded two letters to the Bureau, dated May 9, 2000, and June 1, 2000, respectively, in opposition to the ADF Petition.<sup>22</sup> No other pleadings are currently pending before us relating to this matter.

### III. DISCUSSION

6. The ADF Petition does not present any new issues or arguments; rather, it restates previous arguments that ADF set forth in its Opposition to the Revere Letter. Specifically, the ADF Petition reiterates ADF's arguments that (1) the Revere Letter cannot be treated as a petition for reconsideration; (2) service on ADF of the Revere Letter was insufficient; (3) the Bureau failed to inquire into alleged improprieties by the frequency coordinator; and (4) the Revere Police Department had not presented unique circumstances warranting grant of a waiver.<sup>23</sup> We believe that these arguments raised in the ADF Petition were fully addressed in the *1999 MO&O*. For the same reasons stated therein, we believe that the ADF Petition should be denied.

---

<sup>16</sup>See Letter to Richard Villiotte, former Solicitor of the City of Revere, from John J. Borkowski, former Chief, Policy & Rules Branch, Public Safety & Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission (dated Aug. 5, 1998).

<sup>17</sup>*1999 MO&O* at 7.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.* at 7-8.

<sup>20</sup>*Id.* at 8.

<sup>21</sup>*Id.*

<sup>22</sup>See Letters to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Denise DiCarlo, counsel to the Revere Police Department, (dated May 9, 2000, and June 1, 2000). Both letters indicate that ADF was served.

<sup>23</sup>ADF Petition at 7-9.

7. *Procedural Matters.* First, we will discuss the service of the Revere Letter on ADF, and the treatment of the Revere Letter as a petition for reconsideration. We note, as an initial matter, that the Bureau has delegated authority to waive the Commission's procedural rules with respect to pleadings.<sup>24</sup> The Bureau announced its treatment of the Revere Letter as a petition for reconsideration, by releasing the Revere Public Notice on February 26, 1998.<sup>25</sup> The Revere Public Notice stated that although the Revere Letter had not been served on ADF, it nonetheless was submitted to the FCC within thirty days of the Public Notice announcing the grant of ADF's application, authorizing ADF to operate on the subject frequencies under call sign WPLQ307.<sup>26</sup> The Revere Public Notice required the City of Revere to serve a copy of the Revere Letter on ADF, and to file proof of such service in accordance with Section 1.47(g) of the Commission's Rules, within three business days of the date of release of the Public Notice.<sup>27</sup>

8. As explained in the 1999 *MO&O*, after receiving the Revere Letter and performing a balancing test of public interest considerations versus any procedural shortcomings on the part of the Revere Police Department, the Bureau released the Revere Public Notice, which made the full text of the Revere Letter and its attachments available for viewing to the public, and provided interested persons with an opportunity to comment on the Revere Letter.<sup>28</sup> The Revere Public Notice also provided ADF with an opportunity to oppose the Revere Letter, protecting ADF's due process rights.<sup>29</sup> ADF argues that it was deprived of its rights, since it had only received a "portion" of the Revere Letter.<sup>30</sup> We disagree. As explained in the 1999 *MO&O*:

We additionally reject ADF's argument that the Revere Police Department improperly served ADF, by not serving ADF with the attachments to the Revere letter. ADF had been placed on notice by the Revere Police Department of the existence of the attachments to the Revere letter (the text of the letter minus the eight-page attachment) in accordance with the Revere Public Notice. The first page noted that the Revere Police Department had "been issued a Special Temporary Authorization (enclosed)..." The Revere letter further stated, in paragraph five: "We have also enclosed one FCC Form 1034G, three FCC Form 574R and three FCC Form 574N." ADF knew, therefore, that the attachments to the Revere letter consisted of the STA, and various return notices and renewal request forms. Thus, ADF could have obtained copies of the attachments by

---

<sup>24</sup>47 C.F.R. § 0.131(a).

<sup>25</sup>Public Notice, "Wireless Telecommunications Bureau Announces Comment Period on Petition of City of Revere, Massachusetts for Reconsideration of Authorization Granted to ADF Communications, Inc.," DA 980225 (rel. Feb. 26, 1998) (Revere Public Notice).

<sup>26</sup>Revere Public Notice at 1.

<sup>27</sup>*Id.* at 2 (*citing* 47 C.F.R. § 1.47(g)).

<sup>28</sup>*See* Revere Order at 5.

<sup>29</sup>*Id.*

<sup>30</sup>ADF Petition at 6.

contacting the Revere Police Department directly or by viewing them in the Commission's Public Reference Room.<sup>31</sup>

9. The ADF Petition alleges that the decision to treat the Revere Letter as a petition for reconsideration is inconsistent with the Commission's decision in *Houston Mobilfone*.<sup>32</sup> This decision is inapposite. *Houston Mobilfone* involved interpretation of a specific portion of Section 1.106 of the Commission's Rules,<sup>33</sup> dealing with whether petitions for reconsideration of hearing designation orders should be entertained. This issue is not germane to the matters addressed in the context of this proceeding.

10. *Frequency Coordination*. Next, we will consider ADF's allegation that the 1999 MO&O did not address improprieties that ADF alleges were made by APCO, an FCC-certified frequency coordinator.<sup>34</sup> ADF alleges that the application of the Revere Police Department for the subject frequencies was "improperly processed," given that it was sent to the Commission on the day of receipt. We disagree that this fact alone is indicative that APCO did something wrong. In this regard, we reiterate our explanation in the 1999 MO&O:

In 1986, the Commission modified the procedures by which most of the frequencies allocated to the PLMR services are assigned to individual applicants.<sup>35</sup> The modified procedures were set out in the *Report and Order* specifically stating: "We recognize, however, that processing in order of receipt does not necessarily lead to coordinator actions or disposals in that same order. Some coordinations are more complicated than others and therefore require greater time to complete.<sup>36</sup> Consequently, we are not persuaded that filing on the same day is necessarily indicative of an impropriety."<sup>37</sup>

Based on the record before us, we are not persuaded that APCO acted improperly with respect to the Revere Police Department application.

11. *Waiver Analysis*. Finally, we consider ADF's argument that the Revere Police Department had not presented unique circumstances, warranting grant of a waiver.<sup>38</sup> This argument was fully considered in the 1999 MO&O. The 1999 MO&O relied upon the Commission's established waiver policy, which allows the grant of a waiver if it is (a) in the public interest and the underlying purpose of the

---

<sup>31</sup>1999 MO&O at 5-6.

<sup>32</sup>ADF Petition at 5 (citing *In re Applications of Houston Mobilfone, Inc., Memorandum Opinion and Order*, 52 FCC 2d 1009 (1975)) (*Houston Mobilfone*).

<sup>33</sup>47 C.F.R. § 1.106.

<sup>34</sup>ADF Petition at 6.

<sup>35</sup>Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, PR Docket No. 83-737, 103 FCC 2d 1093, 1101, para. 18 (1986).

<sup>36</sup>*Id.* at 1102, para. 21.

<sup>37</sup>1999 MO&O at 7.

<sup>38</sup>ADF Petition at 7-9.

rule(s) would be frustrated or not served by application to the present case, or (b) in view of unique or unusual factual circumstances, application of the rules(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>39</sup>

12. We concluded that the Revere Police Department had shown that grant of a waiver of the Commission's Rules regarding reinstatement of the Revere Police Department's authorization was warranted under the second waiver standard.<sup>40</sup> Specifically, we found that, in view of the unique factual circumstances, application of the rules would leave the Revere Police Department with no reasonable alternative, and would be contrary to the public interest.<sup>41</sup> The Bureau cited a 1991 Commission rule making proceeding, in which the Commission stated that licensees engaged in public safety activities may not exercise a lesser degree of diligence in complying with the Commission's renewal procedures, but wherein the Commission also stated that it will continue to retain discretion in extraordinary circumstances to waive our reinstatement/late-filed renewal rules if warranted by particular circumstances.<sup>42</sup>

13. In the *1999 MO&O*, we fully discussed the uniqueness of the Revere Police Department's factual circumstances.<sup>43</sup> We noted, *inter alia*, the Revere Police Department's 24-hour public safety emergency use of frequency pair 470.8625/473.8625 MHz.<sup>44</sup> In this connection, the *1999 MO&O* stated:

According to Revere, the channel is used extensively around the clock for the dispatch of police officers to life-threatening emergencies, felony crimes in progress, general law enforcement, civil and domestic disturbances, medical emergencies, rescues, assistance to other law enforcement agencies, traffic and crowd control, and various public service requirements.<sup>45</sup>

As a result, we concluded that this matter involves unique factual circumstances which warrants the exercise of discretion in waiving the Commission's rules regarding reinstatement.<sup>46</sup> We also noted that our decision in the *1999 MO&O* was consistent with the Universal Licensing System reinstatement treatment of late-filed applications recently adopted by the Commission, where the Commission stated that its treatment of late-filed renewal applications should take into consideration the complete facts and circumstances involved, including the length of the delay in filing, the performance record of the licensee, the reasons for

---

<sup>39</sup>47 C.F.R. § 1.925(b)(3)(i).

<sup>40</sup>*1999 MO&O* at 7.

<sup>41</sup>*Id.*

<sup>42</sup>*1999 MO&O* at 8 (*citing* Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, 6 FCC Rcd 7297, 7301 at para. 20 (1991)).

<sup>43</sup>*Id.* at 8.

<sup>44</sup>*Id.*

<sup>45</sup>*Id.*

<sup>46</sup>*Id.*

the failure to timely file, and the potential consequences to the public if the license were to terminate.<sup>47</sup>

14. In sum, we fully considered ADF's arguments in the *1999 MO&O*, and determined that the reinstatement of the Revere Police Department's authorization to operate Station KCZ967 on frequency pair 470.8625/473.8625 MHz was in the public interest. This determination took into account the Revere Police Department's critical need for the frequencies. Specifically, we noted that to deny the Revere Police Department's requested relief would create an emergency situation in which police, fire and medical units would lose communications service vital to the health and safety of an entire populous community.<sup>48</sup>

#### IV. CONCLUSION AND ORDERING CLAUSES

15. For the reasons stated above, we conclude that the decision set out in the *1999 MO&O* is in the public interest and is affirmed. Reinstating the Revere Police Department's authorization to operate Station KCZ967 was necessary and within our authority.<sup>49</sup> As explained above, as well as in the *1999 MO&O*, the situation before us is extraordinary. The Revere Police Department demonstrated unique circumstances warranting grant of a waiver of reinstatement. We addressed and rejected ADF's arguments in the *1999 MO&O* and ADF has failed to provide any new issues or arguments to persuade us otherwise. The ADF Petition is therefore denied.

16. Accordingly, IT IS ORDERED that, 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 by ADF Communications, Inc. on November 4, 1999, IS DENIED.

17. 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

Kathleen O'Brien Ham  
Deputy Chief, Wireless Telecommunications Bureau

---

<sup>47</sup>*Id.* at 11-12 (*citing* Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11,476, at para. 22 (1999)).

<sup>48</sup>*Id.* at 12.

<sup>49</sup>47 U.S.C. §§ 151, 332(a)(1).