

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

In the Matter of)	
)	
Supreme Radio Communications, Inc.)	File No. 96F041
)	
Finder's Preference Request)	
For Specialized Mobile Radio)	
Station WPDB879, Licensed to)	
Columbia Communications Services Corp. at)	
East Peoria, Illinois)	

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 2000

Released: February 29, 2000

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. Introduction

1. On January 9, 1997, Supreme Radio Communications, Inc. (Supreme) filed a petition for reconsideration (Petition)¹ of a decision by the Wireless Telecommunications Bureau's (Bureau) Office of Operations dismissing its finder's preference request for Specialized Mobile Radio (SMR) Station WPDB879.² On November 23, 1999, the Commercial Wireless Division of the Wireless Telecommunications Bureau reversed its earlier decision and reinstated Supreme's finder's preference request.³ We now address the merits of Supreme's finder's preference request. For the reasons discussed below, that request is hereby denied.

II. Background

2. On September 13, 1993, the Commission issued a license granting Supreme authorization to construct Station WPDB879 at the Supreme Tower Site. On August 29, 1994, the Wireless

¹ Petition for Reconsideration filed January 9, 1997.

² See Letter from William J. Kellett, Esq., Office of Operations, to Supreme Radio Communications, Inc., dated December 10, 1996 (dismissed for insufficient fee payment).

³ See Letter from William W. Kunze, Esq., Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, dated November 23, 1999, to Russell H. Fox, Esq., and James Goldstein, Esq.

Telecommunications Bureau's Land Mobile Branch granted Columbia Services Corp. (Columbia) Special Temporary Authority (STA) to operate Station WPDB879 at an alternative site. On or about November 2, 1995, Supreme filed its finder's preference request for Station WPDB879 alleging that the station was not constructed in a timely fashion and was, therefore, in violation of section 90.631(e) of the Commission's Rules.⁴

3. The Commission dismissed the finder's preference request on December 10, 1996, because the finder failed to fulfil procedural requirements. On January 9, 1997, Supreme submitted a petition for reconsideration of the decision dismissing the request. On November 23, 1999, the Commission set aside its action and reinstated the finder's request. Therefore, we rule on the merits of Supreme's finder's preference request.

III. Discussion

4. The Commission created the finder's preference program in order to relieve the scarcity of spectrum in several frequency bands by creating "new incentives for persons to provide [the Commission with] information about unconstructed, non-operational, or discontinued private land mobile radio systems...."⁵ Under the finder's preference program, a person could file a finder's preference request by presenting the Commission with evidence leading to the cancellation of a license due to the licensee's noncompliance with certain regulations. The Commission, upon recovery of the channels from the target licensee, awards the finder a dispositive preference for the recovered frequencies.

5. When it established the finder's preference program, the Commission established that the finder would have the burden of proving that the target licensee violated our rules relating to construction, placement-in-operation, and continuance of operation.⁵ Therefore the burden is on Supreme to demonstrate that a violation occurred. The Commission issued the original license on September 13, 1993. On August 29, 1994, the Commission granted the licensee an STA to operate the station from an alternative site.

6. The licensee submitted evidence demonstrating that Station WPDB879 was timely constructed by September 10, 1994 – less than one year after the original grant date for the license. Columbia presented a copy of a letter signed under the penalty of perjury by Columbia's Court appointed receiver, Daniel R. Goodman. In his November 8, 1994 letter, Mr. Goodman attested to the fact that Station WPDB879 was timely constructed, as indicated above, by September 10, 1994. To show merely

⁴ See 47 C.F.R. § 90.631(e) (".... licensees of trunked facilities must complete construction within one year.").

⁵ See 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*, PR Docket No. 90-481, 6 FCC Rcd. 7297, 7309, ¶ 77 (1991) (*Finder's Preference Report & Order*).

⁵ See *Finder's Preference Report & Order*, 6 FCC Rcd. at 7308.

that the station was constructed, the licensee also submitted a copy of the payment letter United Radio Service Inc. received for constructing the station. Thus, the target licensee presented credible evidence that the station was timely constructed from the date on which the Commission granted the license. In light of Columbia's evidence swearing compliance with the STA and the construction deadline for WPDB879, we find that the finder has failed to meet its burden to demonstrate that the target licensee did not construct its station in a timely manner. Therefore, we deny the finder's preference request.

IV. Ordering Clause

7. 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) and 405, and sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331 and 1.106, the finder's preference request filed by Supreme Radio Communications, Inc., in Finder's Preference Case No. 96F041. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze, Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau