

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

In re: Applications of

CARIBBEAN SMR, INC.	)	File No. 0000263859
For Assignment of SMR Call Signs	)	
WPDF781, WPDF782 and WPDF783	)	
to Nextel License Holdings 5, Inc.	)	
	)	
SMR DIGITAL PR, INC.	)	File No. 0000263862
For Assignment of SMR Call Signs	)	
WPDF796, WPDF797 and WPDF798	)	
to Nextel License Holdings 5, Inc.	)	
	)	
ISLAND COMMUNICATIONS, INC.	)	File No. 0000267488
For Assignment of SMR Call Signs	)	
WPDF793, WPDF794 and WPDF795	)	
to Nextel License Holdings 5, Inc.	)	
	)	

**ORDER**

**Adopted: August 17, 2001**

**Released: August 20, 2001**

By the Deputy Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. On December 22 and 27, 2000, Preferred Acquisitions, Inc. (“Preferred”) filed three similar petitions to deny (collectively, “Petitions”) the above-captioned applications to assign certain licenses of CARIBBEAN SMR, INC. (“Caribbean”), SMR DIGITAL PR, INC. (“SMR Digital”) and ISLAND COMMUNICATIONS, INC. (“Island Communications”) (collectively, “Applications”) to Nextel License Holdings 5, Inc. (“Nextel”). In the Petitions, Preferred alleges that it has “an agreement” with the applicants and that assignment of the licenses to Nextel would “tortiously interfere with Preferred’s contractual rights.”<sup>1</sup> In addition, Preferred contends that the Applications of Caribbean and SMR Digital are defective because the individuals who signed those Applications lacked corporate authority to do so. For the reasons discussed below, we deny the Petitions and grant the Applications.

2. As an initial matter, we find that Preferred has failed to demonstrate the requisite standing to file a Petition to Deny. Section 309(d)(1) of the Communications Act of 1934, as amended, permits any “party in interest” to file a petition to deny an application.<sup>2</sup> In general, to establish standing, a

<sup>1</sup> Petitions at 1.

<sup>2</sup> 47 U.S.C. § 309(d)(1).

petitioner must allege sufficient facts to demonstrate that grant of the subject application would cause the petitioner to suffer a direct injury.<sup>3</sup> The petitioner must further demonstrate a causal link between the claimed injury and the challenged action.<sup>4</sup> The Commission has stated that “[i]n assignment or transfer of license proceedings, ‘a party does not have standing unless it can establish that a grant of the application complained of would result in, or be reasonably likely to result in, some injury of a direct, tangible, or substantial nature.’”<sup>5</sup> Preferred alleges that grant of the instant applications would “tortiously interfere with Preferred’s contractual rights.” Preferred is silent, however, as to what kind of contractual rights it has or what type of contract it has with the applicants. Moreover, Preferred fails to demonstrate both how such alleged interference may result in a palpable injury and how any such injury would be traceable to the grant of the instant Applications. Therefore, we find that Preferred has failed to establish standing.

3. Even if Preferred had demonstrated standing, we would conclude that its Petitions lack merit. Preferred argues that the Applications<sup>6</sup> are defective because David Aleman Gonzalez, who signed the Application of Caribbean as its Director, and Jorge Morales-Colon, who signed the Application of SMR Digital as its Director, lacked corporate authority to do so. In support of its argument, Preferred submits two affidavits, one signed by Ismael Rodriguez Morales, claiming to be the real Director of Caribbean since 1997, and one by Hector Marrero, claiming to be the real sole officer and director of SMR Digital.

4. We are not persuaded that we should deny the Applications on the basis of Preferred’s corporate authority allegations. It is the Commission’s policy generally not to intervene in disputes over corporate authority. Such disputes usually revolve around questions of state law and private contracts, matters which the Commission historically and consistently has left to local courts of appropriate jurisdiction to resolve.<sup>7</sup> Accordingly, we do not view the affidavits supplied by Preferred as providing sufficient grounds for denying the Applications, and we therefore need not and do not resolve the corporate authority claims that they present.

5. We also find without merit Preferred’s assertion that grant of the instant Applications will “tortiously interfere” with its contractual rights. As noted above, not only does Preferred fail to explain what kind of contractual rights it allegedly has, it also fails to explain how grant of the subject Applications will “tortiously interfere” with its rights. Moreover, as explained above, the Commission consistently has taken the position that arguments based on private contractual disputes are best left to the courts to resolve.

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<sup>3</sup> See *Los Angeles Cellular Telephone Co.*, 13 FCC Rcd 4601, 4603-4604, ¶ 5 (CWD 1998), citing *AmericaTel Corp.*, 9 FCC Rcd 3993, 3995 (1994), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Warth v. Seldin*, 422 U.S. 490, 508 (1975).

<sup>4</sup> See *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74, 81 (1978).

<sup>5</sup> See *In re Applications of Brian L. O’Neill*, *Memorandum Opinion and Order and Notice of Apparent Liability*, 6 FCC Rcd 2572 (1991), quoting *In re Applications of Teleprompter Corp.*, 87 FCC 2d 531, 537 (1981), *aff’d*, 89 FCC 2d 417 (1982).

<sup>6</sup> Although Preferred alleges that the Application of Island Communications is also defective, Preferred fails to present any basis for such allegation. Accordingly, we see no need to discuss this unsupported allegation against the assignment Application of Island Communications.

<sup>7</sup> See, e.g., *In re Northwest Broadcasting, Inc. and Radio Broadcasting, Inc.*, *Memorandum Opinion and Order*, FCC 97-37, at ¶ 10 (1997) (“*Northwest Broadcasting*”).

Accordingly, “[a]bsent a final court judgment raising issues within the Commission’s jurisdiction, we would not ordinarily act on matters resulting from private contracts.”<sup>8</sup>

6. We also deny Preferred’s request that we defer ruling in this matter to afford the judicial authorities in Puerto Rico an opportunity to assert jurisdiction.<sup>9</sup> As we have explained, “[a]bsent a prior court injunction we would not ordinarily withhold consent to an otherwise acceptable transaction.”<sup>10</sup> Consistent with previous decisions, however, we stress that our decision here does not foreclose any relief to which Preferred ultimately may be entitled based on the outcome of any subsequent civil litigation.<sup>11</sup>

7. As we are denying the Petitions for the reasons discussed above, and having reviewed the Applications, we conclude that grant of the above-captioned Applications will serve the public interest, convenience and necessity.

8. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.331 and 1.2108 of the Commission’s rules, 47 C.F.R. §§ 0.331, 1.2108, the Petitions to Deny filed by Preferred Acquisitions, Inc. on December 22 and 27, 2000 in the above-captioned proceedings ARE HEREBY DENIED.

9. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 309(d), and sections 0.331 and 22.137 of the Commission’s rules, 47 C.F.R. §§ 0.331, 22.137, the above-captioned respective applications of CARIBBEAN SMR, INC. for assignment of SMR Call Signs WPDF781, WPDF782 and WPDF783; SMR DIGITAL PR, INC. for assignment of SMR Call Signs WPDF796, WPDF797 and WPDF798; and ISLAND COMMUNICATIONS, INC. for assignment of SMR Call Signs WPDF793, WPDF794 and WPDF795, in each case to Nextel License Holdings 5, Inc., ARE HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Linda C. Ray  
Deputy Chief, Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau

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

<sup>9</sup> *See Preferred’s Reply to Oppositions at 2.*

<sup>10</sup> *Northwest Broadcasting, FCC 97-37, at ¶ 10.*

<sup>11</sup> *See In the Matter of Airtouch Paging, Inc., Order, DA 99-1175, at ¶ 6 (CWD June 1999).*