

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

In the Matter of)
)
JIM and LINDA DOERING)
d/b/a J. DOERING COMMUNICATIONS)
) Compliance No. 93F581
Finder's Preference Request for)
SMR Station WNXS753 Licensed)
To James A. Kay, Jr. at Corona,)
Montrose, and Running Springs, California)

ORDER

Adopted: November 16, 2001

Released: November 19, 2001

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

1. This order addresses a petition for reconsideration ("Petition") filed by Jim and Lynda Doering d/b/a Doering Communications ("Doering") on November 23, 1994. Doering seeks reconsideration of the denial of the above-captioned finder's preference request by the former Private Radio Bureau (Bureau).¹ James A. Kay, Jr. ("Kay"), the target licensee, filed an opposition to the Petition on December 8, 1994, and Doering filed a reply to the opposition on December 21, 1994. For the reasons set forth below, we deny Doering's Petition.

2. In his Petition, Doering argues that he has submitted sufficient proof in support of his contention that Kay did not construct call sign WNXS753 in accordance with: 1) section 90.155(a) of the Commission's rules,² which requires that stations in the private land mobile radio services be placed in operation within eight months from the date of grant;³ and 2) section 90.633(d) of the Commission's rules,⁴ which provides that a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation.⁵ Doering also contests the Bureau's finding that Kay submitted

¹ In 1994, the former Private Radio Bureau and the former Mobile Services Division of the Common Carrier Bureau became the Wireless Telecommunications Bureau.

² Petition at 2.

³ 47 C.F.R. § 90.155(a).

⁴ Petition at 2.

⁵ 47 C.F.R. § 90.633(d).

substantial rebuttal evidence that the station was timely constructed and placed in operation including a declaration from an end user.⁶

3. The Commission developed 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"⁷ Under the finder's preference program, a person could file a finder's preference request by presenting the Commission with evidence of a licensee's noncompliance with certain regulations. Upon recovering channels from a target licensee deemed to be in violation of those regulations, the Commission would then award a dispositive preference for those frequencies to the finder.⁸

4. The Commission specifically excluded loading violations from the scope of the finder's preference program⁹ and indicated that it would be difficult to generate conclusive evidence of loading violations because loading is a dynamic concept that, by its very nature, can vary from day to day.¹⁰ Failure to license end users, as evidenced by Commission records, is not a violation subject to a finder's preference request.¹¹ The finder's preference program was designed to supplement, rather than duplicate, our compliance efforts.¹² Doering's finder's preference request relies solely on Commission records as evidence that no mobile stations were authorized to operate on Kay's station during the eight-month construction period. Doering's reliance on Commission records to support an allegation that a station is not operational because no mobiles have been licensed merely duplicates our efforts. Under our clear policies, Doering's showing fails to warrant the award of a dispositive preference against call sign WNXS753.

5. 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 sections 0.331 and 1.106 of the

⁶ Petition at 2-3.

⁷ 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 and Order*).

⁸ The Commission discontinued the finder's preference program for the 800 MHz service on December 15, 1995. See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order*, *Eighth Report and Order*, and *Second Further Notice of Proposed Rulemaking*, PR Docket No. 93-144, 11 FCC Rcd 1463, 1634, ¶ 416 (1995).

⁹ *Finder's Preference Report and Order*, 6 FCC Rcd at 7305, ¶ 49 (1991).

¹⁰ *Id.*

¹¹ *Id.* Violations are limited to a licensee's failure to construct, place in operation, or continue operation as noted in 47 C.F.R. § 90.173(k) (1994). See In the Matter of James A. Kay, Jr., *Finder's Preference Request for SMR Station WNJF770 Licensed to Stanley W. Harris d/b/a Western Communications Company*, *Order*, DA 01-2415 (Comm. Wir. Div. rel. October 17, 2001).

¹² *Finder's Preference Report and Order*, 6 FCC Rcd at 7307, ¶ 59 (1991).

Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the petition for reconsideration filed by Jim and Lynda Doering d/b/a Doering Communications on November 23, 1994, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau