

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

In the Matter of:)
)
CROSTOWN LIMOUSINE SERVICE, INC.) File No. 9606D040121
)
470-512 MHz Station)
Call Sign WIJ591)

ORDER ON RECONSIDERATION

Adopted: March 20, 2001

Released: March 22, 2001

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Order*, we address the Petition for Reconsideration and Request for Issuance of Notice of Violation (*Petition*) filed by Atlantic Telecommunications, Inc. (Atlantic) and Statcom Electronics, Inc. (Statcom) (collectively, Petitioners) on March 3, 2000. The Petitioners request reconsideration of the Licensing and Technical Analysis Branch's (Branch) action on February 7, 2000, granting Crosstown Limousine Service, Inc.'s (Crosstown) application for modification of Station WIJ591.¹ In addition, the Petitioners ask that we find that this station's license cancelled automatically and issue a notice of violation to Crosstown with respect to its operation of the station.² For the reasons set forth below, we deny the *Petition*.

II. BACKGROUND

2. On May 6, 1996, Atlantic filed a Finder's Preference Request (FP Request) targeting Station WIJ591.³ In June 1996, Crosstown submitted an application seeking to modify its original authorization for Station WIJ591. Subsequently on July 5, 1996, the former Office of Operations served Crosstown a FP Request notification⁴ to which Crosstown responded by asserting that the finder's preference rules do not apply in this instance.⁵ Additionally, Crosstown indicated that its system had been in operation

¹ See *Petition* at 1.

² *Id.*

³ *Id.* at 2. 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 . . ." 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. Upon recovery of the channels from the target licensee, the Commission awards the finder a dispositive preference for the recovered frequencies. See Chadmoore Communications, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 15832 (2000), (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 (1991)).

⁴ See Finder's Preference Request Notification, Compliance File No. 96F209 (July 5, 1996).

regularly in 1992; however, its base station had been inadvertently installed at an unauthorized site.⁶ On July 18, 1996, Atlantic requested that the Commission take no action on Crosstown's modification application pending the disposition of the FP Request.⁷

3. On November 25, 1996, Statcom notified the Commission about interference from Crosstown's operations and requested that the Commission direct the company to cease operating on frequencies 477/480.8125 MHz.⁸ On December 12, 1996, Crosstown submitted a request to extend its temporary authority to operate the station at a modified location, which was denied by the Office of Operations on December 13, 1996.⁹ The Office of Operations indicated that the matter had been referred to the Enforcement Division of the Wireless Telecommunications Bureau (Enforcement) for investigation of Crosstown's unlicensed operation.¹⁰ In a response letter dated January 13, 1997, Crosstown asked the Commission to reevaluate its decision to forward the matter to Enforcement and to grant its request for temporary authority or alternatively, its modification application.¹¹

4. Subsequently, Crosstown sought expeditious action regarding the resolution of the FP Request, to which Atlantic Telecom and Statcom filed a joint opposition.¹² Crosstown requested that the Office of Operations either grant its application for permanent authority to operate the subject station, as modified, or renew the license at the originally authorized location.¹³ On September 15, 1997, the Commission conditionally granted Crosstown's renewal application, subject to the outcome of the finder's preference case. No party challenged the conditional grant of Crosstown's renewal application.

⁵ See Opposition to Finder's Preference Request, Compliance File No. 96F209 at 3-4 (Oct. 4, 1996) (*Opposition to FPR*).

⁶ See *id.* The initial license for Station WIJ591 was granted on May 21, 1992 and the construction deadline for these facilities was January 21, 1993. Crosstown stated that it completed the construction of its facilities and launched its operations pursuant to the Commission's rules, within eight months of the initial grant of its license, however, later discovered (after the receipt of the FP Request) that its actual operating site was approximately two and one-half miles from the authorized base station site.

⁷ See Petition for Stay on Station Modification at 1 (Jul. 18, 1996).

⁸ See Letter from Joseph Vaglica, President, Statcom Electronics, Inc. to Chief, Office of Operations, Wireless Telecommunications Bureau (Nov. 25, 1996); Letter from Joseph Vaglica, President, Statcom Electronics, Inc. to Finder's Preference Bureau, Federal Communications Commission (Nov. 26, 1996).

⁹ See Letter from W. Riley Hollingsworth, Deputy Associate Bureau Chief, Office of Operations, Wireless Telecommunications Bureau to Frederick M. Joyce, Joyce & Jacobs (Dec. 13, 1996).

¹⁰ See *id.*

¹¹ See Letter from Frederick M. Joyce, Joyce & Jacobs to W. Riley Hollingsworth, Deputy Associate Bureau Chief (Jan. 13, 1997).

¹² See Letter from Elizabeth R. Sachs, Lukas, McGowan, Nace & Gutierrez to Michael Regiec, Deputy Chief, Public Safety and Private Wireless Division (Aug. 4, 1997).

¹³ See Letter from Frederick M. Joyce, Joyce & Jacobs to Michael Regiec, Deputy Chief, Office of Operations, Request for Expedited Action (July 22, 1997).

5. On June 25, 1999, the Commission dismissed Atlantic's FP Request as defective, indicating that the Station was not the proper subject of a FP proceeding.¹⁴ Atlantic Telecom did not file a petition for reconsideration of that action.

6. On February 7, 2000, the LTAB granted Crosstown's modification application.¹⁵ In the *Petition*, Petitioners ask that we reconsider the grant of Crosstown's application, find that the license cancelled automatically and determine whether the Station's unauthorized operation warrants issuance of a notice of violation.

III. DISCUSSION

7. The Petitioners argue that the Branch erred by granting Crosstown's modification application prior to receiving a determination concerning Crosstown's operations from Enforcement.¹⁶ According to the Petitioners, the modification application would be fatally defective if Enforcement determines that Crosstown failed to place the station in operation on a timely basis or permanently discontinued its operation because it would seek to modify a non-existent license.¹⁷

8. Under these circumstances, we are unable at this time to consider the argument that Crosstown's license cancelled automatically as a matter of law. Petitioners' argument is based upon facts that were considered when the staff granted Crosstown's renewal application. The staff determined that the appropriate remedy was to grant the renewal application, subject to the outcome of the finders' preference proceeding. Petitioners did not challenge that conclusion. Indeed, in its current petition, Atlantic states that it is not seeking reconsideration of the denial of the FP Request.¹⁸ Under these circumstances, where the staff explicitly considered Atlantic's allegations in determining that a conditional grant of a renewal application was in the public interest, we are barred from reexamining those matters at this time.¹⁹ While Petitioners may have contemplated that the merits of Atlantic's arguments would have been considered in the finders' preference proceeding, Petitioners knew that Crosstown had argued that the FP Request was procedurally defective. Atlantic also made no attempt to have the Commission consider the merits of its allegations after the FP Request was dismissed. Under these circumstances, the interest in administrative finality outweighs consideration of Crosstown's conduct prior to the grant of the renewal application.

¹⁴ See Letter from John J. Borkowski, Chief, Policy & Rules Branch, Public Safety and Private Wireless Division, to Elizabeth R. Sachs, Esq. of Law Offices of Lukas, Nace, Gutierrez & Sachs (June 25, 1999). The Commission found that the channel had not reached its maximum loading level and therefore, was not "exclusive" as of the date the FP Request was filed.

¹⁵ File No. 9606D040121.

¹⁶ See *Petition* at 5-7.

¹⁷ *Id.*

¹⁸ See *Petition* at 5 n.16.

¹⁹ See *Theodore E. Sousa*, 92 FCC 2d 173, 180 (1982), (citing *Radio Para La Paza*, 40 FCC 2d 1102 (1972) for the holding that "where an applicant's programming proposals had in fact been considered as part of the renewal decision-making process, we were precluded from reviewing such matters some thirteen months later in light of the strong Congressional policy favoring administration [sic] finality reflected in Section 405 of the Act.")

9. We will also not entertain at this time Petitioners' suggestion that Crosstown lacks the character qualifications to be a Commission licensee.²⁰ As with its other argument, Petitioners' argument is based upon Crosstown's conduct in 1996 and previously. Petitioners did not, however, challenge the Commission's 1997 conditional grant of Crosstown's renewal application, which necessarily made the determination that Crosstown has the character qualifications needed to remain a Commission licensee. Both the Commission and Petitioners were aware of the allegations that Crosstown had violated our Rules at the time the renewal application was granted. Accordingly, we will not revisit Crosstown's character qualifications at this time. Against this backdrop, we find that the record in this proceeding is devoid of a sufficient basis upon which to reverse the Branch's decision to grant Crosstown's modification application.

10. Petitioners also request that we issue a Notice of Violation against Crosstown. Pursuant to Section 0.111 of the Commission's rules, we referred this portion of the *Petition* to the Enforcement Bureau for further consideration. The Enforcement Bureau's Technical and Public Safety Division has reviewed the *Petition* and determined that enforcement action was not warranted.

11. Finally, with respect to allegations of harmful interference created by Crosstown's operations, we remind Crosstown that it has an obligation pursuant to Section 90.403(e) of the Commission's rules to make a good faith effort to resolve any interference problems with co-channel licensees.²¹ We also note that in the event that Crosstown fails to satisfy its obligations under Part 90 of the Commission's rules regarding interference, we will refer future complaints of interference to the Commission's Enforcement Bureau for appropriate handling.

IV. CONCLUSION AND ORDERING CLAUSES

12. For the foregoing reasons, we affirm the Branch's grant of Crosstown's modification application. Therefore, we deny the *Petition*.

13. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the *Petition* for Reconsideration filed by Atlantic Telecommunications, Inc. and Statcom Electronics, Inc. on March 3, 2000 is DENIED.

²⁰ See *Petition* at 9.

²¹ See 47 C.F.R. § 90.403(e).

14. 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 COMMUNICATION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
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