

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

In re Application of)
)
Talk Back Arkansas, Inc.)
for Paging and Radiotelephone Service)
operation on 454.100 MHz in)
Little Rock, Arkansas)

ORDER

Adopted: April 3, 2001

Released: April 4, 2001

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

1. This order addresses a Petition for Reconsideration (“Petition”) filed by TBA Communications, Inc. d/b/a Talk Back Arkansas (“TBA”) on December 30, 1999. TBA seeks reconsideration of a decision released by the Commercial Wireless Division (“Division”) of the Wireless Telecommunications Bureau on December 13, 1999.¹ In that decision, the Division dismissed the application filed by TBA for operation on 454.100 MHz in Little Rock, Arkansas, because the filing of TBA’s application was precluded by the current freeze on the acceptance of paging applications.² TBA seeks reconsideration of the *TBA Order* on the ground that dismissal of its application unjustly precludes TBA from initiating paging services in its market area or, in the alternative, seeks a waiver of the Commission’s paging freeze. For the reasons discussed below, we deny the Petition and deny TBA’s request for a waiver.

2. In its Petition, TBA reiterates the identical arguments it submitted with its application for authorization on 454.100 MHz. In addition, TBA argues that the Commission is placing an undue burden on TBA by prohibiting it from competing for State, County, and Government bids, and that the Commission is precluding it from providing service to both current and future customers.³

¹ See Application of Talk Back Arkansas, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 2198 (WTB 1999) (“*TBA Order*”).

² See In the Matter of Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18 and Implementation of Section 309 (j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, *Notice of Proposed Rule Making*, 11 FCC Rcd 3108 (1996) (“*NPRM*”) (wherein the Commission suspended acceptance of new paging applications because of the proposed transition from site-by-site licensing to geographic area licensing for all paging services licensed on an exclusive, non-nationwide basis).

³ Petition at 1.

3. TBA presents no new arguments that would persuade us to reverse the decision to dismiss TBA's application. We find that the *TBA Order* properly addressed the issues reiterated in TBA's Petition, which are substantially identical to those arguments raised by commenters in opposition to the imposition of the paging freeze.⁴ We therefore affirm our decision to dismiss TBA's application as unacceptable for filing pursuant to the paging freeze.

4. We now consider TBA's request for waiver of the Commission's freeze on the acceptance of applications for new paging facilities. Under certain circumstances, we have granted a waiver of the paging freeze for operation on a secondary basis.⁵ However, TBA's application seeks authorization to operate on the same frequency and location as that of Norark Paging of Little Rock, Inc., a currently authorized incumbent paging licensee under call sign KNKB-547. Under the operating parameters proposed in TBA's application, a waiver of the paging freeze cannot be granted and we therefore deny TBA's request for waiver.⁶

5. 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 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition for Reconsideration filed by TBA Communications, Inc. d/b/a Talk Back Arkansas on December 30, 1999, IS DENIED.

⁴ See In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18 and Implementation of Section 309 (j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, *First Report and Order*, 11 FCC Rcd 16570 (1996) (*First Report and Order*). In the *First Report and Order*, the Commission declined to lift the freeze as requested by the paging industry commenters. The commenters argued that the freeze was disruptive to their business plans and would undermine competition. In reply, the Commission stated that the paging freeze was necessary to combat telemarketing schemes involving paging applications fraud. See also In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18 and Implementation of Section 309 (j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, FCC 99-98, ¶ 9 (1999) (wherein the Commission stated that it did not believe that applicants that had their applications dismissed pursuant to the paging freeze were irreparably harmed because their applications were dismissed without prejudice, and these applicants may file applications to participate in the paging auction).

⁵ See *Acadian Ambulance Services, Inc., Order*, 14 FCC Rcd 19310 (1999); *JSM Tele-Page, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 19516 (1999).

⁶ We note that TBA may wish to participate in the auction for lower band paging frequencies to expand its paging facilities. See *Auction of Licenses for the Lower and Upper Paging Bands Scheduled for June 26, 2001, Public Notice*, DA 01-593 (rel. March 7, 2001).

6. IT IS FURTHER 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 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the Request for Waiver filed by TBA Communications, Inc. d/b/a Talk Back Arkansas on December 30, 1999, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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