

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

In the Matter of)	
)	
Thomas A. Baker)	
)	File No. 93F724
Finder's Preference Request)	
For Specialized Mobile Radio Station)	
WNRU-207, licensed to K-Comm)	
At Mahoney Township, PA)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2001

Released: April 17, 2001

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This order addresses the Petition for Further Reconsideration or Waiver (Petition) filed on December 22, 1999 by Thomas Baker (Baker).¹ Baker seeks further reconsideration of a November 23, 1999 decision by the Wireless Telecommunications Bureau (Bureau), which granted a Petition for Reconsideration filed by K-Comm on March 31, 1997 (K-Comm Petition). For the reasons discussed below, the Baker Petition is denied.²

II. BACKGROUND

2. On December 14, 1993, Baker filed a finder's preference request against K-Comm, licensee of Specialized Mobile Radio station WNRU-207, alleging a violation of Commission rule section 90.157, which provides for the cancellation of a station license upon permanent discontinuance of operations.³ On September 23, 1994, the Bureau's Office of Operations denied the preference request, finding insufficient evidence that operation of WNRU-207 had permanently discontinued.⁴ Baker sought reconsideration of this decision and, on February 26, 1997, the Bureau's Office of Operations granted

¹ Petition for Further Reconsideration, filed by Thomas A. Baker on December 22, 1999 (Baker Petition).

² In the Matter of Thomas A. Baker, *Memorandum Opinion and Order*, 14 FCC Rcd. 19556 (1999) (*Baker*).

³ 47 C.F.R. § 90.157.

⁴ See Letter from William H. Kellett, Office of Operations, Wireless Telecommunications Bureau, to Harry F. Cole, Esq. and Kathleen A. Kaercher, Esq., dated September 23, 1994.

Baker's petition and awarded a finder's preference to Baker.⁵ In awarding the preference, the Office of Operations cited evidence submitted by Baker that the Commission's licensing records listed no end users associated with K-Comm's station, and that Baker had monitored the assigned frequencies over an eleven month period and heard no activity.⁶ K-Comm petitioned for reconsideration of the Office of Operations decision.

3. On November 23, 1999, the Bureau granted the K-Comm Petition, set aside the finder's preference, and reinstated K-Comm's license.⁷ The Bureau found that under the finder's preference rules, the absence of listed end users in the Commission's licensing records was not a rule violation that could form the basis for a finder's preference request.⁸ The Bureau also found that because Baker's monitoring efforts occurred over a period of less than one year, it failed to meet its burden of demonstrating that K-Comm had discontinued operation for a year as required to trigger cancellation under Section 90.157.⁹ Baker then filed the instant Petition.

III. DISCUSSION

4. We find that the Baker Petition fails to specify any new facts or changed circumstances that would merit reconsideration of the Bureau's denial of Baker's finder's preference request. The Commission created the finder's preference program in order to relieve the scarcity of spectrum in certain 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...."¹⁰ In the *Finders Preference NPRM*, the Commission addressed instances where a licensee has permanently discontinued operations, and indicated that the "[a]pplicants identifying violations of these requirements may be able to uncover facts of which we are not aware or which we cannot readily ascertain."¹¹ The Commission stressed that the "establishment of a preference scheme must serve as a supplement to, rather than a substitute for, our existing compliance programs and activities."¹² Moreover, the Commission specifically excluded loading violations from the scope of the finder's preference program.¹³ The Bureau

⁵ See Letter from W. Riley Hollingsworth, Deputy Associate Bureau Chief, Office of Operations, Wireless Telecommunications Bureau, to Robert H. Schwaninger, Jr., Esq. and Harry F. Cole, Esq., dated February 26, 1997.

⁶ *Id.*

⁷ *Baker* at ¶ 1.

⁸ *Id.* at ¶ 5.

⁹ *Id.*

¹⁰ 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, ¶ 77 (1991) (*Finder's Preference Report and Order*).

¹¹ See Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Notice of Proposed Rulemaking*, PR Docket No. 90-481, 5 FCC Rcd 6401, ¶ 22 (1990) (*Finder's Preference NPRM*).

¹² *Id.* at ¶ 21.

¹³ *Finder's Preference Report and Order* at ¶ 49.

therefore acted properly in rejecting Baker's submission of loading information from the Commission's licensing records as a basis for its finder's request. Because such information was readily available to Commission staff, it did not constitute the type of information that could support a finder's preference claim.

5. In addition, under the finder's preference program, the finder has the burden of proving that the target licensee violated our rules relating to construction, placement in operation, and continuance of operation.¹⁴ As set forth in *Baker*, the finder failed to carry its burden in proving a violation of Commission rules. Even if we assume that all facts alleged by the finder are true, we affirm our prior determination that permanent discontinuance of operation has not been proven. Baker's monitoring efforts were for a period of less than one year, while section 90.157 defines "permanent discontinuance" of operation as cessation of operations for a full year.¹⁵ Baker further argues that K-Comm is not the real-party-in-interest to the subject license, and that all pleadings filed by K-Comm in opposition to Baker's request for a finder's preference should be considered moot.¹⁶ Baker's allegations concerning real-property-in-interest violations are not the proper subject of a finder's preference request, which is limited solely to violations of our construction and operation requirements. We therefore find that the Baker Petition fails to specify any new facts or changed circumstances that would merit reconsideration or reversal of the Bureau's prior order. Accordingly, we deny Baker's Petition for Further Reconsideration.

6. 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 Petition for Further Reconsideration filed by Thomas A. Baker is DENIED.

Federal Communications Commission

James D. Schlichting
Deputy Chief
Wireless Telecommunications Bureau

¹⁴ *Id.* at ¶¶ 49, 68.

¹⁵ *See* 47 C.F.R. § 90.157.

¹⁶ Baker Petition at 3.