

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

In the Matter of)	
)	
S.A. Dawson d/b/a Dawson Associates)	File No. 9512R106102
)	
Assignment of License for 900 MHz)	
Specialized Mobile Radio Station)	
WNVE296 at Bithlo City, Florida)	

MEMORANDUM OPINION AND ORDER

Adopted: January 7, 2002

Released: January 9, 2002

By the Deputy Chief, Wireless Telecommunications Bureau:

I. Introduction

1. This matter involves a licensing dispute between S.A. Dawson d/b/a Dawson Associates (Dawson) and American National Communications Companies, Inc. (ANCC). Both Dawson and ANCC claim the right to operate 900 MHz Specialized Mobile Radio (SMR) Station WNVE296 at Bithlo City, Florida. In April 1995, the former Office of Operations of the Wireless Telecommunications Bureau (Bureau) issued a *Letter Decision* setting aside an earlier assignment of WNVE926 from ANCC to Dawson, and declaring ANCC to be the proper licensee.¹ We have before us a petition for reconsideration filed by Dawson challenging the *Letter Decision*.² Because we conclude that the *Letter Decision* lacks an adequate basis in the record before us, we grant Dawson's petition for reconsideration in part, set aside the *Letter Decision*, and instruct the Commercial Wireless Division (Division) of the Wireless Telecommunications Bureau to assess the need for further development of the record in this matter.

II. Background

2. The license for call sign WNVE296 was initially awarded to Dawson by Commission lottery in 1987. In January 1992, Dawson filed an application (FCC Form 1046) for consent to assign the license to ANCC. The Commission consented to the assignment on March 10, 1992, and the license was assigned to ANCC.³

¹ Letter from W. Riley Hollingsworth, Deputy Associate Bureau Chief, Office of Operations, Wireless Telecommunications Bureau, to David J. Kaufman, counsel for ANCC, and Frederick M. Joyce, counsel for Dawson (April 13, 1995) (*Letter Decision*). See also FCC File No. 9512R106102.

² Letter from Frederick M. Joyce, counsel for Dawson, to W. Riley Hollingsworth, Deputy Associate Bureau Chief, Office of Operations, Wireless Telecommunications Bureau (filed April 25, 1995) (Petition for Reconsideration).

³ Radio Station License WNVE296, issued March 10, 1992, File No. 9201571020.

3. On June 16, 1993, an application was filed to reassign the license for WNVE296 from ANCC back to Dawson. Robert Eaton (Eaton) signed the assignment application on behalf of ANCC, as Executive Vice-President. The Commission consented to this assignment on August 31, 1993.⁴ On August 9, 1994, almost one year after the Commission consented to the reassignment of the license back to Dawson, ANCC filed a request for declaratory ruling, asking the Commission to rescind the assignment and to declare ANCC the rightful licensee for WNVE296. In its request, ANCC claimed that Eaton had “caused the license for WNVE296 to be reassigned to Dawson. . . by fraudulently representing himself as an officer of ANCC[I].”⁵ On March 23, 1995, Dawson filed an opposition to ANCC's request, claiming that it was the rightful licensee of WNVE296, because Eaton was acting “in his authorized capacity as Executive Vice-President of ANCC[I]” at the time he signed the assignment application filed with the Commission.⁶

4. On April 13, 1995, the Bureau's Office of Operations granted ANCC's motion and set aside the reassignment to Dawson on the grounds that the June 1993 assignment application was “not properly signed” by ANCC as of the filing date.⁷ On April 25, 1995, Dawson petitioned for reconsideration of the Letter Decision and sought to reinstate the assignment from ANCC to Dawson.⁸ Although the *Letter Decision* set aside the assignment to Dawson, the Bureau's licensing records apparently continued to reflect Dawson as the licensee of WNVE296. Consequently, when the license neared its expiration date, the Bureau's Licensing Division sent a license renewal application to Dawson. Dawson submitted the renewal application in the fall of 1995, and the renewal was granted on January 26, 1996.⁹ On February 7, 1996, ANCC requested the rescission of Dawson's license, citing the *Letter Decision*.¹⁰ In August 1996, the Licensing Division amended the licensing database to identify ANCC as the licensee for WNVE296. On April 24, 1997, Dawson filed an emergency petition and stay request seeking reinstatement as the licensee.

5. On June 13, 1997, ANCC filed an application to assign the authorization for WNVE296 to a third party, CELSMER, the geographic licensee for the same frequencies in the Orlando, FL Metropolitan Trading Area (MTA), which includes Bithlo City.¹¹ The Licensing and Technical Analysis Branch (Branch) of the Commercial Wireless Division consented to the assignment on July 18, 1997.¹² CELSMER cancelled its authorization for call sign WNVE296 on April 24, 2001.

⁴ Radio Station License WNVE296, File No. 9306626629 (issued Aug. 31, 1993).

⁵ Request for Declaratory Ruling (Request) at 2. ANCC states in this filing: “In late May of 1993, the ANCC[I] board of directors removed Mr. Eaton from the board of directors and dismissed Mr. Eaton from his position and duties as executive vice president of ANCCI.” *Id.* (no specific date in May 1993 is provided).

⁶ Letter from Frederick M. Joyce, counsel for Dawson, to Regina Keeney, Chief, Wireless Telecommunications Bureau, filed March 23, 1995, at 2 (Opposition to Request for Declaratory Ruling).

⁷ See Letter Decision.

⁸ See Petition for Reconsideration. ANCC opposed the petition on May 10, 1995, and Dawson filed a reply on May 22, 1995.

⁹ Radio Station License WNVE296, File No. 9512R106102, issued Jan. 26, 1996.

¹⁰ Letter from David Kaufman, counsel for ANCC, to David Furth, Chief, Commercial Wireless Division, Wireless Telecommunications Bureau dated Feb. 7, 1996.

¹¹ See *Public Notice*, Report No. 1941 (June 13, 1997).

¹² See *Public Notice*, Report No. 1946 (July 22, 1997).

III. Discussion

6. Section 1.917(a)(3) of the Commission's rules requires an "officer, director, or duly authorized employee" to sign an application when the applicant is a corporation.¹³ The dispute concerning who is the rightful licensee of Station WNVE296 arises out of a disagreement between Dawson and ANCC concerning Robert Eaton's authority to sign the June 1993 assignment application on behalf of ANCC. In setting aside the assignment from ANCC to Dawson, the Office of Operations concluded, based solely on the pleadings filed by the parties, that Eaton was not a corporate officer of ANCC at the time the application was executed and/or filed and therefore did not have such authority. We find that in reaching this conclusion, the Office of Operations acted without sufficient basis in the record before it.

7. In order for the Office of Operations to decide that Eaton was not an officer, director, or duly authorized employee of ANCC at the time he signed the assignment application, it was required to find that the pleadings did not raise a substantial and material question of fact that would require further investigation or designation of the matter for hearing.¹⁴ Upon review of the record, we find that the Office of Operations could not have made such a finding. The conflicting pleadings filed by ANCC and Dawson raise a substantial and material issue of fact regarding Eaton's corporate authority, and fail to resolve the issue conclusively. We conclude that if the Commission is required to decide this issue, it cannot be resolved without further development of the record and could ultimately require designation for hearing. Therefore, we refer the matter to our Commercial Wireless Division to take further action as necessary to investigate and develop the record in this matter, and to make a recommendation whether this matter should ultimately be designated for hearing. We also note that the dispute between ANCC and Dawson and the issue of Eaton's authority appears to be a contractual matter of the sort that is ordinarily addressed by the courts rather than the Commission.¹⁵

IV. Conclusion

8. Because we conclude that the Office of Operations lacked a sufficient basis in the record for its *Letter Decision*, we set aside the *Letter Decision* pending further proceedings in this matter. We recognize that such further proceedings could potentially affect CELSMER's ability to use the frequencies under its geographic license within the Bithlo City area of the Orlando MTA. Nevertheless, we find it in the public interest for CELSMER to continue operating throughout the Orlando MTA pursuant to its geographic license to provide service to the public on these frequencies. Therefore, we take no action at this time with respect to CELSMER's right to operate within the area on the frequencies originally authorized under call sign WNVE296; however, the scope of the rights afforded by CELSMER's geographic license remain

¹³ 47 C.F.R. § 1.917(a)(3).

¹⁴ 47 U.S.C. § 312

¹⁵ The Commission generally does not adjudicate private contractual disputes, but instead attempts to reach a fair accommodation between its exclusive authority over licensing matters and the authority of state and local courts through procedures that defer contractual matters to courts to decide under state and local law. *See e.g.*, In the Matter of Airtouch Paging, Inc., For Consent to Partial Assignment, *Order* (CWD/WTB: rel. June 16, 1999); *Listener's Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987).

subject to the outcome of this proceeding. Finally, as we are setting aside the *Letter Decision*, we dismiss Dawson's Emergency Petition/Stay Request as moot.

V. Ordering Clauses

9. 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, 1.2, and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.2, and 1.106, the Petition for Reconsideration filed by S.A. Dawson d/b/a Dawson Associates on April 25, 1995, is GRANTED to the extent discussed herein, and is otherwise DENIED.

10. IT IS FURTHER ORDERED that the Office of Operations decision of April 13, 1995 is SET ASIDE.

11. IT IS FURTHER ORDERED that the Emergency Petition for Reconsideration/Motion for Stay filed by S.A. Dawson on April 24, 1997, is DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting
Deputy Chief
Wireless Telecommunications Bureau