

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

In the Matter of)	
)	
RF POCKETCOMM INC.)	File No. 0001013661
)	
Application to Renew the License for 800 MHz)	
Conventional Business Radio Service Station)	
WPKX607, Riverside County, California)	

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 2003

Released: September 17, 2003

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

1. *Introduction.* On September 11, 2002, Nextel of California, Inc. (Nextel) requested that the Commission reconsider the renewal of Station WPKX607, Riverside County, California, licensed to RF Pocketcomm Inc. (Pocketcomm).¹ Nextel requests that the renewal of the subject station be set aside, and the license cancelled or, in the alternative, granted on a secondary basis.² For the reasons set forth below, we propose to modify the subject license to provide that the operations of Station WPKX607 be protected only on a secondary basis. We otherwise deny the Petition.

2. *Background.* Frequency coordination in the Private Land Mobile Radio (PLMR) Services is the process by which a private entity certified by the Commission recommends the most appropriate frequencies for applicants in designated radio services.³ In 1986, the Commission adopted frequency coordination rules and procedures in an effort to maximize service to the public by assuring that the assignment and management of the PLMR spectrum is performed in an efficient and effective manner.⁴ The Commission has stated that accurate information is fundamental to its ability to review effectively the frequency recommendations made by FCC-certified frequency coordinators in connection with the Commission's licensing determinations.⁵ A fundamental aspect of frequency coordination, in any radio service, is an accurate determination by a FCC-certified coordinator as to whether the proposed operations potential will cause harmful interference to existing co-channel or adjacent channel licensees.⁶

3. Section 90.621(b)(4) of the Commission's Rules provides that co-channel stations in the 800 MHz band are required to be separated by 70 miles (113 km).⁷ Also, the rules provide that stations

¹ Nextel of California, Inc. Petition for Reconsideration and Set Aside of Renewal (filed Sept. 11, 2002) (*Petition*). Nextel of California, Inc. (Nextel) is a wholly owned subsidiary of Nextel Communications, Inc. *Id.* at 1.

² *Id.* at 2.

³ Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, PR Docket No. 83-737, 103 FCC 2d 1093 (1986).

⁴ *Id.* at 1094-95 ¶ 2.

⁵ *Id.* at 1148 ¶ 111, 1150 ¶ 116.

⁶ See generally American Mobile Telecommunications Association, Inc. and American Trucking Associations, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 12416, 12422-23 ¶¶ 13-15 (WTB PSPWD 2001).

⁷ 47 C.F.R. § 90.621(b)(4).

operating on frequencies 12.5 kHz offset in the Mexican border region will be considered co-channel with stations operating on non-offset frequencies outside the Mexican border region.⁸

4. Nextel is the licensee of Stations WNBF500 and WPGH426, San Marcos, California. Both stations operate on frequency 859.8750 MHz, among others. These stations have been licensed at their current locations and technical parameters since 1990 and 1995, respectively.⁹

5. The license for Station WPKX607 was initially granted on September 8, 1997.¹⁰ At the time of grant, the subject station was authorized in the Business Radio Service to operate on Business Pool frequency 859.8625 MHz at primary sites located at Banning and Hemet, California. On January 24, 2002, the station license was modified to change the Banning operations to secondary status and to add Riverside, California, as a primary site.¹¹ The Hemet, Banning, and Riverside transmitters are all within seventy miles of Nextel's stations in San Marcos.¹² On August 30, 2002, Pocketcomm filed an application to renew the license for Station WPKX607, which the Licensing Technical and Analysis Branch (LTAB) of the Wireless Telecommunications Bureau's Public Safety and Private Wireless Division granted on August 31, 2002.¹³

6. On September 11, 2002, Nextel filed its Petition seeking reconsideration of the renewal grant and cancellation or modification of the license. Nextel submits that Station WPKX607 should not have been authorized to operate on a frequency 12.5 kHz offset and less than seventy miles from its pre-existing stations.¹⁴ If operation on the subject frequency is to continue, Nextel argues that it should only be on a secondary basis.¹⁵ In response to Nextel's request for reconsideration, on September 17, 2002, LTAB set aside the license renewal grant for Station WPKX607.¹⁶ The effect of this action was to return the renewal application to pending status. Pocketcomm has not submitted a response to the Petition, or, for that matter, to the LTAB set aside letter.

7. *Discussion.* Nextel requests that the Pocketcomm license for Station WPKX607 be set aside and cancelled because coordination of its frequency (859.8625 MHz) was faulty. According to Nextel, neither the original grant of the subject station nor the later modification of the license appears to have taken into consideration operation of Stations WNBF500 and WPGH426 as licensed to Nextel on the adjacent Mexican border region channel 859.8750 MHz.¹⁷ Nextel submits that its licenses were granted prior in time to Pocketcomm's Station WPKX607.¹⁸ It further contends that it was not served copies of the original application or license modification application regarding Station WPKX607.¹⁹

⁸ 47 C.F.R. § 90.621(b)(7).

⁹ *Petition* at 2-3.

¹⁰ This license was previously granted to MSL Freight, which assigned it to Pocketcomm in 2001.

¹¹ *See* File No. 000575700 (filed Aug. 29, 2001).

¹² Specifically, forty-five, sixty-one, and forty miles, respectively. *Petition* at 4.

¹³ *See* File No. 0001013661 (filed Aug. 30, 2002).

¹⁴ *Petition* at 2.

¹⁵ *Id.*

¹⁶ Letter dated Sept. 17, 2002, from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission to Rosa M. Valles, RF Pocketcomm.

¹⁷ *Petition* at 3.

¹⁸ *Id.* at 2, 4.

¹⁹ *Id.* at 3.

Thus, Nextel contends that Station WPKX607 was improperly authorized on frequency 859.8625 MHz. It requests that the renewal of Pocketcomm's license be set aside, and the license cancelled.²⁰ In the alternative, Nextel asks that Pocketcomm's operations at Hemet and Riverside be relegated to secondary status.²¹

8. Based upon our analysis and the information currently before us, we conclude that neither the initial application for Station WPKX607 nor the modification application should have been coordinated, because the proposed operations did not provide the requisite interference protection to Stations WNB500 and WPGH426. Any location must comply with the requisite separation requirements regardless of primary or secondary status.²² However, a license applicant may submit a waiver request with a letter of concurrence indicating agreement between it and any co-channel licensee within the specified separation as to any interference resulting from the reduced separation between their stations.²³ In our view, Nextel's suggestion in its Petition that Station WPKX607 be protected only as a secondary station comprises concurrence. Therefore, we find that cancellation of Pocketcomm's license is unnecessary in the instant case because Nextel's alternative suggestion of secondary protection for Station WPKX607 is designed to eliminate the potential for harmful interference to the Nextel stations.

9. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.²⁴ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.²⁵ In this connection, we note that the proposed modification would serve the public interest by maintaining the operations of Station WPKX607 while ensuring that Stations WNB500 and WPGH426 do not incur harmful interference. Given that Station WPKX607 already operates on a secondary basis at its Banning location, and no actual instances of harmful interference have not been reported from any of the locations, it appears that Pocketcomm's operations will not be unduly disrupted by changing the status of the Hemet and Riverside locations from primary to secondary. Although actual or probable interference need not be claimed by Nextel for it to receive the required protection from "interference potential,"²⁶ the lack of such allegations leads to a likelihood that Pocketcomm's station operations will not be hampered in any significant manner by operating secondary to Nextel's stations.

10. As discussed above, we now believe that the coordination of the initial and modification applications for Station WPKX607 was defective because the required mileage separation was not met and copies of the original license application and license modification application were not served on Nextel as an affected co-channel licensee, as required by Section 90.621 of the Commission's Rules. Further, we believe that a modification of the Pocketcomm license to provide for secondary status at Hemet and Riverside, California (the Banning location currently has secondary status), as proposed by Nextel, is an appropriate mechanism to prevent harmful interference to Nextel's stations. In accordance with Section 1.87(a) of the Commission's Rules,²⁷ we will not issue a modification order until Pocketcomm has received notice of our proposed action and has had an opportunity to interpose a protest.

²⁰ *Id.* at 5.

²¹ *Id.*

²² *Cf.* White Eagle Concrete, Inc., *Order on Reconsideration*, DA 03-2356, ¶ 4 (WTB PSPWD rel. July 25, 2003).

²³ 47 C.F.R. § 90.621(b)(5).

²⁴ 47 U.S.C. § 316(a)(1).

²⁵ *Id.*

²⁶ *See* Pacific Gas and Electric Company, Personal Communications Industry Association and Alon Shatzki, Inc., *Memorandum Opinion and Order on Reconsideration*, 17 FCC Rcd 20900, 20905 ¶ 12 (WTB PSPWD 2002).

²⁷ 47 C.F.R. § 1.87(a).

To protest the modification, Pocketcomm must, within thirty days of the release date of this *Memorandum Opinion and Order*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554.²⁸ If no protest is filed, Pocketcomm will have waived its right to protest the modification and will be deemed to have consented to the modification.

11. *Conclusion.* For the reasons stated above, we conclude that the coordination of the initial and modification applications for Station WPKX607 was defective. Accordingly, we propose to modify Pocketcomm's license for Station WPKX607 to provide secondary status to its locations at Hemet and Riverside, California, in order to protect co-channel licensees from harmful interference.

12. *Ordering Clauses.* 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 Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration and Set Aside of Renewal filed by Nextel of California, Inc., on September 11, 2002, IS GRANTED IN PART to the extent indicated above and IS OTHERWISE DENIED.

13. IT IS PROPOSED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, the license for Private Land Mobile Radio Services Station WPKX607 licensed to RF Pocketcomm, BE MODIFIED by providing secondary status to its operations at Hemet and Riverside, California, on frequency 859.8625 MHz.

14. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to RF Pocketcomm, Inc., Attention Rosa M. Valles, P.O. Box 911487, Los Angeles, California 90091-1239, and it shall be sent by regular mail to James L. Wheaton, Nextel Communications, Inc., 2001 Edmund Halley Drive, Reston, Virginia 20191, and Personal Communications Industry Association, 500 Montgomery Street, Suite 700, Alexandria, Virginia 22314.

15. 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 COMMISSION

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

²⁸ This address is proper only for protests submitted by U.S. mail. For hand-delivered or messenger-delivered paper filings, the proper address is 236 Massachusetts Ave., N.E., Suite 110, Washington, D.C. 20002. For documents sent by overnight delivery service other than United States Postal Service Express Mail and Priority Mail, the proper address is 9300 East Hampton Dr., Capitol Heights, MD 20743. For further information, contact the Office of the Secretary at (202) 418-0300 or Marlene.Dortch@fcc.gov.