

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

In the Matter of)
)
INDUSTRIAL TELECOMMUNICATIONS)
ASSOCIATION, INC.)
)
Petition to Rescind License for Station KNNF731,)
Las Vegas, Nevada)
)
and)
)
VSS ENTERPRISES, LLC)
)
Licensee of Station KNNF731, Las Vegas, Nevada)

MEMORANDUM OPINION AND ORDER

Adopted: February 14, 2003

Released: February 14, 2003

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

1. *Introduction.* On February 8, 2002, the Industrial Telecommunications Association, Inc., (ITA) requested the Commission rescind the January 22, 2002 grant of a modification to the license of VSS Enterprises, LLC, (VSS) for Station KNNF731, Las Vegas, Nevada.¹ For the reasons set forth below, we deny the ITA Petition. However, on our own motion, we initiate a proceeding to modify VSS's license for Station KNNF731 to remove the frequency pair 935/896.8875 MHz.

2. *Background.* On September 20, 2001, VSS filed an application to modify its license for trunked Business Station KNNF731 to, *inter alia*, add frequency pair 935/896.8875 MHz.² The Public Safety and Private Wireless Division (Division), Licensing and Technical Analysis Branch granted the application on January 22, 2002. On February 8, 2002, ITA requested rescission of the grant. ITA argues that frequency pair 935/896.8875 MHz should not have been assigned to VSS because it already has been assigned to the American Association of Railroads (AAR) for nationwide geographic use.³ On March 6, 2002, VSS filed a response in which it concedes that assignment of the AAR frequency was improper.⁴

¹ Letter from Ronald G. Franklin, Director, Spectrum Operations and Analysis, ITA, to Mary Shultz, Federal Communications Commission (received Feb. 8, 2002) (Petition).

² FCC File No. 0000598897 (filed Sept. 20, 2001, amended Oct. 4, 2001 and Jan. 15, 2002). The application also sought to change the authorized location for VSS's operations on frequency pairs 937/898.4500 MHz, 938/899.4125 MHz, and 938/899.4250 MHz.

³ Petition at 1 (citing Petition of Association of American Railroads (AAR) for Modification of Licenses for Use in Advanced Train Control Systems and Positive Train Control Systems, *Order*, 16 FCC Rcd 3078 (WTB PSPWD 2001)) (*AAR Order*). ITA also argues that the authorization to relocate VSS's operations on 937/898.4500 MHz and 938/899.4250 MHz should be rescinded because VSS's requested location is too close to the site requested in an application filed earlier by Sunset Bus and Commercial, Inc. (Sunset), and the authorization to relocate VSS's operations on 938/899.4125 MHz should be rescinded because VSS's requested location is too close to Station WPRI751, Las Vegas, Nevada, licensed to Readymix, Inc. (Readymix). Petition at 2 (citing 47 C.F.R. § 90.621).

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3. *Discussion.* We believe that ITA's Petition is most properly characterized as an informal request for Commission action under Section 1.41 of the Commission's Rules.⁵ Based on our analysis, we agree with ITA and VSS that frequency pair 938/899.4125 MHz should not have been assigned to Station KNNF731 because VSS's operations are within AAR's protected zone, and VSS did not obtain AAR's concurrence. However, we find that ITA's suggestion to rescind the grant to VSS is unnecessary in the instant case because we have an alternative to ITA's proposed action. We believe that Section 316 of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.⁶ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.⁷ In this connection, we note that the proposed modification would serve the public interest by preserving the existing coverage areas of affected parties and preventing harmful interference, while not unduly disrupting VSS's operations.

4. As discussed above, the coordination of VSS's application was defective. Thus, we believe that a modification of the VSS license for Station WNNF731 to delete 938/899.4125 MHz as an operating frequency is appropriate. In accordance with Section 1.87(a) of the Commission's Rules,⁸ we will not issue a modification order until VSS has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the modification, VSS must, within thirty days of the release 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 Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554.⁹ If no protest is filed, VSS will have waived its right to protest the modification and will be deemed to have consented to the modification.¹⁰

5. *Conclusion.* For the reasons stated above, we conclude that the grant of VSS's application was improper. Accordingly, we propose to modify VSS's license for Station KNNF731 to delete frequency pair 938/899.4125 MHz.

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We are addressing these frequencies in other proceedings. Specifically, in an *Order* released today, we approve a settlement agreement between VSS and Sunset regarding disposition of frequency pairs 937/898.4500 MHz and 938/899.4250 MHz. Sunset Bus and Commercial, Inc., *Order*, DA 03-447 (WTB PSPWD rel. Feb. 14, 2003). In addition, the Division is working with the frequency coordinators for VSS and Readymix to resolve the outstanding issues concerning frequency pair 938/899.4125 MHz. See Letter dated Dec. 2, 2002 from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, to Industrial Telecommunications Association and Personal Communications Industry Association.

⁴ VSS Opposition to Petition for Reconsideration at 1 (filed Mar. 6, 2002).

⁵ 47 C.F.R. § 1.41.

⁶ 47 U.S.C. § 316.

⁷ 47 U.S.C. § 316(a). Section 316(a) requires that we notify the affected station(s) of the proposed modification(s) and the public interest reasons for the action, and afford at least thirty days to respond.

⁸ 47 C.F.R. § 1.87(a).

⁹ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail or Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

¹⁰ 47 C.F.R. § 1.87(g), (h).

6. 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 Section 1.41 of Commission's Rules, 47 C.F.R. § 1.41, the Petition to rescind the grant of the license for Station KNNF731, submitted by the Industrial Telecommunications Association on February 5, 2002, IS DENIED.

7. IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Private Land Mobile Radio Services Station WNNF731, Las Vegas, Nevada, held by VSS Enterprises LLC, BE MODIFIED by deleting the frequency pair 938/899.4125 MHz.

8. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to James R. Vanwoerkom, VSS Enterprises LLC., P.O. Box 98138, 2800 Fremont St., Las Vegas, NV 89193-8138.

9. 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 COMMUNICATION COMMISSION

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