

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

In the Matter of)	
)	
Donna J. Olson)	File No. 0000801846
Automatic Cancellation of)	
License for Station WPFN331)	

ORDER

Adopted: March 20, 2003

Released: March 21, 2003

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On March 19, 2002, Nextel Communications, Inc. (Nextel) filed a petition to deny the above-captioned modification application filed by Donna J. Olson (Olson),¹ which seeks to add 250 mobile units to Station WPFN331. On June 19, 2002, Nextel filed a second petition requesting that the Commercial Wireless Division's Licensing and Technical Analysis Branch (Branch) delete Station WPFN331 from the Universal Licensing System (ULS) database,² arguing that the license had expired. Pursuant to Section 90.631(f) of the Commission's rules, we find that Olson's license for Station WPFN331 automatically cancelled because the station permanently discontinued its operations. We therefore dismiss Olson's application, dismiss Nextel's Petition to Deny as moot, and grant in part Nextel's Petition to Correct.

II. BACKGROUND

2. Station WPFN331 is licensed to Olson on a secondary basis. Station WPFN331 was originally associated with Station WPCS637, which was licensed on a primary basis. The stations provided trunked operations in the upper 200-channel blocks of the 800 MHz Specialized Mobile Radio (SMR) bands in the Chicago, Illinois area and were assigned to Olson on July 14, 1997.³ At the time WPCS637 was assigned to Olson, four mobile units were licensed under that call sign, making the station operational under Commission rules.⁴ In December 1997, Nextel became the geographic area licensee for those channel blocks in Economic Area (EA) 64 in Chicago.⁵ In late 1998, Olson allowed the license for Station WPCS637 to expire,⁶ but continued to operate WPFN331 on a secondary basis and the license for that station was renewed in August 1999.

¹ Petition to Deny filed by Nextel Communications, Inc. (Mar. 19, 2002) (Petition to Deny).

² Petition to Correct the Database filed by Nextel Communications, Inc. (June 19, 2002) (Petition to Correct).

³ The license for WPCS637 was originally issued on October 6, 1993, and the license for WPFN331 was originally issued on September 21, 1994. HCCI was the original licensee.

⁴ 47 C.F.R. § 90.631(f).

⁵ 800 MHz SMR Auction Closes; Winner Bidders in the Auction of 525 Specialized Mobile Radio Licenses, *Public Notice*, 12 FCC Rcd 20417 (1997).

⁶ The license for Station WPCS637 expired on October 6, 1998.

3. On March 8, 2002, Olson filed an application to add 250 mobile units to the license for Station WPFN331. In response, Nextel filed its Petition to Deny, arguing that Olson's license had automatically cancelled for failure to place the station into operation, and that adding 250 mobile units to the station would cause harmful interference to Nextel's EA operations.⁷ Nextel argues in its Petition to Correct that the secondary license for Station WPFN331 expired when Olson allowed the primary license for Station WPCS637 to expire.⁸

III. DISCUSSION

4. We find that the license for Station WPFN331 automatically cancelled because operations were permanently discontinued under Section 90.631(f) of the Commission's rules. Base stations for trunked SMR systems are not considered to be in operation unless at least two associated mobile stations, or one control and one mobile station, are placed into operation. Trunked SMR facilities that have not operated under this definition for 90 continuous days are presumed to have permanently discontinued operations. If the station's operations have been permanently discontinued, the license cancels automatically.⁹

5. In this case, the mobile units authorized to operate under Olson's system were licensed under the base station authorization (Station WPCS637).¹⁰ Four mobile units were operating under the license for Station WPCS637, but our records show that Olson never identified any mobile units that operate under the authority of Station WPFN331,¹¹ and we reject Olson's argument that the four mobile units operating under the authority of Station WPCS637 were "associated by reference" to Station

⁷ Nextel also filed a motion to revoke the license for Station WPFN331 with the Commission's Enforcement Bureau on February 25, 2002. Motion for Revocation of License (Station WPFN331) filed by Nextel Communications, Inc. (Feb. 25, 2002). As described in its Petition to Deny, Nextel argues in its motion for revocation that Olson has "willfully and repeatedly" violated Commission rules by refusing to cooperate in relocating the station to alternative 800 MHz spectrum. Petition to Deny at 1-2. Nextel argues that the Commission should deny Olson's modification application "in light of the pendency of the Motion for Revocation." We do not consider this argument because we are dismissing the application on other grounds.

⁸ In this Order, we consider Olson's late-filed opposition, as well as her unauthorized Response to Nextel's Reply. Section 1.45 of the Commission's rules requires parties to file an opposition within ten days of the date on which the petition to deny is filed. 47 C.F.R. § 1.45(b). Olson filed her opposition late because Nextel filed its Petition to Deny on March 19, 2002, establishing a deadline for filing oppositions of March 29, 2002, and Olson filed her Opposition on May 31, 2002, two months after the deadline. Olson also filed an unauthorized response to Nextel's reply. Commission rules permit parties to file petitions to deny, oppositions to those petitions, and replies to oppositions, but the rules do not provide for a response to a reply. *Id.* § 1.939. Nevertheless, we believe it is in the public interest to consider all of the arguments in this case before making a determination regarding automatic cancellation of Olson's license. We therefore deny Nextel's request to dismiss Olson's opposition as untimely filed. We also consider the arguments raised in Olson's response.

⁹ 47 C.F.R. § 90.631(f); *see* In the Matter of Jen-Shenn Song Renewal Application for Station WNKS326 and Request for Waiver of Section 1.949(a) of the Commission's Rules, *Order*, 17 FCC Rcd 3503, 3508, ¶ 10 (CWD 2002) (stating that "Section 90.631(f) of the Commission's rules provides that base stations for SMR trunked systems are not considered to be in operation unless at least two associated mobile stations, or one control and one mobile station, are also placed into operation").

¹⁰ 47 C.F.R. § 90.655; *see* In the Matter of Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems, *Report and Order*, 7 FCC Rcd 5558, 5559-60, ¶¶ 7-16 (1992).

¹¹ In her Response, Olson acknowledges that she has never associated any mobiles with WPFN331. She states "[t]hat the mobile units not also listed under WPFN331, ..., is to be corrected for the purpose of future clarity and administrative convenience." Olson Response at 2.

WPFN331 after the primary site license expired.¹² Accordingly, any authority to operate mobile units on Olson's system expired along with the license for Station WPCS637 on October 6, 1998. Because the four mobile units were no longer authorized to operate after the license for Station WPCS637 expired, Station WPFN331 permanently discontinued operations 90 days after October 6, 1998.¹³ We therefore find that Olson's license for Station WPFN331 automatically cancelled because of permanently discontinued operations on January 4, 1999. As a result, the spectrum licensed under Station WPFN331 automatically reverts to the geographic area licensee.¹⁴

6. We also reject Olson's argument that the renewal of its license for Station WPFN331 in September 1999, constitutes an "affirmation" that the station was "properly licensed."¹⁵ Olson argues that renewal of its license for Station WPFN331 somehow removes the requirement that she associate mobile units with the license to demonstrate operation under Commission rules. We disagree. Renewal of a license does not by itself remove or modify a Commission requirement that applies to station operations under the license. Renewal authority is approval to operate under the terms and conditions of the license.¹⁶ Olson retained her license on the condition that Station WPFN331 operates as defined under Commission rules and Olson has failed to meet that requirement. Accordingly, we dismiss Olson's above-captioned modification application because the underlying license has automatically cancelled. Because we are dismissing the application, we also dismiss Nextel's Petition to Deny as moot. Finally, we grant Nextel's petition to delete the station license for WPFN331 from the ULS database for the reasons set forth above.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 90.631(f) of the Commission's rules, 47 C.F.R. §§ 0.331, 90.631(f), the authorization granted to Donna J. Olson for Station WPFN331 has AUTOMATICALLY CANCELLED.

8. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.934 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.934, the Application for Modification of Station WPFN331 filed by Donna J. Olson on March 8, 2002, IS DISMISSED.

¹² Opposition at 2. Olson explains that although she allowed the primary license to expire, the mobile units remain in operation and maintain their association under the secondary site license. *Id.*

¹³ We note that Olson does not present any rule or decision to support its argument that a station operating on a secondary basis under a separate call sign "inherits" the authority granted under an expired primary license.

¹⁴ 47 C.F.R. § 90.683(b). We similarly reject Nextel's argument that the license for Station WPFN331 expired along with the license for Station WPCS637. Petition to Correct the Database at 1-2. Because the primary and secondary sites were authorized to operate under separate licenses, the expiration of the license for Station WPCS637 resulted only in the expiration of all authority granted under that authorization for Olson's system. The expiration of the license for WPCS637 did not result in the expiration of the license for Station WPFN331. We note that in most cases, secondary sites operate under the authority of the base station license. Under those circumstances, the authority for the secondary site expires along with the license for the base station. If Olson's secondary site had been operating under the authority of the license for the base station WPCS637, the license for that secondary site would have also expired on October 6, 1998.

¹⁵ Olson Response at 2.

¹⁶ See In the Matter of Richard Duncan d/b/a Anderson Communications, *Memorandum Opinion and Order and Order on Remand*, FCC 03-52 at ¶ 9 (rel. March 12, 2003) (stating that "[r]enewal of a license does not by itself grant new authority removing or modifying conditions that were applicable at the time the original license was granted").

9. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309, and Sections 0.331 and 1.939 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.939, the Petition to Deny filed by Nextel Communications, Inc. on March 19, 2002, IS DISMISSED as moot.

10. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.41 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.41, the Petition to Correct the Database filed by Nextel Communications, Inc. on June 19, 2002, IS GRANTED to the extent specified herein.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari
Chief, Policy and Rules Branch
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