

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

In the Matter of)
MILTON H. PINTELL) FCC File No. 0000866395
Licensee of Station WIL295, New York, New York)

ORDER ON RECONSIDERATION

Adopted: December 1, 2005

Released: December 2, 2005

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

I. INTRODUCTION

1. In this Order, we address the petition filed by Atlantic Telecommunications (Atlantic) on July 8, 2002. Atlantic seeks reconsideration of the grant of the above-captioned application to renew the license of Milton H. Pintell (Pintell) for Station WIL295, New York, New York, and termination of the license, on the grounds that the license automatically cancelled because the station either was not constructed on a timely basis or, if timely constructed, permanently discontinued operations. For the reasons that follow, we find that the license for Station WIL295 cancelled automatically. Accordingly, we grant the petition for reconsideration, and will modify the Commission's licensing records to reflect such cancellation.

2. Background. Pintell is the current licensee of record for conventional Industrial/Business Pool Station WIL295, New York, New York, which is authorized to operate on frequency pair 471/474.7625 MHz. On October 12, 2001, as part of its audit of the construction and operational status of the Private Land Mobile Radio (PLMR) stations licensed on frequencies below 512 MHz that are subject to frequency coordination and rule-based construction and operational requirements, the Wireless Telecommunications Bureau (Bureau) sent Pintell a letter seeking information regarding the status of Station WIL295. Pintell did not respond to the PLMR audit letter. On May 31, 2002, the license for Station WIL295 expired by its own terms. Consequently, no further action was taken pursuant to the audit with respect to Station WIL295, even though no audit response had been received. On April 22, 2002, however, Pintell filed an application to renew the license. The renewal application was granted on June 7, 2002, in large part, because it was filed within thirty days of the license expiration date.

1 Petition for Reconsideration and Informal Request for Initiation of License Revocation Proceeding (filed July 8, 2002) (Petition).

2 See Wireless Telecommunications Bureau Announces Commencement of an Audit of the Construction and Operational Status of Private Land Mobile Radio Stations, Public Notice, 16 FCC Rcd 14264 (WTB 2001).

3 Licensees that do not respond to audit letters face cancellation of their licenses. See Wireless Telecommunications Bureau Lists Private Land Mobile Licenses Cancelled as a Result of the Spectrum Audit, Public Notice, 19 FCC Rcd 10100 (WTB 2004).

4 FCC File No. 0000866395 (filed Apr. 22, 2002).

5 See Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless (continued...)

3. On July 8, 2002, co-channel licensee Atlantic⁶ filed a petition seeking reconsideration of the grant of the renewal application and termination of the license for Station WIL295, on the grounds that the license automatically cancelled because the station either was not constructed on a timely basis or, if timely constructed, permanently discontinued operations. The Petition states that Atlantic and New York Radio Service, Inc. (New York Radio), which services and maintains Atlantic's stations, monitored the frequency daily from 1993 to 1996 as part of routine monitoring for co-channel traffic, and never detected any activity from Station WIL295.⁷ In addition, personnel from Atlantic and New York Radio visited the authorized location of Station WIL295 in 2001, and were told by the building's security chief that there were no antennas on the roof.⁸

4. On December 1, 2004, the Public Safety and Critical Infrastructure Division (Division), acting pursuant to Section 308(b) of the Communications Act of 1934, as amended,⁹ requested that Pintell provide information regarding the construction and operational status of Station WIL295.¹⁰ The letter stated that if Pintell failed to respond within thirty days, the Division could conclude that the authorization had cancelled for failure to meet the pertinent construction or operational requirements.¹¹ To date, the Division has received no response from Pintell.

5. *Discussion.* Sections 90.155 and 90.157 of the Commission's Rules provides that a license for a private land mobile radio station cancels automatically if the station is not constructed within twelve months of the date of license grant, or upon discontinuance of operation for a period of one year or more.¹² In this case, we find that Pintell's failure to respond to the audit letter and the Division's 308(b) letter, *supra*, is dispositive evidence supporting Atlantic's claim that the authorization for Station WIL295 cancelled automatically, because Pintell's failure to respond to repeated inquiries presumptively indicates that the station is not constructed or operational.

6. In light of the failure to construct the station, we conclude that the grant of the Pintell renewal application was invalid *ab initio*, as there was no license extant which could be renewed.¹³ Moreover, even if the renewal could somehow cure the termination or be considered the grant of a new license, because the station has not operated for over one year, the license subsequently terminated for permanent discontinuance of operations pursuant to Section 90.157 of the Commission's Rules. We will modify the Commission's licensing records accordingly.

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Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11486 ¶ 22 (1999).

⁶ Atlantic is the licensee of trunked Industrial/Business Pool Station KED880, New York, New York, which is authorized to operate on frequency pair 471/474.7625 MHz, among others.

⁷ See Petition at 3; Declaration from Robby Reiss, Chief Engineer, Atlantic Telecommunications, at 1 (dated July 2, 2002) (Reiss Declaration); Declaration from John Mazza, Systems Engineer, New York Radio Service, Inc., at 1 (dated July 1, 2002) (Mazza Declaration). The distance between the authorized location of Station WIL295 and the nearest site of Station KED880 is 0.675 miles.

⁸ See Petition at 4; Reiss Declaration at 1; Mazza Declaration at 1.

⁹ 47 U.S.C. § 308(b).

¹⁰ Letter dated Dec. 1, 2004 from Scot Stone, Deputy Chief, Public Safety and Critical Infrastructure Division to Milton H. Pintell.

¹¹ See *id.* at 1.

¹² 47 C.F.R. §§ 90.155(a), 90.157; see also 47 C.F.R. § 1.955(a)(2), (3).

¹³ Elmont Trans Med Corporation, *Order*, 18 FCC Rcd 18692, 18695 ¶ 11 (WTB PSPWD 2003).

7. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 1.41 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.106, that the Petition for Reconsideration and Informal Request for Initiation of License Revocation Proceeding filed by Atlantic Telecommunications on July 8, 2002 IS GRANTED, and the Commission's licensing records SHALL BE MODIFIED to reflect the cancellation of the license for Station WIL295.

8. IT IS FURTHER ORDERED that this *Order* shall be sent by certified mail, return receipt requested, to Milton H. Pintell, 225 N. Rte 303, Congers, NY 10920-1798.

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 COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau