

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

In the Matter of )
SAMUEL MOSES )
Licensee of 900 MHz Private Land Mobile Radio )
Station WPTG843 )
Petition to Deny or Informal Objection, Petition ) File No. 0001077180
for Reconsideration, Motion for Set Aside and )
Motion for Stay; and )
DALLAS AREA RAPID TRANSIT )
AUTHORITY )
Licensee of 900 MHz Private Land Mobile Radio )
Station WNJU479 )
Request for Reinstatement of Licensed Frequency )
and for Cancellation or Revocation of License )

ORDER ON RECONSIDERATION

Adopted: April 18, 2007

Released: April 19, 2007

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. In this Order on Reconsideration, we address a petition1 filed on August 7, 2006 by the Dallas Area Rapid Transit Authority (DART) for reconsideration of a July 7, 2006 Order by the Wireless Telecommunications Bureau's Public Safety and Critical Infrastructure Division (Division).2 The Order granted in part petitions filed by Samuel Moses (Moses) against the grant to DART of Special Temporary Authority (STA) to operate Station WPWF999, Dallas, Texas, on frequency 936.9000 MHz at Dallas, Texas; and denied DART's request that its authorization to operate Station WNJU479, Dallas, Texas, on the frequency be reinstated. DART was ordered to cease and desist from use of frequency 936.9000 MHz by August 11, 2006. For the reasons set forth below, we grant the petition for reconsideration in part, and deny it in part. Specifically, we will permit DART to renew its STA for an additional six months after its current term expires, in order to provide sufficient time to make the necessary modifications to its system. In all other respects, we deny the petition for reconsideration. We also dismiss as moot DART's request, filed July 28, 2006, that the Order be stayed pending resolution of its petition for reconsideration.3

1 Petition for Reconsideration (filed August 7, 2006) (Petition for Reconsideration).

2 Samuel Moses, Order, 21 FCC Rcd 7205 (WTB PSCID 2006) (Order). Pursuant to a Commission reorganization effective September 25, 2006, the relevant duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, Order, 21 FCC Rcd 10867 (2006).

3 Emergency Motion for Stay (filed July 28, 2006) (Emergency Motion)

2. *Background.* DART was first licensed for frequency pair 897/936.9000 MHz, and eleven other 900 MHz frequency pairs, under Call Sign WNJU479 in 1987.<sup>4</sup> On July 18, 1997, DART filed an application for renewal of the license of Station WNJU479 on FCC Form 600, which required a listing of each of the frequencies that DART sought to renew on an attached Schedule G, Technical Data form.<sup>5</sup> DART's renewal application, however, rather than requesting base station authority for both 936.0000 MHz and 936.9000 MHz, twice listed the base frequency 936.0000 MHz (omitting the base station frequency 936.9000 MHz).<sup>6</sup> The application was granted on October 6, 1997, but because the base frequency 936.9000 MHz was not listed on DART's renewal application, DART's authorization was not renewed for base station frequency 936.9000 MHz.

3. Because frequency 936.9000 MHz became available for licensing, Moses's application for the frequency was granted under Call Sign WPTG843, Dallas, Texas, on October 1, 2001.<sup>7</sup> On November 1, 2002, DART filed an application for STA to use frequency 936.9000 MHz. The STA application was granted on November 7, 2002, under Call Sign WPWF999.<sup>8</sup> Moses filed a petition to deny the STA application, and petitions for reconsideration and to stay and set aside the grant of the STA application. DART filed a request that its authorization to operate Station WNJU479 on frequency 936.9000 MHz be reinstated. While the pleadings were pending, Moses assigned the license for Station WPTG843 to S M Leasing and Rental Ltd. (SM).<sup>9</sup>

4. On August 7, 2006, the Division denied DART's request; and granted in part Moses's petition to deny, petition for reconsideration, and motion to set aside. The Division concluded that it had authority pursuant to Section 316 of the Communications Act of 1934, as amended,<sup>10</sup> to modify the licenses at issue if such action would serve the public interest, but that DART had not advanced public interest considerations that justified reinstatement of its authority to operate on frequency 936.9000 MHz.<sup>11</sup> Based on the evidence presented, the Division was not convinced that DART's loss of frequency 936.9000 MHz or its inability to locate replacement 900 MHz spectrum would leave DART with a system incapable of meeting its communications requirements in the Dallas region.<sup>12</sup> The Division ordered DART to cease and desist from use of frequency 936.9000 MHz by August 11, 2006.<sup>13</sup>

5. *Discussion.* In its petition for reconsideration, DART argues that the denial of its request should be reconsidered because the Commission's handling of DART's 1997 renewal application conflicted with the Commission's rules, and that DART will suffer irreparable injury if reconsideration is not granted. DART also argues that the license for Station WPTG843 should be revoked or terminated due to questions regarding Moses's and SM's qualifications and activities. As discussed below, we find none of these arguments persuasive with respect to the ultimate issue in this proceeding—which party

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<sup>4</sup> FCC File No. 8707578885, FCC Form 574-L.

<sup>5</sup> FCC Form 600, filed July 1997.

<sup>6</sup> FCC Form 600-Schedule G, July 1997.

<sup>7</sup> See File No. 0000549249, granted Oct. 1, 2001.

<sup>8</sup> The STA has been renewed several times, and is currently scheduled to expire on May 22, 2007.

<sup>9</sup> See File No. 0002175028, granted June 2, 2005. SM subsequently applied to assign the license to Richard R. Susainathan. See File No. 0002566618, filed Apr. 11, 2006. That application remains pending.

<sup>10</sup> 47 U.S.C. § 316.

<sup>11</sup> See *Order*, 21 FCC Rcd at 7208-10 ¶¶ 7-10.

<sup>12</sup> *Id.* at 7209-10 ¶ 10. The Division noted that DART is licensed to use frequencies in other bands, as well as the eleven other 900 MHz channels authorized under Call Sign WNJU479. See *id.* at 7210 ¶ 10 & n.43.

<sup>13</sup> *Id.* at 7211 ¶ 13.

should have the right to use frequency 936.9000 MHz in the Dallas area. Based on new information in the petition for reconsideration, however, we extend the deadline for DART to vacate the frequency.

6. With respect to the handling of the renewal application, DART argues that the Commission erred in not returning the application to the applicant, rather than granting authorization for mobile frequency 897.9000 MHz but not its paired base station frequency 936.9000 MHz, because 1) the Commission's rules required evidence of frequency coordination to delete a frequency, which DART did not provide; and 2) the Commission did not permit authorization on a 900 MHz mobile frequency unless the frequency was paired with a base station frequency.<sup>14</sup> DART appears to miscomprehend the nature of this proceeding. Because DART did not raise these arguments until after the licensing actions had become final, the issue is not whether any procedural error occurred in the processing of DART's application, but whether license modification would "promote the public interest, convenience, and necessity."<sup>15</sup> As the *Order* concluded, Moses was entitled to rely on the information in the Commission's licensing database indicating that frequency 936.9000 MHz was available for assignment.<sup>16</sup> Others should not be denied a license or suffer harmful interference as a result of a series of events that began with DART's failure to exercise due diligence in carrying out its obligation to provide accurate information.

7. With respect to the injury DART will suffer, DART reiterates that if it is required to cease use of frequency 936.9000 MHz, its system will experience significant congestion, and DART will incur significant (but unquantified) effort and expense.<sup>17</sup> In its petition, DART explains that the system currently runs at eighty-six percent capacity, and loss of the frequency would drive routine usage to one hundred percent capacity, leaving no reserve in times of emergencies.<sup>18</sup> DART also "is greatly concerned that because the control logic in the system is programmed through the controller and audio switch, there is reason to believe that deactivating this [f]requency could cause the entire system to switch to 'failsoft' or conventional mode, thereby eliminating its current trunking efficiencies and even further overloading an already heavily loaded network."<sup>19</sup> Finally, DART asserts that it would serve the public interest to avoid the "chaotic situation" that could arise if the system fails in this manner.<sup>20</sup> We are not persuaded by DART's speculation regarding a worst-case scenario, which we note is not supported by any technical analysis. Consequently, based on the record before us, we continue to believe that DART has not advanced public interest considerations that justify reinstatement of its authority to operate on frequency 936.9000 MHz.

8. We are persuaded, however, by DART's assertion that the *Order* did not grant it sufficient time to cease use of frequency 936.9000 MHz. As DART explains in the petition for reconsideration, in addition to significant changes to the base station facilities, each radio in its 1,500-vehicle fleet will have to be reprogrammed individually.<sup>21</sup> We recognize that DART provides public transit services on a twenty-four hour basis, and must minimize the time that any vehicle is out of commission. Consequently, it may be impractical to expect DART to cease use of the frequency forthwith. For this reason, DART will be permitted once more to renew its STA, which currently is scheduled to expire on May 22, 2007.

<sup>14</sup> See Petition for Reconsideration at 4-5.

<sup>15</sup> 47 U.S.C. § 316(a)(1).

<sup>16</sup> See *Order*, 21 FCC Rcd at 7210-11 ¶¶ 11-12.

<sup>17</sup> See Petition for Reconsideration at 7-8.

<sup>18</sup> See *id.* at 9.

<sup>19</sup> *Id.* at 9-10.

<sup>20</sup> See *id.* at 10.

<sup>21</sup> See *id.*

If the STA is renewed for six months, that will afford DART until November 2007—sixteen months after the *Order* was released—to implement the necessary changes.

9. Finally, DART again argues that the Division should inquire into substantive questions it raises regarding Moses's and SM's claims regarding construction and operation of Station WPTG843, and their eligibility for the authorization.<sup>22</sup> DART presented such enforcement issues previously. The Division noted them, and indicated that they were beyond the scope of the present proceeding but could be pursued by DART in an appropriate setting.<sup>23</sup> DART asserts that considering these matters in the present proceeding would conserve Commission resources.<sup>24</sup> The Division is not obligated to handle collateral issues all in one proceeding. DART cites no authority, and we are aware of none, constraining our discretion with respect to the sequence in which matters are addressed.<sup>25</sup> The *Order* reasonably concluded that the public interest and administrative efficiency would best be served by reaching a final resolution of the central issue presented by the pleadings before the Division—which party should currently have the right to use frequency 936.9000 MHz in the Dallas area. Additional issues and evidence would expand and prolong this proceeding. Should it be determined in an appropriate setting that Moses was not qualified or that SM is not qualified due to misrepresentations or lack of candor, the Commission retains discretion to take whatever remedial action it deems appropriate under the circumstances, including license revocation.<sup>26</sup>

10. *Conclusion.* In view of the foregoing, we substantially affirm the Division's action denying DART's request for reinstatement and granting Moses's petitions to deny and for reconsideration and set-aside. DART has not advanced public interest considerations that justify reinstatement of its authority to operate on frequency 936.9000 MHz. DART will be permitted to renew its STA under Call Sign WPWF999 once more. Upon expiration of the renewed STA, DART will be required to cease and desist from use of frequency 936.9000 MHz.

11. 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), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by the Dallas Area Rapid Transit Authority on August 7, 2006 IS GRANTED IN PART to the extent indicated above, and IS OTHERWISE DENIED.

12. IT IS FURTHER ORDERED that the Emergency Motion for Stay filed by the Dallas Area Rapid Transit Authority on July 28, 2006 IS DISMISSED AS MOOT.

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<sup>22</sup> See *id.* at 12-14.

<sup>23</sup> See *Order*, 21 FCC Rcd at 7207 n.17.

<sup>24</sup> See Petition for Reconsideration at 15.

<sup>25</sup> See *Maritime Communications/Land Mobile LLC, Order on Reconsideration*, 22 FCC Rcd 4780, 4785 n.45 (WTB MD 2007), *recon. and review pending*; *Mobex Network Services, LLC, Order on Reconsideration*, 22 FCC Rcd 665, 669 ¶ 15 (WTB MD 2007) (citing *Geostar Corporation, Memorandum Opinion and Order*, 2 FCC Rcd 5875, 5875 ¶ 4 (CCB 1987)), *recon. and review pending*.

<sup>26</sup> See 47 U.S.C. § 312. The decisions made in the instant proceeding are without prejudice to the resolution of qualification or eligibility issues raised in any future proceedings.

13. 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

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau