

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

In the Matter of)
) File No. EB-07-SE-095
Presbyterian Hospital, Inc.)
New York, New York 10032)
)

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 2008

Released: March 13, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we admonish Presbyterian Hospital, Inc. (“Presbyterian Hospital”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station KNS481, for operating its PLMRS station without Commission authority and for failing to file a timely renewal application for the station. Presbyterian Hospital acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)¹ and Sections 1.903(a) and 1.949(a) of the Commission’s Rules (“Rules”)² by failing to file a timely renewal application for station KNS481 and for continued operation of that station from May 22, 2002 to August 5, 2003.

II. BACKGROUND

2. On April 18, 1997, Presbyterian Hospital was granted a license renewal for PLMRS station KNS481 with an expiration date of May 21, 2002. Presbyterian Hospital did not file a renewal application, and consequently its license to operate station KNS481 expired on May 21, 2002.³ On February 13, 2007, Presbyterian Hospital filed an application with the Wireless Telecommunications Bureau (“WTB”) for special temporary authority (“STA”)⁴ to operate on the KNS481 frequencies. On February 22, 2007, Presbyterian Hospital filed a modification to its STA request,⁵ and on February 27, 2007, filed an application for a new license.⁶ WTB granted Presbyterian Hospital’s modified STA request under call sign WQGK659 on February 26, 2007,⁷ and subsequently issued Presbyterian Hospital

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a) and 1.949(a).

³ KNS481 was licensed to operate on frequencies 472.2875/472.7625 MHz (repeater stations) and 475.2875/475.7625 MHz (mobile units).

⁴ File No. 0002911545.

⁵ File No. 0002921486.

⁶ File No. 0002928272.

⁷ WTB granted Presbyterian Hospital’s initial STA request on February 15, 2007. The modified STA request was granted on February 26, 2007. *See* File No. 0002921486.

a new license, WQQQ798, on March 27, 2007.⁸

3. Because it appeared that Presbyterian Hospital may have operated KNS481 after the expiration of its license, WTB referred this case to the Enforcement Bureau for investigation and possible enforcement action. On July 30, 2007, the Enforcement Bureau's Spectrum Enforcement Division issued a letter of inquiry ("LOI") to Presbyterian Hospital.⁹

4. On September 25, 2007, the Enforcement Bureau received Presbyterian Hospital's LOI Response.¹⁰ In its Response, Presbyterian Hospital admits that it failed to file a timely renewal application for station KNS481 and that it operated that station without authority after the license had expired.¹¹ Presbyterian Hospital states that it became aware that its license had expired in May 2003, but because of the hazardous location of its facilities and the high number of dangerous incidents within its facilities, it could not discontinue its operations on the KNS481 frequencies.¹² Presbyterian Hospital states that upon learning that its license had expired, it immediately contacted an FCC application facilitator to prepare a new application and STA request for the same frequencies it used under its license for station KNS481.¹³ According to Presbyterian Hospital, the applications were subsequently forwarded to the frequency coordinator, Personal Communications Industry Association ("PCIA"); however, PCIA advised Presbyterian Hospital in July 2003 that it would be impossible to obtain a new license with those frequencies, as those frequencies were now licensed to Atlantic Telecommunications ("AT").¹⁴ Presbyterian Hospital states that in August 2003, it made arrangements with AT to use the same frequencies previously authorized under its license for station KNS481.¹⁵

5. Presbyterian Hospital states that it operated on AT's licensed frequencies under an informal agreement with AT from August 2003 until February 8, 2007, when it received a call from AT informing Presbyterian Hospital that its operations were causing interference to a new customer using one of AT's licensed frequencies.¹⁶ Presbyterian Hospital further states that after a number of follow-up telephone calls with AT, it learned that AT wanted Presbyterian Hospital off AT's frequencies by the end

⁸ File No. 0002928272.

⁹ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Richard Irizarry, Presbyterian Hospital (July 30, 2007).

¹⁰ Letter from Thomas P. Van Wazer, Esq., Sidley Austin LLP, Counsel for Presbyterian Hospital, Inc., to Peter Waltonen, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, (September 25, 2007) ("Response").

¹¹ Response at 3.

¹² Response at 5.

¹³ Response, Exhibit 2, Declaration of Richard Irizarry ("Irizarry Declaration"), at para. 7. Mr. Irizarry is the Director of Security at Presbyterian Hospital and is responsible for maintaining the two-way radio equipment used by the Hospital's Security Department and the FCC license authorizing those radio operations.

¹⁴ *Id.* at para. 8.

¹⁵ *Id.* at paras. 9-10; Exhibit 1, Declaration of William T. Greene ("Greene Declaration"), at para. 11. Section 90.179 of the Rules permits PLMRS licensees, such as AT, to share the use of their facilities with persons not licensed for the facilities, either on a non-profit cost shared basis or a for-profit private carrier basis. *See* 47 C.F.R. § 90.179. AT is classified as a for-profit private carrier and, under the Rules, is permitted to allow entities it deems eligible to use its system. Unlike licensees who operate on a non-profit cost shared basis, a written agreement with each participant is not required. *See* 47 C.F.R. § 90.179(d).

¹⁶ *Response*, Greene Declaration at para. 13; Irizarry Declaration at para. 12.

of February 2007.¹⁷ Presbyterian Hospital states that it immediately took steps to research and coordinate available frequencies, order and install new equipment, and before the end of February 2007, began operating under a Commission license on authorized frequencies.¹⁸

III. DISCUSSION

6. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization.¹⁹ Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.”²⁰ Absent a timely filed renewal application, a wireless radio station license automatically terminates.²¹

7. As a Commission licensee, Presbyterian Hospital was required to maintain its authorization in order to operate its PLMRS station.²² Presbyterian Hospital admits that it failed to file a timely renewal application for station KNS481 and that it operated that station without Commission authority after the license expired on May 21, 2002. Presbyterian Hospital’s unauthorized use of the KNS481 frequencies continued until August 5, 2003, when it obtained AT’s consent to operate on AT’s licensed frequencies. Based on the information before us, we find that Presbyterian Hospital was operating on the KNS481 frequencies without authority from May 22, 2002, until it made arrangements with AT to use AT’s licensed frequencies on August 5, 2003.

8. Although we believe that a monetary forfeiture would be warranted for Presbyterian Hospital’s failure to file a timely renewal application and for unauthorized operations from May 22, 2002 until August 5, 2003, we note that the statute of limitations for proposing such a forfeiture is one year from the date of violation.²³ Accordingly, based upon our review of the facts and circumstances in this case, and because we are barred by the one-year statute of limitations from proposing a forfeiture for these violations, we admonish Presbyterian Hospital for violating Section 1.949(a) of the Rules by failing to timely renew its license for KNS481 and for violating Section 301 of the Act and Section 1.903(a) of the Rules by operating that station without authorization after the expiration of its license. We caution Presbyterian that any violations of future license provisions may result in additional sanctions.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that Presbyterian Hospital, Inc. **IS ADMONISHED** for operating former PLMRS station KNS481 without authority and for failing to timely file a renewal application as required by Section 301 of the Act, 47 U.S.C. § 301, and Sections 1.903 and 1.949 of the Rules, 47 C.F.R. §§ 1.903(a) and 1.949(a).

¹⁷ *Response*, Greene Declaration at para. 13.

¹⁸ *Response*, Greene Declaration at paras. 13-14; Irizarry Declaration at paras. 15-18.

¹⁹ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

²⁰ 47 C.F.R. § 1.949(a).

²¹ 47 C.F.R. § 1.955(a)(1).

²² *See, e.g., Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) (licensee is responsible for compliance with all Commission rules).

²³ *See* 47 U.S.C. § 503(b)(6)(B); 47 C.F.R. § 1.80(c)(3).

10. **IT IS FURTHER ORDERED** that copies of this *Memorandum Opinion and Order* shall be sent by first class mail and certified mail, return receipt requested, to counsel for Presbyterian Hospital, Inc., Thomas P. Van Wazer, Esq., Sidley Austin LLP, 1501 K Street N.W., Washington, D.C. 20005 and Richard Irizarry, Director of Security, Presbyterian Hospital, Inc., 622 W 168th St., New York, N.Y. 10032.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau