

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

In the Matter of )
JRZ ASSOCIATES ) File No. 0002862763
Application for Renewal of License for Broadband )
Radio Service Station WNTH835 )

ORDER ON RECONSIDERATION

Adopted: June 15, 2009

Released: June 16, 2009

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On February 15, 2007, the Wireless Telecommunications Bureau (Bureau) granted the above-captioned application to renew Broadband Radio Service Station WNTH835. On March 23, 2007, Sprint Nextel Corporation (Sprint Nextel) filed a petition for reconsideration of that grant. We also have before us an opposition filed by JRZ Associates, a reply filed by Sprint Nextel, and a request to designate this proceeding as "permit but disclose" for purposes of the Commission's ex parte rules filed by Sprint Nextel, and an informal objection filed against the Application by Sprint Nextel, Nokia, Inc. and Nokia Siemens Networks, Inc. For the reasons discussed below, we dismiss the Petition and Informal Objection and deny the Ex Parte Motion.

II. BACKGROUND

2. On May 20, 1991, JRZ was granted the license for Station WNTH835. This license was due to expire on May 20, 1996. JRZ filed an application for renewal of this license May 6, 1996. On November 4, 2004, the Wireless Telecommunications Bureau returned the application and directed JRZ

1 File No. 0002862763 (Application).

2 See Wireless Telecommunications Bureau Market-Based Applications Action, Report No. 2940, Public Notice (rel. Feb. 21, 2007) at 1 (Grant Public Notice).

3 Petition for Reconsideration of Sprint Nextel Corporation (filed Mar. 23, 2007) (Petition).

4 Opposition to Sprint Nextel Corporation's Petition for Reconsideration (filed Apr. 2, 2007) (Opposition).

5 Reply of Sprint Nextel Corporation (filed Apr. 17, 2007) (Reply).

6 Request to Designate Proceedings as "Permit but Disclose," Sprint Nextel Corporation (filed Mar. 22, 2007) (Ex Parte Motion).

7 Letter from Trey Hanbury, Director, Government Affairs, Sprint Nextel Corporation and Cecily Cohen, Director, Government and Industry Affairs, Nokia and Nokia Siemens Networks to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (Jul. 10, 2007) (Informal Objection).

8 See license for BRS Station WNTH835.

9 Id.

10 File No. 9650833 (1996 Renewal Application)

to file a waiver request.<sup>11</sup> On December 9, 2004, JRZ filed the instant waiver request as an amendment to its renewal application.<sup>12</sup>

3. JRZ acknowledged that its 1996 Renewal Application was late-filed.<sup>13</sup> JRZ offered no explanation as to why the Renewal Application was filed late but stated that the error was unintentional.<sup>14</sup> Nevertheless, JRZ claimed that even though the Renewal was late-filed, the Waiver Request should be granted and the license should be renewed because an application for renewal was filed prior to the license expiring.<sup>15</sup> JRZ also cited the Public Safety and Private Wireless Division's decision in *Jonsson Communications Corp.*, which held that it would be unduly harsh to dismiss a license when a renewal application was filed after the deadline but prior to license expiration.<sup>16</sup> Finally, JRZ stated that it has retained outside counsel to handle all Commission filing deadlines to ensure that no errors occur in the future.<sup>17</sup>

4. No party filed a petition to deny or other opposition against the 1996 Renewal Application. On November 28, 2006, the Bureau's Broadband Division (Division) issued a letter granting the 1996 Waiver Request and directing processing of the 1996 Renewal Application.<sup>18</sup> The Division granted the 1996 Renewal Application on December 7, 2006.<sup>19</sup> No party filed a petition for reconsideration of that action.

5. Normally, JRZ Associates would have been required to file a renewal application by May 2006 to cover the 2006-2016 period. Because the 1996 Renewal Application was still pending in May 2006, however, JRZ Associates was not able to file a renewal application within the period prescribed by the rule. Bureau staff advised JRZ Associates to file another renewal application with a waiver request.<sup>20</sup> JRZ Associates filed the instant Application on January 3, 2007.<sup>21</sup> Public notice that the Application had been accepted for filing was given on January 10, 2007.<sup>22</sup> No party filed a petition to deny or other opposition was filed against the Application. On February 15, 2007, the Application was granted without written order or opinion.<sup>23</sup>

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<sup>11</sup> Letter from Federal Communications Commission, Wireless Telecommunications Bureau to JRZ Associates, Ref. No. 3120634 (Nov. 4, 2004).

<sup>12</sup> 1996 Renewal Application, Request for Waiver of Renewal Filing Window (1996 Waiver Request).

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See id*; *see also* *Jonsson Communications Corp., Memorandum Opinion and Order*, 17 FCC Rcd 22697 (WTB PSPWD 2002).

<sup>17</sup> Waiver Request at 1-2.

<sup>18</sup> *See* Letter from John J. Schauble, Deputy Chief, Broadband Division to Mr. Lawrence Behr, JRZ Associates (Nov. 28, 2006) (*2006 Waiver Grant*).

<sup>19</sup> *See* Wireless Telecommunications Bureau Market-Based Applications Action, Report No. 2749, *Public Notice* (rel. Dec. 13, 2006) at 1.

<sup>20</sup> Opposition at 5-6.

<sup>21</sup> Application.

<sup>22</sup> *See* Wireless Telecommunications Bureau Market-Based Applications Accepted For Filing, Report No. 2818, *Public Notice* (rel. Jan. 10, 2007) at 1.

<sup>23</sup> *Grant Public Notice*.

6. On March 23, 2007, Sprint Nextel filed the Petition.<sup>24</sup> The Petition to Deny fails to acknowledge the history of JRZ's authorization, the fact that JRZ could not have filed during the time provided for in the rules, or the *2006 Waiver Grant*. Sprint Nextel claims that JRZ "has no authorization to renew" because the authorization automatically terminated when the expiration date passed.<sup>25</sup> Sprint Nextel claims that the grant of the Application was arbitrary and capricious<sup>26</sup> and not in the public interest.<sup>27</sup> JRZ responds that Sprint lacks standing to file a petition for reconsideration,<sup>28</sup> that the Petition violates Section 1.106(b) of the Commission's Rules because Sprint has failed to explain why it did not participate earlier,<sup>29</sup> that the Petition is untimely with respect to the *2006 Waiver Order*,<sup>30</sup> and that the justification for the waiver was self-evident from the circumstances surrounding the filing of the Application.<sup>31</sup> In its Reply, Sprint Nextel does not argue that the facts support the denial of the Application, but it argues that the Division should vacate the original grant and engage in an individualized assessment of the facts in a written order.<sup>32</sup>

### III. DISCUSSION

#### A. *Ex Parte* Motion

7. Sprint Nextel argues that the "broad, important public policy issues" raised by these and similar applications justifies "permit-but-disclose" treatment of the Application under the Commission's *ex parte* rules.<sup>33</sup> It also contends that changing the *ex parte* status of the proceedings would allow the Commission to develop a more complete record and provide the opportunity to meet with all parties to explore an appropriate resolution to this proceeding.<sup>34</sup>

8. We deny Sprint Nextel's request because we do not believe that changing the *ex parte* status of this proceeding will assist the Commission in the resolution of the applications. Sprint Nextel has had a full opportunity to make its arguments in its pleadings, and it fails to explain what additional information it could provide in meetings that it did not provide in its pleadings. Furthermore, given the large number of applications Sprint Nextel has filed against, changing the *ex parte* status of the proceedings could ultimately delay resolution of the proceedings by engendering a large number of repetitive presentations that would consume the resources of the parties and the Commission while not materially assisting the Commission in resolving the issues.

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<sup>24</sup> Petition.

<sup>25</sup> Petition at 1-2, 5-6.

<sup>26</sup> Petition at 6-7.

<sup>27</sup> Petition at 8.

<sup>28</sup> Opposition at 1-3.

<sup>29</sup> Opposition at 3-5.

<sup>30</sup> Opposition at 5.

<sup>31</sup> Opposition at 5-6.

<sup>32</sup> Reply.

<sup>33</sup> *Ex Parte* Motion at 2.

<sup>34</sup> *Ex Parte* Motion at 2-3.

**B. Petition for Reconsideration**

9. We dismiss the Petition because Sprint Nextel fails to meet Section 1.106(c) and 1.106(e) of the Commission's Rules.<sup>35</sup> As a result, we need not make a determination on the merits of the Petition.

10. Section 1.106(c) of the Commission's Rules specifies the circumstances under which the Commission will permit a party to enter a proceeding at the reconsideration stage. Section 1.106(c) of the Commission's Rules provides that, if a party that has not hitherto participated in a proceeding chooses to file a petition for reconsideration, the petition may only be granted if (1) the petition relies on events which have occurred or circumstances which have changed since the last opportunity to present such matters, (2) the petition relies on facts unknown to the petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity, or (3) consideration of the facts relied on is in the public interest.<sup>36</sup> A petitioner must also show good reason why it was not possible for it to participate in the earlier stages of the proceeding.<sup>37</sup>

11. Section 1.939 of the Commission's Rules provides that any interested party who wants to object to any application must file a petition to deny within thirty days of the public notice.<sup>38</sup> The Application was accepted for filing on January 10, 2007. Although Sprint Nextel, through the exercise of ordinary diligence, could have filed a petition to deny or other objection in response to any of these public notices accepting the applications for filing, it did not do so. In addition, Sprint Nextel does not indicate that events or circumstances have changed since the Application was accepted for filing. In fact, Sprint Nextel does not attempt to explain why it was not possible for it to participate in the earlier stages of the proceedings.

12. In the absence of a showing that Sprint Nextel acted diligently, we find that it is not in the public interest to consider its late-filed Petition. Sprint Nextel's Petition fails to address the unusual circumstances surrounding JRZ Associates' Application. Moreover, in its Reply, Sprint Nextel does not contend that JRZ Associates' Application should be denied. Instead, it takes issue with other actions granting late-filed renewal applications. We believe the basis for granting the Application is self-evident from the fact that JRZ Associates could not have filed a timely renewal application during the period prescribed by the rules because the 1996 Renewal Application was still pending. We see no basis for considering Sprint Nextel's untimely Petition when it has filed pleadings against those other applications. We therefore dismiss the Petition.

13. We also dismiss the Informal Objection. Sprint Nextel's Petition cannot be considered because it failed to timely participate in the proceeding. The Commission's procedural rules regarding petitions for reconsideration would have no meaning if a party could circumvent those rules by filing an informal objection months after the deadline for petitions for reconsideration. While Nokia also signed

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<sup>35</sup> 47 C.F.R. § 1.106(c) and (e). Although not decisional, we reject JRZ Associates' argument that Sprint Nextel lacks standing to file the Petition. Sprint Nextel holds the BRA BTA authorization for the New Bern, North Carolina BAT (BTA 316) within which the license for Station WNTH835 is located. If the license for Station WNTH835 were cancelled, Sprint Nextel would obtain the right to operate within the station's geographic service area. See 47 C.F.R. § 27.1206(b).

<sup>36</sup> 47 C.F.R. §§ 1.106(b)(2), (c).

<sup>37</sup> 47 C.F.R. § 1.106(b)(1) states: "If the petition [for reconsideration] is filed by a person who is not a party to the proceeding, it ... shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding."

<sup>38</sup> 47 C.F.R. § 1.939.

the pleading, Nokia also fails to explain its failure to participate in a timely fashion in the proceeding and makes no serious attempt to demonstrate standing. We therefore dismiss the Informal Objection.<sup>39</sup>

#### IV. CONCLUSION AND ORDERING CLAUSES

14. For the reasons discussed above, we deny Sprint Nextel's request to change the *ex parte* status of this proceeding. We also dismiss the Petition for failure to comply with Sections 1.106(c) and (e) of the Commission's Rules.

15. Accordingly, IT IS ORDERED, 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, that the Petition for Reconsideration of Sprint Nextel Corporation on March 23, 2007 IS DISMISSED.

16. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the informal objection filed by Sprint Nextel Corporation, Nokia, Inc. and Nokia Siemens Networks, Inc. on July 10, 2007 IS DISMISSED with respect to File No. 0002862763.

17. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.1200(a) of the Commission's Rules, 47 C.F.R. § 1.1200(a), that the Request to Designate Proceedings as "Permit but Disclose" filed by Sprint Nextel Corporation on March 22, 2007 IS DENIED with respect to File No. 0002862763.

18. 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 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Blaise A. Scinto  
Chief, Broadband Division  
Wireless Telecommunications Bureau

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<sup>39</sup> On March 19, 2008, the Commission adopted a declaratory ruling clarifying its policy concerning the division of overlapping geographic service areas (GSAs) between active EBS licensees and EBS licensees whose licenses expired prior to January 10, 2005 but are later reinstated. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, WT Docket No. 03-66, FCC 08-83 ¶¶ 161-179 (Mar. 20, 2008). The Commission held that late-filed renewal applications granted prior to the adoption of that new policy would be entitled to "split the football" with overlapping co-channel licensees. *Id.* at ¶ 174. Because JRZ Associates' Application was granted prior to the adoption of the new policy, it is entitled to "split the football."