

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
CITY OF AVENTURA, FLORIDA)	FCC File Nos. 0003719918, 0003815812
)	
CITY OF DORAL, FLORIDA)	FCC File Nos. 0003718757, 0003755738
)	
Applications for Licenses in the 800 MHz Band)	

MEMORANDUM OPINION AND ORDER

Adopted: April 8, 2013

Released: April 8, 2013

By the Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we resolve a licensing dispute in the 800 MHz band between the City of Aventura, Florida (Aventura) and the City of Doral, Florida (Doral) and between their respective frequency coordinators, PCIA—the Wireless Infrastructure Association (PCIA) and Enterprise Wireless Alliance (EWA). Specifically, we deny the Petition for Reconsideration filed by PCIA¹, affirm the prior dismissal of conflicting applications filed by Aventura and Doral,² and dismiss two subsequent applications filed by Aventura and Doral, respectively.³ We further clarify that frequency coordinators must resolve conflicts involving mutually exclusive applications before filing the applications with the Bureau, or the Bureau will dismiss the competing applications.

II. BACKGROUND

2. In 2004, the Commission ordered the reconfiguration of the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band.⁴ As part of this reconfiguration, the Commission ordered that Interleaved Band (809-815/854-860 MHz) spectrum relinquished by Sprint Nextel Corporation (Sprint) during rebanding be made available for licensing exclusively to public safety for three years, and then to public safety and critical infrastructure industry (CII) applicants for the next two years.⁵ Thereafter, any remaining Sprint-vacated spectrum would be made available for licensing for public safety, Business/Industrial

¹ Petition for Reconsideration, filed March 6, 2009 by PCIA—The Wireless Infrastructure Association (PCIA Petition). On March 23, 2009, the City of Aventura, Florida (Aventura) filed a separate Petition for Reconsideration, but because it was untimely we will not consider it. See 47 C.F.R. § 1.106(f) (30 day limit on filing petitions for reconsideration).

² Aventura Application for Radio Station Authorization, File No. 0003719918, filed Jan. 28, 2009 (January Aventura Application); Doral Application for Radio Station Authorization, File No. 0003718757, filed January 28, 2009 (January Doral Application).

³ City of Doral, Florida (Doral) Application for License, File No. 0003755738, filed February 27, 2009 (February Doral Application); Aventura Application for Modification, File No. 0003815812, filed Apr. 22, 2009, (April Aventura Application).

⁴ See *Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd. 14969 (2004).

⁵ See *Public Safety and Homeland Security Bureau Announces Application and Licensing Procedures for Channels Relinquished by Sprint Nextel Corporation in the 809-809.5/854-854.5 MHz Band*, WT Docket No. 02-55, *Public Notice*, 23 FCC Rcd. 18343 (Dec. 29, 2008)(*800 MHz Vacated Spectrum Public Notice*).

Land Transportation (B/ILT), or Specialized Mobile Radio (SMR) use as specified in Section 90.615 of the Commission's rules.⁶

3. In December 2008, the Public Safety and Homeland Security Bureau (Bureau) began implementing the process for licensing Sprint-vacated spectrum by issuing the *800 MHz Vacated Spectrum Public Notice*, which announced that the Bureau would begin accepting applications on January 28, 2009 for licensing of Sprint-vacated channels in the 809-809.5/854-854.5 MHz portion of the 800 MHz band (Channels 231-250) in specific NPSAC regions.⁷ The *Public Notice* required all applications to be coordinated by a qualified frequency coordinator prior to filing, and established a pre-filing notification process that required each frequency coordinator to provide electronic notification of each application submitted to it for coordination "to all other participating coordinators prior to filing the application with the Commission."⁸ The *Public Notice* stated that the purpose of this notification process was "to avoid the possibility of the Commission receiving mutually exclusive applications" and "to enable frequency coordinators to address and resolve conflicting applications prior to filing with the Commission."⁹ The *Public Notice* instructed coordinators to "check each notified application for mutual exclusivity with other notified applications," and stated that "[i]f conflicts are found, the application with the earliest notification date and time stamp will take precedence."¹⁰ The *Public Notice* further stated that the coordinator notification process would start at 8:00 a.m. January 14, 2009.¹¹

4. Pursuant to the above procedures, on January 14, 2009, PCIA sent an electronic notification to the other frequency coordinators (including EWA) that Aventura intended to apply for four identified co-channel frequency pairs.¹² PCIA's notification was time-stamped at 8:00.00.005 a.m. Eastern Time, less than five one-thousandths of a second after the opening of the pre-filing notification window.¹³ Later on January 14, 2009, EWA electronically notified the other coordinators (including PCIA) that Doral intended to apply for the same co-channel pairs. EWA's notification was time-stamped at 3:15.35.687 p.m. Eastern Time, approximately seven hours after PCIA's notification.¹⁴ Because the proposed Aventura and Doral station locations are 26.4 kilometers apart, both coordinators were aware that the two applications were mutually exclusive.¹⁵ However, neither PCIA nor EWA attempted to resolve the conflict.¹⁶ Instead, on January 28, 2009, the two coordinators filed conflicting applications

⁶ *Vacated Spectrum Public Notice* at 18343.

⁷ *Id.*

⁸ *Id.* at 18345.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² PCIA's notification was for frequency pairs 854.0125/809.0125; 854.0375/809.0375; 854.1375/809.1375; and 854.1875/809.1875 MHz.

¹³ PCIA Petition at 1-2.

¹⁴ *Id.* at 2.

¹⁵ The Commission's rules require a minimum separation of 113 kilometers (70 miles) between co-channel 800 MHz stations, unless the applicant requests, justifies, and receives a waiver to operate at a shorter separation distance. See 47 C.F.R. § 90.621(b)(4). Aventura and Doral are located 26.4 kilometers apart, and neither applicant filed for or received a waiver of this minimum separation rule.

¹⁶ Also on January 14, 2009, on behalf of the City of Plantation, Florida, the Association of Public-Safety Communications Officials (APCO) filed notification for frequency pairs 854.0125/809.0125 and 854.1375/809.1375 MHz. PCIA and APCO resolved the mutually exclusive notifications, which resulted in PCIA removing frequency pairs 854.0125/809.0125 and 854.1375/809.1375 MHz from its notification. PCIA then filed an amended application with the Commission. See PCIA Petition at 2.

on behalf of Aventura and Doral in the Commission's Universal Licensing System (ULS).¹⁷ On February 19, 2009, the Bureau dismissed both applications as mutually exclusive and therefore defective.¹⁸

5. On February 27, 2009, EWA filed a second application on behalf of Doral for frequency pair 854.1875/809.1875 MHz.¹⁹ On March 20, 2009, PCIA petitioned to deny the Doral application, alleging that EWA and Doral did not follow the filing procedure in the *800 MHz Vacated Spectrum Public Notice* and that it was contrary to the public interest for EWA to file another application on behalf of Doral.²⁰ Since we address the application below, we dismiss PCIA's petition to deny as moot.

6. On March 6, 2009, PCIA, on behalf of Aventura, petitioned for reconsideration seeking reinstatement of Aventura's dismissed application.²¹ EWA filed an opposition to PCIA's petition, alleging that grant of reconsideration would adversely affect Doral's still-pending second application.²² On March 23, 2009, Aventura filed its own petition for reconsideration, arguing that Doral's original application should never have been filed because PCIA's January 14 coordination notification on behalf of Aventura preceded EWA's coordination notification on behalf of Doral by more than seven hours.²³ On March 26, 2009, PCIA replied to the EWA opposition, reiterating its central argument that EWA "did not properly cross-reference and defer to previously-filed applications as specified in the Commission's pre-coordination procedures."²⁴ On April 22, 2009, Aventura filed an amended application that did not resolve the mutual exclusivity issue.²⁵

7. On May 22, 2009, EWA, PCIA, the Utilities Telecommunications Council, and the Public Safety Communications Council notified PSHSB that they had concluded a memorandum of agreement that would, *inter alia*, resolve disputes such as the Aventura and Doral mutually exclusive applications and other frequency coordination disputes before filing applications with the Commission.²⁶ However, this memorandum was not in

¹⁷ Aventura Application for Radio Station Authorization, File No. 0003719918, filed Jan. 28, 2009 (January Aventura Application); Doral Application for Radio Station Authorization, File No. 0003718757, filed January 28, 2009 (January Doral Application).

¹⁸ See Notice of Dismissal attached to File Nos. 0003719918 and 0003718757.

¹⁹ See February Doral Application.

²⁰ Petition to Deny, filed Mar. 20, 2009 by PCIA (PCIA Petition to Deny). On April 2, 2009, EWA filed an opposition to the PCIA petition to deny. Opposition to Petition to Deny, filed Apr. 2, 2009 by EWA. The Commission's rules state that parties have ten days to file oppositions to petitions to deny. See 47 C.F.R. § 1.939(f), *referencing* 47 C.F.R. § 1.45. The EWA opposition was therefore untimely and we decline to consider it.

²¹ PCIA Petition at 1.

²² Opposition to Petition for Reconsideration, filed March 19, 2009 by EWA (*re* 0003719918) (EWA Opposition).

²³ Petition for Reconsideration, filed Mar. 23, 2009, by Aventura at 2 (*re* 0003719918). However, as noted in n.1 *supra*, this Petition was untimely and thus we will not consider it.

²⁴ Reply to Opposition to Petition for Reconsideration, filed Mar. 26, 2009, by PCIA (PCIA Reply).

²⁵ See April Aventura Application. On May 12, 2009, the State of Florida filed a petition to deny Aventura's application, noting that these offset frequencies are used by Florida's Statewide Law Enforcement Radio System (SLERS), and "[the frequency'] protection from co-channel and adjacent-channel interference is critical to law enforcement operations in Florida. See Letter from Bruce A. Meyers, State of Florida Department of Management Services, to Public Safety and Homeland Security Bureau, Federal Communications Commission (filed May 12, 2009).

²⁶ Letter from William Brownlow, Public Safety Communications Council, to David Furth, Acting Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission June 19, 2009; Letter from William Brownlow, Public Safety Communications Council, to David Furth, Acting Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed May 22, 2009).

effect at the time of the instant dispute, and neither Aventura nor Doral have withdrawn their pleadings. Thus, Doral's February 27, 2009 application and Aventura's April 22, 2009 application for modification of license are mutually exclusive and remain pending.

III. DISCUSSION

8. The Commission's rules and the *800 MHz Vacated Spectrum Public Notice* require parties seeking authorizations in the 800 MHz band to first proceed through the frequency coordination process and to file applications through ULS only after successful coordination efforts.²⁷ Here, each applicant initiated coordination as required, but the coordinators did not address and resolve the conflicting applications prior to filing them with the Commission. Instead, each coordinator asserts that the application it has filed should receive priority over the other.

9. We decline to rule on whether one application or the other should receive priority because we find that both coordinators failed to fulfill their coordination responsibilities in this instance. The underlying purpose of the Commission's coordination requirements is to improve the efficient use of spectrum and reduce the delay and burden on Commission resources associated with mutually exclusive applications.²⁸ In the case of 800 MHz spectrum being relinquished by Sprint and made available to public safety, the Bureau further refined its coordination procedures specifically "to enable frequency coordinators to address and resolve conflicting applications prior to filing with the Commission."²⁹ Thus, in this case the conflicts in the applications should have been resolved by negotiation and settlement between the frequency coordinators involved.

10. We recognize that the *800 MHz Vacated Spectrum Public Notice* stated that if conflicts were found between notifications, the earlier one would take precedence.³⁰ However, this provision was intended to assist coordinators in negotiating the resolution of conflicting 800 MHz applications, not to be a substitute for negotiation. It was also not intended to give an automatic advantage to the coordinator with the fastest computer capable of "batch filing" multiple applications as soon as an application window opens.³¹ Accordingly, we clarify that where mutually exclusive applications are filed on the same day in bands requiring frequency coordination, any conflicts that arise must be resolved by the relevant coordinators before the applications are filed with the Commission, or the conflicting applications will be dismissed. Coordinators may select the prevailing application on the basis of its notification time, but only in the event that there is no engineering solution or other rational basis

²⁷ See 47 U.S.C. § 90.175(e). See also *Vacated Spectrum Public Notice* at 18345.

²⁸ Frequency Coordination in the Private Land Mobile Radio Services, PR Docket No. 83-737, *Report and Order*, 103 F.C.C.2d 1093, 1095 (Apr. 15, 1986) citing 47 U.S.C. § 151.

²⁹ *800 MHz Vacated Spectrum Public Notice* at 18345.

³⁰ *Id.*

³¹ See Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSPAC Regions, *Public Notice*, 27 FCC Rcd 14775, 14780 n.36 (PSSHB 2012) ("batch filing is prohibited"); Public Safety and Homeland Security Bureau Announces the Opening of a Filing Window for Additional Locations Relinquished by Sprint Nextel Corporation in the 809.5-825/854.5-860 MHz Band Segment, *Public Notice*, 26 FCC Rcd 6639, 6641 n.13 (PSSHB 2011) ("batch filing is not permitted"); Public Safety and Homeland Security Bureau Announces Application and Licensing Procedures for Certain Channels Relinquished by Sprint Nextel Corporation in the 809.5-815/854.5-860 MHz Band, *Public Notice*, 25 FCC Rcd. 16038, 16042 n.27 (PSSHB 2010) ("batch filing is not permitted"); Public Safety and Homeland Security Bureau Announces Application and Licensing Procedures for Certain Channels Relinquished by Sprint Nextel Corporation in the 809.5-815/854.5-860 MHz Band, *Public Notice*, 24 FCC Rcd 13236, 13240 n.23 (PSSHB 2009) ("batch filing is not permitted").

on which to resolve mutual exclusivity.³² In so finding, we ensure that frequency coordination does not become a game of chance but is instead a fair and transparent process in which frequency coordinators use their technical expertise to resolve mutually exclusive applications in the public interest. Based on the foregoing, we dismiss both Aventura's and Doral's applications.

IV. ORDERING CLAUSES

11. Accordingly, pursuant to the authority of Sections 0.191, 0.392 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392, 1.106; Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) IT IS ORDERED that the Petition for Reconsideration, filed March 6, 2009 by PCIA—The Wireless Infrastructure Association IS DENIED and the Petition to Deny filed March 20, 2009 by PCIA—The Wireless Infrastructure Association IS DISMISSED AS MOOT.

12. IT IS FURTHER ORDERED that the Opposition to Petition to Deny, filed Apr. 2, 2009 by the Enterprise Wireless Alliance and the Petition for Reconsideration, filed Mar. 23, 2009, by Aventura, Florida are DISMISSED AS UNTIMELY.

13. IT IS FURTHER ORDERED that the Application for License, File No. 0003755738, filed February 27, 2009 by the City of Doral and the Application for Modification, File No. 0003815812, filed April 22, 2009 by the City of Aventura are DISMISSED.

14. IT IS FURTHER ORDERED that the Petition to Deny, filed May 12, 2009, by the State of Florida IS DISMISSED AS MOOT.

15. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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³² In order to qualify for a time preference, an application must be filed manually as specified in the coordinators' Memorandum of Agreement, *supra*. "Batch filed" applications, timed to be computer-filed the instant the application window opens, may not be afforded a time preference.