

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

In re Application of)	
)	
STEPHEN F. JOHNSTON, SR.)	File Nos. 35240-CD-P/L-95,
)	35384-CD-P/L-95, 35462-CD-P/L-95,
)	35692-CD-P/L-95, 35696-CD-P/L-95,
)	35683-CD-P/L-95
)	
For New Paging Facilities)	
To Operate On 931.0875 MHz)	
at Locations in Maryland, Virginia)	
and the District of Columbia)	

ORDER

Adopted: December 18, 1997

Released: December 18, 1997

By the Chief, Commercial Wireless Division:

1. By this Order, we dismiss as moot TSR Paging Inc.'s ("TPI") petition to dismiss ("Petition") Stephen F. Johnston, Sr.'s ("Johnston") applications for new paging facilities to operate on frequency 931.0875 MHz in the Washington, D.C. metropolitan area ("Proposed Johnston Facilities"). Additionally we dismiss Johnston's above-captioned applications due to a shortage of available spectrum on which to grant them.¹ The dismissal of Johnston's applications renders TPI's Petition moot.

2. On May 10, 1995, the Commercial Wireless Division accepted for filing TPI's application for new paging facilities to operate on frequency 931.0875 MHz in Owings Mills, MD ("Proposed TPI Facilities").² On August 16, 1995, the Commercial Wireless Division's Licensing and Technical Analysis Branch accepted for filing Johnston's applications for new paging facilities to operate on frequency 931.0875 MHz at locations in Maryland, Virginia and the District of Columbia.³ On September 15, 1995, TPI filed its Petition requesting that the Licensing and Technical Analysis Branch dismiss Johnston's applications alleging that the grant of Johnston's applications would cause undue interference to the proposed TPI facilities.⁴

3. After processing the applications filed within TPI's filing window, the Licensing and Technical Analysis Branch determined that there were no alternative 931 MHz frequencies available for assignment at the locations proposed by Johnston. Section 22.31(b)(2)(i) of the Commission's rules requires an

¹ See 47 C.F.R. § 22.128(e)(2) which allows the Commission to dismiss applications that request spectrum which is not available.

² See *Public Notice*, Report No. NCS-95-38 (May 10, 1995).

³ This application was accepted for filing on August 16, 1995. See *Public Notice*, Report No. NCS-95-38 (Aug. 16, 1995).

⁴ On September 28, 1995, Johnston filed an opposition to the petition and on October 11, 1995, TPI filed a reply to the opposition.

applicant to file its application within sixty days of the public notice listing the first of the conflicting applications as accepted for filing.⁵ In response to TPI's Petition, the Licensing and Technical Analysis Branch determined that TPI's preferred frequency had already been assigned to an applicant whose application was accepted for filing on December 12, 1990. Since TPI's application was received after the filing window closed, the available frequency was assigned to an applicant in the earlier filing window. Accordingly, we dismiss Johnston's above-captioned applications due to a shortage of available frequencies, in accordance with section 22.128(e)(2) of the Commission's rules.⁶ This dismissal of Johnston's above-captioned applications renders TPI's Petition moot. Consequently, we dismiss TPI's Petition as moot.

4. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), authority delegated by section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, and pursuant to section 22.128(e)(2) of the Commission's rules, 47 C.F.R. § 22.128(e)(2), the applications filed by Stephen F. Johnston, Sr. on August 4, 1995, ARE DISMISSED.

5. IT IS FURTHER ORDERED that, pursuant to authority delegated by sections 4(i) and 309(d) of the Communications Act, as amended, 47 U.S.C. §§ 154(i) and 309(d), authority delegated by section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, and pursuant to section 22.20 of the Commission's rules, 47 C.F.R. § 22.20, the petition to dismiss filed by TSR Paging Inc. on September 15, 1995, IS DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

for 
David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

⁵ 47 C.F.R. § 22.31(b)(2)(i) (1994) allows the Commission to dismiss applications that request spectrum which is not available. We are applying the old rules as the Commission stayed the effective date of certain new Part 22 rules (including § 22.131(b)(2)(i)) before they took effect. See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115, *Order*, 10 FCC Rcd. 4146, 4147-48, 4151, ¶¶ 2-5, 14 (1995). As a result, the former 931 MHz processing and licensing rules remain in effect including rule § 22.31(b)(2)(i). As of this date, the stay has not been lifted.

⁶ 47 C.F.R. § 22.128(e)(2).