

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

In the Matter of)	
)	
WEST COAST CAB COMPANY)	
)	File No. 94F021
Finder's Preference Request)	
Regarding Station WCL255,)	
Licensed to Century Transit System, Inc.)	
Los Angeles, California)	

MEMORANDUM OPINION AND ORDER

Adopted: March 10, 2000

Released: March 28, 2000

By the Commission:

I. INTRODUCTION

1. The Commission has before it an Application for Review filed on March 17, 1997, by Bell Cab Company (Bell Cab).¹ Bell Cab seeks review of the February 13, 1997, letter ruling² by the Deputy Associate Bureau Chief, Licensing Division (Division),³ Wireless Telecommunications Bureau, denying Bell Cab's petition for reconsideration⁴ relating to the cancellation of Station WCL255, located in Los Angeles, California. Station WCL255's authorization was cancelled by the Division on September 21, 1994, after the Division determined that Station WCL255 had failed to operate for a period in excess of one year.⁵ Based on the record in this proceeding, we find no basis to reverse the February 13, 1997, decision. Accordingly, for the reasons set forth below, Bell Cab's Application for Review is denied.

¹Application for Review (filed March 17, 1997). Note: On February 28, 1994, Bell Cab filed an assignment application with the Division, seeking assignment of Station WCL255 from Century Transit System, Inc., the licensee of record.

²See Letter to Terry J. Romine, counsel to Bell Cab Company, from W. Riley Hollingsworth, Federal Communications Commission (February 13, 1997).

³Pursuant to a reorganization of the Wireless Telecommunications Bureau in 1997, the pertinent functions of the Licensing Division regarding private wireless matters are now administered by the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division.

⁴Petition for Reconsideration (Oct. 21, 1994) (Petition).

⁵Letter to Mahmood Babaeian d/b/a Century Transit System, Inc., from William H. Kellett, Federal Communications Commission (dated September 21, 1994) (citing 47 C.F.R. § 90.157).

II. BACKGROUND

2. On October 21, 1991, Century Transit System, Inc. (Century Transit) received authorization to operate Station WCL255 on frequency pair 508.9875/511.9875 MHz in the Los Angeles area. On April 15, 1993, Bell Cab entered into a Business Purchase Agreement with Century Transit, which included the assets relating to Station WCL255.⁶ On August 11, 1993, the owner of Century Transit executed the necessary documents to be filed with the Commission to assign the authorization for Station WCL255 to Bell Cab.⁷ On February 28, 1994, Bell Cab filed an application seeking assignment of Station WCL255 from Century Transit.⁸

3. On March 1, 1994, Hussein Assalinabati, d/b/a West Coast Cab Company (West Coast), filed a finder's preference request (Request)⁹ targeting Century Transit's authorization to operate Station WCL255.¹⁰ West Coast alleged in its Request that Century Transit failed to operate Station WCL255 for a period in excess of one year, in violation of Section 90.157 of the Commission's Rules.¹¹ In a supporting declaration to the Request, Mr. Neal Carter, a private investigator hired on behalf of West Coast, stated that on February 15, 1994, he visited the Tujunga Ranger District of the U.S. Forest Service, to ascertain whether Station WCL255 was properly registered with the U.S. Forest Service at the station's authorized location on U.S. Forest Service property.¹² Mr. Carter stated that during his visit, he asked a resource officer to conduct a search for an electronic land use permit for Station WCL255. According to Mr. Carter, the resource officer conducted a search, and was unable to locate a land use permit for Station WCL255.¹³ Mr.

⁶Application for Review at 1.

⁷*Id.* at 1-2.

⁸See Application FCC File No. 415233 (filed February 28, 1994). The assignment application has not been processed, pending the outcome of the instant proceeding.

⁹In 1991, the Commission established the finder's preference program to augment its compliance review efforts in the private land mobile radio service. Specifically, if an entity demonstrated that an existing license, in the 220-222 MHz, 470-512 MHz and 800-900 MHz bands, had canceled automatically for failure to comply with the Commission's Rules, then that entity was entitled to obtain a dispositive preference for use of the licensed frequencies in the assigned area. See Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, 6 FCC Rcd 7297, 7302 ¶30 (1991); see also, Amendment of Parts 1 and 90 of the Commission's Rules, *Memorandum Opinion and Order*, 8 FCC Rcd 6690 ¶1 (1993).

¹⁰Finder's Preference Request (March 1, 1994). We note that the Commission eliminated the finder's preference program with respect to the 220-222 MHz band and in the 470-512 MHz, 800 MHz and 900 MHz Private Land Mobile Radio bands as of July 29, 1998. Finder's preference requests for these frequencies pending as of July 29, 1998, however, are being processed. See *Report and Order*, 13 FCC Rcd 23816 (1998).

¹¹*Id.* (citing 47 C.F.R. § 90.157 (1994)).

¹²*Id.* at Exhibit 1.

¹³*Id.*

Carter also stated that on February 2, 1994, he had spoken to the property manager of the building housing Station WCL255's base station, and was informed that the base station had been disconnected more than one year prior. Mr. Carter stated that the property manager cited failure to pay site rental fees as the reason for disconnection of Station WCL255's base station.¹⁴

4. On May 11, 1994, the Division attempted service of the instant Request on Century Transit by mail, by forwarding the Request to Century Transit's address of record.¹⁵ The Request was returned by the U.S. Post Office marked "Forwarding Order Expired." An Opposition to the Request was never filed. On September 21, 1994, the Division awarded West Coast a dispositive preference for Station WIL255.¹⁶ The Division also forwarded a cancellation notice to Century Transit, canceling its authorization to operate Station WCL255, on the basis that the station failed to operate for a period in excess of one year, in violation of Section 90.157 of the Commission's Rules.¹⁷

5. Bell Cab filed a Petition on October 21, 1994, seeking reconsideration of the September 21, 1994, cancellation of Station WCL255's authorization.¹⁸ Bell Cab argued that the Division erred in awarding a dispositive preference to West Coast, without having provided Bell Cab, a prospective assignee of the station, an opportunity to respond to the Request. Bell Cab alleged that it was not aware of the award to West Coast until October 20, 1994, one day before the expiration of the time period for seeking reconsideration.¹⁹ Bell Cab argued that West Coast was "well aware" of the fact that a pending application for assignment of the station was pending, yet West Coast failed to notify Bell Cab of the pending Request.²⁰ Bell Cab further argued that "[d]ue to the significant interest Bell Cab had in the

¹⁴*Id.* at Exhibit 2.

¹⁵Letter to Mahmood Babaeian d/b/a Century Transit System, Inc., from William H. Kellett, Federal Communications Commission (dated May 11, 1994). We note that the Division first learned of Century Transit's new address on October 21, 1994, when Bell Cab filed its Petition relating to the instant proceeding. *See* Petition at Exhibit D.

¹⁶Letter to Hussein Assalinabati d/b/a West Coast Cab Company, from William H. Kellett, Federal Communications Commission (dated September 21, 1994).

¹⁷Letter to Mahmood Babaeian d/b/a Century Transit System, Inc., from William H. Kellett, Federal Communications Commission (dated September 21, 1994).

¹⁸*See* note 4, *supra*.

¹⁹*Id.* at 4.

²⁰*Id.*

authorization, the Division erred when it failed to make Bell Cab an initial party to this case.”²¹ Bell Cab also stated that Station WCL255 had not failed to operate for a period in excess of one year.²²

6. On October 31, 1994, West Coast filed an Opposition to the Petition.²³ West Coast argued, *inter alia*, that Bell Cab did not have standing to file its Petition, because Century Transit was the licensee of record of Station WCL255.²⁴ West Coast additionally argued that the Petition contained no competent evidence to refute the evidence presented in the Request.²⁵ The Division denied the Petition on February 13, 1997, on the basis that Bell Cab failed to rebut the *prima facie* showing made by West Coast in its Request.²⁶ The Division further denied the Petition on the basis that Bell Cab had failed to “defend its interest in the post finder’s decision pleadings.”²⁷ The Division ruled that Bell Cab had standing to file the Petition, given that its interests, as a prospective assignee, had been adversely affected by the cancellation action.²⁸

7. Bell Cab filed the instant Application for Review of the February 13, 1997, denial action on March 17, 1997,²⁹ reiterating the argument that Bell Cab should have been permitted to participate in the initial stages of the finder’s preference proceeding.³⁰ Bell Cab additionally reiterated its earlier allegation that Station WCL255 had not failed to operate for a period in excess of one year, and provided the declaration of Mahmood Babaeian, President, Century Transit, stating that “Station WCL255 has been in operation since the license was assigned to me by the FCC in October of 1991.”³¹ No other evidence, such as employee affidavits, photographs, equipment serial numbers, site leases or rental receipts, was provided to substantiate continuous operation of Station WCL255.

²¹*Id.*

²²*Id.* at 5.

²³Opposition to Petition for Reconsideration (filed October 31, 1994) (Opposition to Petition).

²⁴*Id.* at 2.

²⁵*Id.* at 8.

²⁶See note 2, *supra*.

²⁷*Id.* at 2.

²⁸*Id.*

²⁹See note 1, *supra*.

³⁰*Id.* at 3.

³¹*Id.* at 2 and Exhibit B.

8. On April 1, 1997, West Coast filed an Opposition to the Application for Review.³² In its Opposition, West Coast argues that Bell Cab is not the target licensee, but a mere “proposed assignee” of the target station.³³ As such, West Coast argues that the Division properly attempted service on Century Transit, and not Bell Cab, of the initial Request.³⁴ West Coast noted that Section 90.173(k)(4) of the Commission’s Rules provides that “... the Commission shall forward the request to the target licensee’s address of record for the subject license and to any ‘last known address’ provided by the finder.”³⁵

III. DISCUSSION

9. We disagree with Bell Cab’s allegation that the Division improperly failed to serve it with a copy of the Request. The Division properly attempted service on Century Transit, the licensee of record, when it forwarded a copy by regular mail³⁶ of West Coast’s Request to Century Transit’s address of record. Former Section 90.173(k) of the Commission’s Rules provided:

If the Commission determines that a request has met all procedural requirements and has stated a *prima facie* violation, the Commission shall forward the request to the target licensee’s address of record for the subject license and to any “last known address” provided by the finder.³⁷

10. As a Commission licensee, Century Transit was required to furnish the Commission with an address to be used by the Commission in serving documents or in directing correspondence.³⁸ The Commission’s Rules specifically state:

Unless any licensee advises the Commission to the contrary, the address contained in the licensee’s most recent application will be used by the Commission for this purpose.³⁹

³²Opposition to Application for Review (filed April 1, 1997) (Opposition).

³³*Id.* at 2-3.

³⁴*Id.*

³⁵*Id.* at 3-4 (citing 47 C.F.R. § 90.173(k)(4) (1994)).

³⁶Under the provisions of Commission Rule 1.47(d), 47 C.F.R. § 1.47(d), documents may be served upon a party by delivering a copy or by mailing a copy to the last known address.

³⁷47 C.F.R. § 90.173(k)(4) (1994). See also Amendment of Parts 1 and 90 of the Commission’s Rules, *Memorandum Opinion and Order*, 8 FCC Rcd 6690 ¶ 29 (1993) (citing 47 C.F.R. §§ 1.47 and 1.5).

³⁸See 47 C.F.R. § 1.5(a) (1994).

³⁹*Id.*

Therefore, the Bureau properly cancelled Station WCL255's authorization after Century Transit failed to rebut the *prima facie* showing made by West Coast in its Request.

11. The matters raised below were properly decided by delegated authority on February 13, 1997, and we affirm the underlying action for the reasons stated therein. The Division did not fail to include Bell Cab in the initial stages of the instant finder's preference proceeding. Bell Cab is not and was not the licensee of record of Station WCL255. Bell Cab is not an assignee of the license. Bell Cab merely filed an assignment application seeking assignment of Station WCL255 from Century Transit. Additionally, we agree with the Division's finding that West Coast satisfied its burden of proof and sufficiently demonstrated that Century Transit failed to continuously operate Station WCL255. In this regard, we note that West Coast provided specific facts relating to the non-operation of Station WCL255 in its Request.⁴⁰

12. Even considering Bell Cab's reconsideration petition, we find insufficient evidence in the record to indicate that Century Transit continuously operated Station WCL255. Bell Cab failed to provide any documentation, such as station-specific canceled checks, system maintenance records, equipment serial numbers, or sworn affidavits from Century Transit employees who had used the system during the subject period, to demonstrate continuous operation of Station WCL255.⁴¹ Other than a bare statement in its Petition,⁴² and again in its Application for Review,⁴³ that Station WCL255 had not permanently discontinued operations, Bell Cab failed to provide any objective and documentary evidence that Station WCL255 was in compliance with the Commission's construction and operation rules. The record has not changed since the Division's determination in this matter, nor has Bell Cab supplemented it. Under the Commission's Rules, a license for a station cancels automatically upon permanent discontinuance of operation for a period of one year or more.⁴⁴ The February 13, 1997, action denying Bell Cab's Petition held that Bell Cab failed to rebut the *prima facie* showings by West Coast that Station WCL255 was in violation of Section 90.157 of the Commission's Rules.⁴⁵ When we evaluate the weight of the evidence as between West Coast and Bell Cab, the evaluation favors West Coast. We therefore affirm the

⁴⁰See Request at 2-4, and Exhibits 1-3.

⁴¹See generally In the Matter of Dale Kane d/b/a/ Kane Communications, *Order*, 13 FCC Rcd 18735 (1999); In the Matter of Veracon, Inc., *Order*, (WTB PSPWD rel. Oct 1, 1999) (target licensees of finder's preference proceedings did not prevail after failing to provide any objective and documentary evidence of compliance with the Commission's construction and operation rules).

⁴²See note 4, *supra*, at 1.

⁴³See note 1, *supra*, at 2 (citing an August 11, 1993, certification letter from Mahmood Babaeian, president, Century Transit Systems, Inc.).

⁴⁴47 C.F.R. § 90.157 (1994).

⁴⁵See note 2, *supra*, at 2 (citing 47 C.F.R. § 90.157 (1994)).

February 13, 1997, action by the Division which denied the Petition filed by Bell Cab, and affirmed the award of a dispositive preference under the finder's preference program to West Coast for Station WCL255.

IV. CONCLUSION AND ORDERING CLAUSE

13. For the reasons stated above, the denial of the Petition for Reconsideration filed by Bell Cab Company IS AFFIRMED. Grant of a dispositive preference under the finder's preference program to Hussein Assalinabati d/b/a West Coast Cab Company, for Station WCL255, formerly licensed to Mahmood Babaeian d/b/a Century Transit System, IS AFFIRMED. West Coast Cab Company has ninety (90) days from the date of release of this *Memorandum Opinion and Order* to follow regular application requirements and file an acceptable application with the Commission for the targeted frequencies. Assignment application Number 415233, filed on February 28, 1994, seeking assignment of Station WCL255 from Century Transit System, Inc. to Bell Cab Company IS DISMISSED.

14. Accordingly, IT IS ORDERED that pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c) and Section 1.115(e) of the Commission's Rules, 47 C.F.R. § 1.115(e), the Application for Review filed on March 17, 1997 by Bell Cab Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary