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

In the Matter of	)	
	)	
SCHROEDER MANATEE RANCH	)	File No. A027584
	)	
Request by Florida Power & Light Company to Set Aside Authorization for Industrial/Business Frequencies for Station WPLZ320, Bradenton, Florida	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 5, 2001 **Released: March 12, 2001**

By the Commission:

I. Introduction

1. The Commission has before it an Application for Review (AFR) filed on April 28, 2000, by Florida Power & Light Company (FPL).[1] FPL requests review of the March 27, 2000, decision[2] of the Wireless Telecommunications Bureau's Public Safety and Private Wireless Division (Division) denying FPL's petition for reconsideration requesting that the authorization of Schroeder Manatee Ranch (Schroeder) to use frequency pair 451.750/456.750 MHz at Industrial/Business Station WPLZ320, Bradenton, Florida, be set aside. FPL believes that the Division's action: (a) was erroneous as to material questions of fact; (b) conflicts with legal precedent; (c) fails to take into consideration certain public safety aspects; and, (d) involves application of a Commission policy that should be revised. No opposition to the AFR was filed. Based on the record in this proceeding, we find no basis to reverse the Division's decision. Accordingly, for the reasons set forth below, FPL's Application for Review is denied.

II. Background

2. On March 30, 1999, Schroeder was granted authorization to use Industrial/Business Pool frequency pair 451.750/456.750 MHz, under Call Sign WPLZ320, at Bradenton, Florida. FPL uses the same frequency pair, under Call Sign WNPM717, also at Bradenton, Florida. FPL states that shortly after the grant of Schroeder's license, its operation of Station WNPM717, located twelve (12) miles from Schroeder's transmitter, was adversely affected.[3] FPL further states that such adverse effect renders radiocommunications impossible in some areas, thereby endangering the safety of crews working with high

[1] Application for Review (filed Apr. 28, 2000) (AFR).

[2] In the Matter of Schroeder Manatee Ranch, Request by Florida Power & Light Company to Set Aside Authorization for Industrial/Business Frequencies for Station WPLZ320, Bradenton, Florida, *Order*, 15 FCC Rcd 10060 (2000) (*Order*).

[3] AFR at 2.

voltage power lines and compromising the public safety.[4] FPL maintains that it attempted to resolve the interference issue by offering to pay all the costs involved in moving Schroeder to other frequencies, but that no other suitable Industrial/Business frequencies could be found.[5] FPL further states that given that the continued operation of Schroeder's station jeopardizes the public safety and, because the parties have exhausted every alternative to resolve the harmful interference, the Commission should set aside the license for Station WPLZ320.[6]

III. Discussion

3. FPL claims that the frequency coordinator failed to coordinate properly Schroeder's license application and that the Division's decision to issue a license to Schroeder deprives FPL of its prior license and assigns exclusive use of the channel to Schroeder.[7] FPL further maintains that the Division erred by not considering the "actual interference" to FPL.[8] FPL raises the same arguments that it had raised in its petition for reconsideration, and we find no reason in the instant matter to disturb the Division's decision on this point. We note that frequencies in the 450-470 MHz band assigned to land mobile radio stations are available on a shared basis only and are not assigned for the exclusive use of any licensee.[9] We further note that the Commission's Rules do not provide for mileage separation or contour analysis in making co-channel assignments for frequencies in the 450-470 MHz band. Frequency assignments in this band ordinarily reflect a frequency coordinator's recommendation of the most appropriate frequency for the applicant. In a shared band, the most appropriate frequency often is one on which an existing licensee already is operating. Therefore, the fact that there is overlap between FPL's and Schroeder's coverage areas is not violative of the Commission's Rules, nor is it necessarily evidence of improper coordination. One licensee may regard another licensee's communications as "harmful interference" when, in reality, they are only the normal usage of a shared channel. Licensees manifest their willingness to cooperate in the use of the shared channel by monitoring the frequency before transmitting to make sure that it is not being used by another licensee who is also equally entitled to communicate on the same frequency. Finally, we remind the parties that, under the rules, licensees of co-channel stations are expected to cooperate in the use of frequencies and resolve any "harmful interference"[10] by mutually satisfactory arrangements.[11] If the parties in good faith are unable themselves to resolve the interference conflict, the Commission may impose restrictions including specifying the transmitter power, antenna

[4] *Id*.

[5] *Id*.

[6] *Id*. at 8.

[7] *Id*. at 3.

[8] *Id*. at 4.

[9] *See* 47 C.F.R. § 90.173(a).

[10] Section 90.7 of the Commission's Rules, 47 C.F.R. § 90.7, defines "harmful interference" as follows: For the purposes of resolving conflicts between stations operating under this part, [harmful interference is] any emission, radiation, or induction which specifically degrades, obstructs, or interrupts the service provided by such stations.

[11] *See* 47 C.F.R. § 90.173(b).

height, or area or hours of operation of the stations.[12]

4. FPL also claims that the Division's decision conflicts with established Commission precedent regarding the protection of public utilities from harmful radio interference.[13] In this connection, FPL cites two cases *Manhattan Products* (*Manhattan*) and *Horizon Communications* (*Horizon*) where, according to FPL, the Commission set aside authorizations because of interference to the communications of Public Service Electric and Gas Company (PSE&G), a public utility.[14] The cases FPL cites, however, are inapposite to the instant case. In both cases, PSE&G's status as a public utility was not determinative of the decision. In *Manhattan*, the reason the Division set aside the license was because the frequency coordinator failed to give proper notification of a frequency change.[15] In *Horizon*, the Division set aside the license because of continuing interference to PSE&G's operations, notwithstanding assurances from Horizon to the Commission prior to the grant of Horizon's license that technical changes to its operation had resolved the interference problem.[16]

5. Further, FPL alleges that because of Schroeder's interference to its radio system, it cannot use its radio to dispatch and monitor line crews in emergency situations, and that this interference jeopardizes the safety of FPL field personnel and compromises the safety of the general public.[17] We reiterate that frequencies in the 450-470 MHz band assigned to stations in the land mobile radio services are available on a shared basis.[18] Therefore, the licensees using those frequencies must be sensitive to the fact that they are not for the exclusive use of any one licensee. To grant the relief that FPL requests would be, in effect, to authorize the exclusive use of that channel to FPL contrary to the shared usage of the 450-470 MHz frequencies provided for under the Commission's Part 90 rules.[19]

6. Finally, FPL argues that the Commission should lift the stay imposed by the Refarming *Fourth MO&O*. The *Fourth MO&O* stayed rules that would have given Power, Petroleum, Railroad and Automobile Emergency certified frequency coordinators exclusive jurisdiction over frequencies that, prior to the consolidation of services effected by Refarming, were allocated on a shared basis to the

[12] *Id.*

[13] AFR at 4-5.

[14] Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division to Tadeusz Szczurek, Manhattan Products, dated March 23, 1999 (*Manhattan Products Letter*); Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division to Matthew Halton, President, Horizon Communications, dated June 9, 1998 (*Horizon Communications Letter*).

[15] *Manhattan Products Letter* at 1.

[16] *Horizon Communications Letter* at 1.

[17] AFR at 6.

[18] 47 C.F.R. § 90.173(a).

[19] *Id.*

former Power, Petroleum, Railroad and Automobile Emergency Services.[20] FPL asserts that the stay should be lifted because the referenced frequency coordinators are best equipped to determine whether new frequency assignments on channels formerly allocated on a shared basis to the former Power Radio Service would adversely affect previously-authorized licensees.[21] As an initial matter, we note that FPL's arguments in this connection should have been raised in the context of a petition for reconsideration of the Refarming *Fourth MO&O*, rather than in the context of an Application for Review of a licensing matter. Moreover, we note that the stay referred to by FPL was lifted in the Refarming *Fifth Memorandum Opinion and Order*.[22] In the *Fifth MO&O*, the Commission approved an industry consensus plan whereby applications submitted for previously-shared frequencies require concurrence of the industry-specific coordinator if the interference contour of the proposed station intersects the service contour of an existing station.[23] However, this rule change is immaterial to the resolution of FPL's Application for Review because Schoreder's application was coordinated according to the rules in effect at the time the application was submitted.

IV. Conclusion

7. Under the Commission's Rules, land mobile radio service frequencies in the 450-470 MHz band are assigned only on a shared basis, and not for the exclusive use of any licensee. Accordingly, for the reasons discussed above, we conclude that the Division's denial of Florida Power and Light Company's Petition for Reconsideration should be affirmed and that the Application for Review should be denied.

V. Ordering Clause

8. **IT IS ORDERED** that, pursuant to the authority of Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Division's denial of Florida Power & Light Company's Petition for Reconsideration **IS AFFIRMED** and its Application for Review, filed April 28, 2000, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

[20] Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Fourth Memorandum Opinion and Order*, PR Docket No. 92-235, 15 FCC Rcd 7051,7056 ¶ 14 (1999) (*Fourth MO&O*).

[21] AFR at 7.

[22] Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Fifth Memorandum Opinion and Order*, PR Docket No. 92-235, 16 FCC Rcd 416 (2000) (*Fifth MO&O*) at ¶ 27.

[23] *See* 47 C.F.R. § 90.35(b)(2)(iii).