

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

In the Matter of)
)
ABRAHAM COMMUNICATIONS, INC.)
Application for Renewal of License for Conventional)
SMR Station WNJV707, Tampa, Florida; and)
)
ABRAHAM TRANSPORTATION SERVICES, INC.)
Application for Renewal of License for Conventional)
SMR Station WNKB945, Tampa, Florida)

MEMORANDUM OPINION AND ORDER

Adopted: July 29, 1996

Released: September 18, 1996

By the Commission:

INTRODUCTION

1. On March 29, 1993, Abraham Communications, Inc. ("ACI") filed an Application for Review of the denial of its Petition for Reconsideration. On February 26, 1993, the former Private Radio Bureau ("Bureau") denied ACI's application for renewal of its license for conventional Specialized Mobile Radio ("SMR") Station WNJV707, Tampa, Florida because of ACI's failure to have any authorized end users operate on its SMR system throughout its previous five-year license term. On April 9, 1993, Abraham Transportation Services, Inc. ("ATS"), an affiliate of ACI, filed an Application for Review of the Bureau's denial on similar grounds of ATS's application for renewal of its license for conventional SMR Station WNKB945, Tampa, Florida. ATS did not file a petition for reconsideration so that the Commission might consolidate the two proceedings. For the reasons that follow, both applications for review are denied.

BACKGROUND

2. ACI and ATS operate taxi dispatch systems on frequencies 852.5373 MHz and 852.2125 MHz respectively. In 1990, the Bureau's Compliance Branch notified ACI that its license cancelled automatically because it failed to place its station into operation within the eight months as required by 47 C.F.R. § 90.633. The letter, dated November 29, 1990, stated:

Our records reflect that as of September 4, 1990, more than eight months from the grant of your license, no users had been licensed to operate on your SMR station. Thus, the SMR was not placed in operation within eight months and its license cancelled

automatically.¹

The Bureau sent ATS a similar letter, bearing the same date, relating to ATS Station WNKB945.²

3. After ACI and ATS each petitioned for reconsideration of these actions, on July 19, 1991, the Compliance Branch rescinded its letters and reinstated the two licenses because ACI and ATS demonstrated that they had been attempting in good faith to comply with the Commission's rules, had constructed their stations, and had simply failed to obtain proper authorization for the mobile units being operated by taxis using their systems. Each letter reinstating the ACI and ATS licenses warned both SMR operators that:

We note for the record, however, that you lost the right to exclusive use of the channel since no units were associated with the above-captioned station as of eight months. *See* 47 C.F.R. § 90.633(b). The channel, consequently, opened for shared use after eight months and could be converted by others to trunked operation without your consent.³

Under the Commission's rules in effect as of the date of the letters, only those mobile units authorized to operate on the conventional SMR system were considered for purposes of determining compliance with our loading requirements.⁴ As a result of the July 19, 1991, letters from the Bureau's Compliance Branch, the licenses held by ACI and ATS were not cancelled at that time despite their failure to obtain proper authorization for their mobile units. The Compliance Branch rescinded its cancellation because, at the time, the Commission had recognized that some licensees did not understand the placed-in-operation requirement and had proposed clarifications.⁵ In the following years, however, ACI and ATS failed to license any end users on their systems. Both ATS and ACI admit that they failed to properly license their end user, Yellow Cab.⁶

¹ Letter from Chief, Compliance Branch, to Abraham Communications, Inc. dated November 29, 1990.

² *See* Letter from Chief, Compliance Branch, to Abraham Transportation Services, Inc. dated November 29, 1990.

³ Letters from Chief, Compliance Branch, to Abraham Communications Inc. and to Abraham Transportation Service, both dated July 19, 1991.

⁴ *See* former 47 C.F.R. § 90.633(b) (1991).

⁵ Notice of Proposed Rulemaking, Amendment of Part 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, PR Dkt. No. 90-481, 5 FCC Rcd 6401 (Released November 1, 1990) (para. 5). *Cf.* Report and Order, PR Dkt. 90-481, 6 FCC Rcd 7297, 7298-99 (1991) (paras. 5-10) (Commission clarified the requirement to place mobile units in operation to satisfy the placed-in-operation requirement adopting proposals contained in Notice of Proposed Rulemaking).

⁶ *See* Applications for Review at 2.

4. After the termination of the separate end user license requirement in 1992,⁷ ACI and ATS did not modify their base station licenses to authorize any mobile transmitters. Because no end users were authorized to operate on the station after the full five-year term of each license, the Commission staff notified ACI and ATS that their licenses cancelled for failure to operate and denied their renewal applications.⁸ Other licensees have now obtained authorization to use the full capacity of the channels at issue and have converted the frequencies in question to trunked use.⁹

DISCUSSION

5. Licensees of conventional SMR stations are required to load channels to seventy mobile units (end users) per channel or share the channel to the extent they are not utilizing the channel to capacity.¹⁰ In this case, ACI and ATS failed to heed the warning in Section 90.633 of our rules that our channel sharing program allows other licensees to use any unused capacity. The same provision provides that each station must have one associated mobile unit placed in operation in order for the system to be in operation. Section 90.157 of our rules provides that a station that has not operated for a period of one year is considered to have permanently discontinued use and its license cancels automatically.¹¹ ACI and ATS failed to have any authorized units operate on their systems during their entire five-year license terms.

6. The licensees also failed to heed the warnings contained in the letters sent by the Bureau's Compliance Branch about obtaining authorization for end users. The Commission staff cautioned both licensees that their failure to authorize any end users at all placed them at risk that subsequent licensees could not only share the channel, but could obtain full use of the channel. This is precisely the situation that has occurred.

7. ACI and ATS contend that the operation of mobiles, although unauthorized end users, should be sufficient to satisfy the requirements of 47 C.F.R. § 90.633 that the stations be placed

⁷ See Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems, PR Dkt. 92-79, 7 FCC Rcd 5558, 5562 (1992).

⁸ Letter from Chief, Consumer Assistance Branch, Licensing Division to Abraham Communications, Inc. dated December 21, 1992; Letter from Chief, Land Mobile Branch, Licensing Division to Abraham Transportation Service (undated). Commission staff has learned that ATS received its letter on March 16, 1993.

⁹ Sharon H. Mizner, Station WNSS427, is licensed to use frequency 852.5375 MHz in the same area as ACI was licensed. Joanne Hinkle, Station WNXG812, is licensed to use frequency 852.2125 MHz in the same area as ATS was licensed.

¹⁰ 47 C.F.R. § 90.633(b).

¹¹ 47 C.F.R. § 90.157.

in operation.¹² It should be noted, however, that both entities do not dispute that they have failed to comply with the requirements of our rules. Rather, they assert that their failure to obtain authorization for any end users is not a violation which should trigger the automatic license cancellation provisions of our rules. ACI and ATS mistakenly assert that because the requirement for separate end user licenses has been eliminated, they are now in full compliance with the Commission's rules.¹³ While both claim to be operating mobiles, neither has requested authorization for use of any mobile transmitters. Indeed, the facts as related by ACI and ATS reflect continuing violations of Section 90.135(a)(5) of our rules.¹⁴ This rule specifically requires licensees of conventional SMR stations to seek modification of their licenses when the number of mobile transmitters operating on the station changes. To date, neither ACI nor ATS has filed a modification application reflecting such changes.

8. ACI and ATS request that we grant their renewal applications and reinstate their exclusive use of the channels in question. Both have failed to preserve their right to place any mobiles in operation on the channels in question despite instructions from the Compliance Branch staff. ACI and ATS assert that it would be in the public interest to renew their licenses so that their taxi dispatch operations will not be interrupted.¹⁵ While we are sympathetic to their need for radio licenses to conduct their business, the integrity of our channel sharing programs require that we insist that licensees provide us with current information regarding their usage of channels. Under our channel sharing program for conventional SMR frequencies, we protect the first licensee from sharing until the licensee's construction and placed-in-operation deadline. ACI and ATS were notified in 1991 that they lost eligibility for this type of protection. They failed to authorize any end users during their entire license term.¹⁶ To reinstate their exclusive use of these channels would be unfair to other licensees who have fully complied with our rules and are now authorized to use these channels. We hereby affirm the Bureau's cancellation of the licenses and denial of the renewal applications.

¹² Section 90.633 of our rules requires that conventional stations be built and placed in operation within eight months of the license grant. *See also*, 6 FCC Rcd 7297, 7298-99.

¹³ Applications for Review at 7-8.

¹⁴ *See* 47 C.F.R. § 90.135(a)(5); Report and Order, PR Dkt. 92-79, 7 FCC Rcd 5558, 5562 (1992) (para. 24). For example, attached to their Applications for Review are copies of the licenses which are the subject of this proceeding. Significantly, these licenses do not authorize the operation of any mobile transmitters.

¹⁵ Applications for Review at 9-10.

¹⁶ *See, e.g.*, 47 C.F.R. §§ 90.157 and 90.633.

ORDERING CLAUSE

9. For the above reasons, IT IS ORDERED that the Applications For Review filed by Abraham Communications, Inc. and Abraham Transportation Services, Inc. on March 29, 1993 and April 9, 1993 ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary