

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

In the Matter of
CMRS Systems, Inc.
For Specialized Mobile Radio Service – Trunked
System, License KNRP591 at Peoria, Illinois
File No. 7110-18

Order

Adopted: May 17, 2002

Released: May 20, 2002

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On December 8, 1999, Supreme Radio Communications, Inc. (Supreme Radio) sought revocation of the above-captioned license granted to CMRS Systems, Inc. (CMRS Systems) by filing a Motion to Set Aside and Correct the Commission’s Records (Motion). The Commercial Wireless Division’s Licensing and Technical Analysis Branch (Branch) denied the Motion and Supreme Radio filed a petition on August 21, 2000, seeking reconsideration of that action (August Petition). On May 23, 2001, the Branch dismissed the petition. On June 14, 2001, Supreme Radio filed a petition seeking reconsideration of the dismissal of its August Petition (June Petition). We grant Supreme Radio’s June Petition, and, therefore, address Supreme Radio’s August Petition in this Order. For the reasons discussed below, however, we dismiss Supreme Radio’s August Petition as moot.

II. BACKGROUND

2. Three licenses are involved in this case – one geographic area license and two incumbent, site-specific licenses. Supreme Radio was granted a geographic area license on March 10, 1998, to operate a Specialized Mobile Radio (SMR) system in the Peoria, Illinois Basic Economic Area (BEA101) under call sign WPLM219. Clarus Communications, L.L.C. (Clarus) was an incumbent operating a site-specific license in the same area under call sign WPEF422, and Joan Moore, Inc. was granted a site-

1 Motion to Set Aside and Correct the Commission’s Records filed by Supreme Radio Communications, Inc. (Dec. 8, 1999).

2 Supreme Radio Communication’s, Inc.’s Petition for Reconsideration (Aug. 21, 2000). On September 6, 2000, CMRS Systems filed an Opposition to the August 21, 2000 petition, and Supreme Radio filed a reply on September 18, 2000.

3 Letter from Terry L. Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, to Richard Hanno, Counsel for Supreme Radio Communications (May 23, 2001).

4 Supreme Radio Communication’s, Inc.’s Petition for Reconsideration (June 14, 2001).

5 Supreme Radio operates on channel numbers 401-420 (861.0-861.5 MHz paired with 816.0-816.5 MHz).

6 Clarus was granted a site-specific license on February 25, 1994, to operate on frequencies 861.2625, 863.2625, 863.4875, 865.2625, and 865.2875 MHz in Springfield, Sangamon, Illinois.

specific license prior to the auction in the same area under call sign KNR591.<sup>7</sup> On May 29, 1998, the Branch granted the assignment of station KNR591 from Joan Moore, Inc. to CMRS Systems.

3. In its Motion, Supreme Radio sought revocation of the license granted to CMRS Systems. Supreme Radio argued that, as the geographic area licensee, it had competitive standing to file its motion and that CMRS System's relocated station KNR591 short-spaced Clarus's station WPEF422 in violation of Commission rules.<sup>8</sup> Based on their argument, Supreme Radio asked the Branch to set aside the grant of CMRS System's application.<sup>9</sup>

4. On July 20, 2000, the Branch denied Supreme Radio's Motion, finding that Supreme Radio had failed to file a timely petition to deny against CMRS System's license application. The Branch also found that Supreme Radio did not have standing because it had failed to demonstrate a direct injury.<sup>10</sup> In response, Supreme Radio filed its August Petition seeking reconsideration of that decision, once again arguing that, as the geographic area licensee, it has standing and that the grant of the license for Station KNR591 should be set aside. On May 23, 2001, the Branch dismissed Supreme Radio's petition as untimely filed,<sup>11</sup> and Supreme Radio filed the instant Petition on June 14, 2001. CMRS Systems did not file an opposition.

### III. DISCUSSION

5. Supreme Radio argues in its June Petition that it filed its August Petition on August 21, 2000, in a timely manner. We agree. Under Section 1.106(f) of the Commission's rules, petitions for reconsideration must be filed within 30 days from the date of public notice of the final action.<sup>12</sup> If, however, the thirtieth day falls on a holiday, the petition must be filed no later than the next business day.<sup>13</sup> The term "holiday" includes, among other days, Saturdays and Sundays.<sup>14</sup> The Branch released its letter denying Supreme Radio's December Motion on July 20, 2000. The thirtieth day, August 19, 2000, fell on a Saturday. As a result, Supreme filed its Petition in a timely manner on Monday, August 21, 2000. Accordingly, we reverse the decision made in the July 20, 2000 letter and address Supreme Radio's August Petition.

6. In both its Motion and August Petition, Supreme Radio states that the separation between the CMRS Systems station and the Clarus station is 108 kilometers in violation of the Commission's short-spacing rules. Supreme Radio further contends that CMRS Systems neither obtained a waiver of the Commission's short-spacing rules nor a concurrence from Clarus showing that Clarus, as a co-channel licensee, agreed to accept interference from the CMRS System station.<sup>15</sup> As a result, Supreme Radio

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<sup>7</sup> Joan Moore, Inc. was granted a site-specific license on October 31, 1995, to operate on frequencies 861.2625, 862.2875, 863.2625, 863.2875, and 865.2625 MHz in Peoria, Tazewell, Illinois.

<sup>8</sup> Motion at 3-6 (citing 47 C.F.R. § 90.621(b)).

<sup>9</sup> Motion at 6-8.

<sup>10</sup> Letter from Terry L. Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, to Richard Hanno, Counsel for Supreme Radio Communications, and Frederick J. Day, Counsel for CMRS Systems (July 20, 2000) (*July 20, 2000 Letter*).

<sup>11</sup> Letter from Terry L. Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, to Richard Hanno, Counsel for Supreme Radio Communications, and Frederick J. Day, Counsel for CMRS Systems (May 23, 2001).

<sup>12</sup> 47 C.F.R. § 1.106(f).

<sup>13</sup> 47 C.F.R. § 1.4(j).

<sup>14</sup> 47 C.F.R. § 1.4(e)(1).

<sup>15</sup> August Petition at 5-6; Motion at 5-6.

argues that the application was defective and the grant of the license to CMRS Systems should be set aside.

7. Section 90.621(b) of the Commission's rules requires a minimum separation between stations, such as WPEF422 and KNRP591, to be 113 kilometers absent a waiver of the short-spacing rules or consent from all existing co-channel licensees.<sup>16</sup> Under the original license, station KNRP591 was properly located 115 kilometers from Clarus's station WPEF422,<sup>17</sup> but CMRS System relocated KNRP591 to within 108 kilometers of WPEF422.<sup>18</sup>

8. While we recognize that the CMRS System station license was granted without a waiver or proof of consent from Clarus, we dismiss Supreme Radio's August Petition as moot because the Clarus station license has been cancelled. Clarus assigned WPEF422 to Illinois Cooperative Association, Inc. d/b/a Clear Talk (Clear Talk) on December 29, 2000,<sup>19</sup> and, on March 13, 2002, Clear Talk cancelled its license for WPEF422.<sup>20</sup> We also note that the CMRS System license has been assigned to Nextel License Holdings 4, Inc. (Nextel) and that assignment was consummated on February 13, 2002.<sup>21</sup> Thus, Nextel is the current licensee for Station KNRP591.

9. Because WPEF422 has been cancelled and the CMRS System license has been assigned to Nextel, the short-spacing issue is no longer before us. Moreover, if we were we to rule on the merits of the August Petition and December Motion, we would not grant Supreme Radio's request to revoke Station KNRP591 for a short-spacing violation. Rather, we would order Nextel to comply with Section 90.621(b) by either lowering the station's power or moving the transmitter to an appropriate location. Accordingly, we dismiss Supreme Radio's August Petition as moot.<sup>22</sup>

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition for Reconsideration filed by Supreme Radio Communications, Inc. on June 14, 2001, IS GRANTED.

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<sup>16</sup> 47 C.F.R. § 90.621(b), Short-Spacing Separation Table.

<sup>17</sup> Moore's station was located at 40-47-50.1 North Latitude and 089-43-39.4 Longitude. Clarus's station was located at 39-46-01.2 North Latitude and 089-34-20.3 West Longitude.

<sup>18</sup> CMRS Systems relocated the transmitter to 40-44-13.1 North Latitude and 089-34-30.3 West Longitude.

<sup>19</sup> Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 743 (Jan. 3, 2001).

<sup>20</sup> Wireless Telecommunications Bureau Site-By-Site Action, *Public Notice*, Report No. 1128 (Mar. 20, 2002).

<sup>21</sup> CMRS System initially assigned Station KNRP591 to Chadmoore Wireless Group, Inc., *see* Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 911 (July 11, 2001) (granting assignment application), which then immediately assigned the station to Nextel, *see* Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1108 (Feb. 20, 2002) (granted consummation of assignment).

<sup>22</sup> Because we find that Supreme Radio's Motion is moot, we need not decide whether Supreme Radio has standing in this case.

11. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition for Reconsideration filed by Supreme Radio Communications, Inc. on August 21, 2000, IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari  
Chief, Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau