

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

In the Matter of)	
)	
McIntosh Communications, Inc.)	
)	FCC File No. A036106
Application for a New Business Radio Service-)	
Trunked Station at Las Vegas, Nevada)	

ORDER

Adopted: May 31, 2000

Released: June 2, 2000

Before the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On July 6, 1999, S.D. Peterson d/b/a Metro Express Taxi and Transport (Metro) filed a petition to deny (Petition) the above-referenced application of McIntosh Communications, Inc. (McIntosh) for authorization to operate a new Business Radio Service station at Las Vegas, Nevada.¹ For the reasons set forth below, we grant the Petition in part, and deny it in part.

2. *Background.* Nevada Power Company (NPC) was the licensee of Station WPBZ469, Las Vegas, Nevada.² On June 9, 1997, McIntosh filed a finder's preference request³ arguing that NPC had failed to construct and operate Station WPBZ469 in accordance with its license.⁴ On February 20, 1998, in response to a license renewal notification from the Commission, NPC voluntarily submitted its license

¹ Petition to Dismiss or Deny (filed July 6, 1999) (Petition).

² Station WPBZ649 was authorized to use the following ten frequencies: 935.3875/896.3875 MHz, 935.4000/896.4000 MHz, 935.4125/896.4125 MHz, 935.4250/896.4250 MHz, 935.4375/896.4375 MHz, 935.4500/896.4500 MHz, 935.4625/896.4625 MHz, 935.4750/896.4750 MHz, 935.4875/896.4875 MHz, and 935.5000/896.5000 MHz.

³ In 1991, the Commission established the finder's preference program to augment its compliance review efforts in the private land mobile radio service. The program was fashioned to provide incentives for individuals to survey licenses assigned in the 220-222 MHz, 470-572 MHz, and 800-900 MHz bands in order to identify licensees who had failed to construct, place in operation, or continue to operate their stations. *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*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7302-03 ¶¶ 30-33 (1991); *see also* Amendment of Parts 1 and 90 of the Commission's Rules, *Memorandum Opinion and Order*, PR Docket No. 90-481, 8 FCC Rcd 6690 (1993). Pursuant to this program, an entity that submitted evidence that an existing license had cancelled automatically for failure to construct, place in operation, or continue to operate the station in compliance with the Commission's Rules was entitled to preference for use of the licensed frequencies in the assigned area. 47 C.F.R. § 90.173(k) (1997). In 1998, Part 90 of the Commission's Rules was amended to eliminate the finder's preference program. *See* Amendment of Part 90 Concerning the Commission's Finder's Preference Rules, *Report and Order*, WT Docket No. 96-199, 13 FCC Rcd 23816 (1998).

⁴ Letter From Don J. Honzay, McIntosh Communications, Inc. to FCC dated May 20, 1997.

for cancellation.⁵ On or about March 5, 1998, the license for Station WPBZ469 was canceled and deleted from the Commission's licensing database. On August 27, 1998, Metro submitted an application for authorization to use eight of the ten frequencies formerly assigned to Station WPBZ469.⁶ On November 3, 1998, the Metro application was granted under Call Sign WPMQ359. McIntosh did not file a petition to deny Metro's application, or a timely⁷ petition for reconsideration of the license grant.

3. On January 4, 1999, McIntosh's finder's preference request was granted.⁸ On April 2, 1999, McIntosh filed the instant application, which requests authorization to use the frequencies formerly assigned to Station WPBZ469, including the eight frequencies currently assigned to Station WPMQ359. On July 6, 1999, Metro requested that the McIntosh application be dismissed or denied.⁹

4. *Discussion.* A formerly licensed frequency becomes available for reassignment as soon as the license is deleted from the Commission's licensing database.¹⁰ Unfortunately, by an erroneous but now final action, the license for Station WPBZ469 was canceled and deleted from the database while McIntosh's finder's preference request was pending. Consequently, we must agree with Metro that the frequencies at issue were available to it, that Metro is authorized as the licensee of the frequencies in question, and that its license is valid and cannot be rescinded because of the Commission's processing error.¹¹

5. We recognize that McIntosh's finder's preference request for the frequencies requested in its present application was granted. We note, however, that it was awarded "a dispositive preference for Station WPBZ469."¹² At the time of the award, Station WPBZ469 no longer existed and had been deleted from the Commission's licensing database. Although the deletion was an error, once the frequencies were assigned to Metro, they no longer were available to be awarded to McIntosh.¹³ Thus, we conclude that

⁵ See Letter from David Le Blanc of Nevada Power Company to John J. Borkowski, Chief, Policy and Rules Branch dated January 21, 1999 (the letter notes that NPC wrote the Commission on February 20, 1998 to cancel its license).

⁶ See Application of S.D. Petersen d/b/a Metro Express Taxi and Transport on FCC Form 600 (FCC File No. 9808C005674) filed August 27, 1998 (Application). Metro requested the following frequencies: 935.3875/896.3875 MHz, 935.4000/896.4000 MHz, 935.4125/896.4125 MHz, 935.4250/896.4250 MHz, 935.4375/896.4375 MHz, 935.4500/896.4500 MHz, 935.4625/896.4625 MHz, 935.4750/896.4750 MHz.

⁷ Although McIntosh did request that Call Sign WPMQ359 "be set aside," this request came almost five months after the grant, which is too late. See Letter from Don Honzay, McIntosh Communications, Inc. to Mike Regiec, FCC, dated March 29, 1999; 47 C.F.R. § 1.106(f) (1999) (reconsideration must be requested within thirty days).

⁸ See Letter From John J. Borkowski, Chief, Policy & Rules Branch, Public Safety and Private Wireless Division to Don J. Honzay, McIntosh Communications, Inc., dated January 4, 1999 (Award).

⁹ See Petition.

¹⁰ Mobile Relay Associates, Inc., *Order*, DA 99-2733, ¶ 7 (WTB PSPWD rel. Dec. 17, 1999).

¹¹ Petition at 6.

¹² Award at 1.

¹³ See Letter from D'wana R. Terry, Chief, Public Safety and Private Wireless Division to Cheryl E. Cox, Lone Star Radio, Inc., dated September 29, 1999 (notifying purported assignee of a license that had been canceled that it was not authorized to operate because the assignment was of no effect).

Metro is authorized as the licensee of the subject frequencies.

6. Consequently, we grant Metro's Petition with respect to the eight frequencies that are licensed to Metro under Call Sign WPMQ359, and dismiss that part of the McIntosh application. The remaining two frequencies¹⁴ are available to McIntosh and that part of its application shall be processed.

7. IT IS ORDERED that pursuant to Sections 4(i) , and 309(d), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106 the Petition to Deny filed by S.D. Peterson d/b/a Metro Express Taxi and Transport on July 6, 1999, IS GRANTED IN PART and DENIED IN PART, as set forth above.

8. IT IS FURTHER ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106 the license application of McIntosh Communication, Inc. (FCC File No. A036106) IS DISMISSED IN PART, as set forth herein, and otherwise IS REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch, for further processing consistent with this *Order*.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁴ 935.4875/896.4875 MHz and 935.5000/896.5000 MHz.