

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

In the Matter of	)	
	)	
R/M Management Co. Inc.	)	File No. 0000851186
	)	
Petition for Reconsideration of Dismissal of	)	
Application for Special Temporary Authority for	)	
Public Safety Radio Station Operations in	)	
Lexington, Kentucky	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 30, 2002**

**Released: December 31, 2002**

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

**I. INTRODUCTION**

1. On May 28, 2002, R/M Management Co., Inc. (R/M) filed a Petition for Reconsideration (*Petition*)<sup>1</sup> of the April 29, 2002, dismissal<sup>2</sup> of its Request for Special Temporary Authority (*STA Request*)<sup>3</sup> by the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch). In the *Dismissal Notice*, the Branch denied R/M's *STA request* which sought authorization to conduct the same operations as its formerly licensed Station WNBA478, Lexington, Kentucky.<sup>4</sup> For the reasons set forth below, we deny the *Petition*.

**II. BACKGROUND**

2. Section 1.931 of the Commission's Rules provides for the grant of special temporary authority (STA) in the Private Wireless Services under five circumstances: (1) in emergency situations; (2) to permit the restoration or relocation of existing facilities to continue communication service; (3) to conduct tests to determine necessary data for the preparation of an application for regular authorization; (4) for a temporary, non-recurring service where a regular authorization is not appropriate; or (5) in other situations involving circumstances which are of such an extraordinary nature that delay in the institution of service would seriously prejudice the public interest.<sup>5</sup> When seeking an STA, the applicant must fully describe the nature of the circumstances that, in its opinion, warrant grant of the requested STA.<sup>6</sup> An

<sup>1</sup> R/M Management Co., Inc., Petition for Reconsideration (filed May 28, 2002) (*Petition*).

<sup>2</sup> Notice of Dismissal, File No. 0000851186, Reference No. 1400409 (WTB PSPWD LTAB Apr. 29, 2002) (*Dismissal Notice*).

<sup>3</sup> R/M Management Co., Inc., Request for Special Temporary Authorization (FCC Form 601) (filed Apr. 16, 2002) (*STA Request*).

<sup>4</sup> *Petition* at 1.

<sup>5</sup> 47 C.F.R. § 1.931(b)(2)(i)-(v).

<sup>6</sup> 47 C.F.R. § 1.931(b)(3).

applicant may request an STA not to exceed 180 days for operation of a new station. Any request for waiver of this 180-day limit must be accompanied by evidence of frequency coordination.<sup>7</sup>

3. R/M is an administrative servicing entity of Rural/Metro Corporation (Corporation) holding all the licenses of the Corporation and its subsidiaries.<sup>8</sup> The Corporation and its operating subsidiaries provide health and safety services which include 911 emergency ambulance and general medical transport services to municipal, residential, commercial and industrial customers.<sup>9</sup> These entities also provide fire protection services, which include fire prevention, fire suppression and first responder medical care to municipalities and other governmental bodies, as well as residential, commercial and industrial customers.<sup>10</sup> They operate in twenty-seven states and the District of Columbia.<sup>11</sup> According to R/M, the Corporation grew significantly through a series of acquisitions during the 1990s during the consolidation of the ambulance industry in this country.<sup>12</sup>

4. The Corporation provides emergency and non-emergency transportation services in Lexington, Kentucky, through its operating subsidiary Mercury Ambulance Services, Inc. (Mercury Ambulance),<sup>13</sup> which held a license for former Station WNBA478. The license for Station WNBA478 expired without renewal on May 20, 1999. R/M asserts that upon discovery of the expired license, Mercury Ambulance ceased operating the subject station, sought alternative methods of communications,<sup>14</sup> and is currently using the services of Nextel Communications (Nextel), a commercial mobile radio service provider, to meet its communications needs.<sup>15</sup> On April 16, 2002, R/M filed the *STA Request* to permit it to operate the facilities associated with former Station WNBA478 until such time as it received a new Commission license.<sup>16</sup> The Branch dismissed the *STA Request* on the basis that the initiation of service as described in the *STA Request* did not provide adequate justification for such an authorization.<sup>17</sup> In dismissing the *STA Request*, the Branch advised R/M that the purpose of an STA is to provide relief for a short period of time during emergencies or other urgent conditions and that R/M's request did not meet this criterion.<sup>18</sup>

### III. DISCUSSION

5. *Petition for Reconsideration.* In its *Petition*, R/M asserts that the circumstances of its *STA Request* fall squarely within the parameters of Section 1.931(b)(2) of the Rules<sup>19</sup> and thus, granting

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<sup>7</sup> 47 C.F.R. § 1.931(b)(1).

<sup>8</sup> See *Petition* at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* The record in this proceeding does not indicate the date R/M became aware of the expired license, or the date Mercury Ambulance ceased operating the subject station.

<sup>15</sup> *Id.* at 3 n.2. The record in this proceeding does not indicate the date Mercury Ambulance commenced using the services of Nextel.

<sup>16</sup> *Id.* at 2. As of the adopted date of this *Memorandum Opinion and Order*, no FCC Application for Wireless Telecommunications Bureau Radio Service Authorization for the radio operations of former Station WNBA478 has been received by the Branch.

<sup>17</sup> See *Dismissal Notice* at 1.

<sup>18</sup> *Id.*

<sup>19</sup> 47 C.F.R. § 1.931(b)(2).

its request would be in the public interest.<sup>20</sup> R/M alleges that lack of radio communications may greatly compromise Mercury Ambulance's provision, on a daily basis, of emergency and non-emergency services in Lexington, Kentucky.<sup>21</sup> Additionally, R/M contends that because state requirements mandate that all ambulance providers have both fixed and mobile portable radios in each ambulance, the failure to receive an STA may force R/M to cease providing ambulance service to Lexington.<sup>22</sup>

6. R/M argues that its current use of Nextel radios, following the discovery that the license for Station WNBA478 had expired, is only an intermediate solution until the Commission grants it an STA.<sup>23</sup> Furthermore, R/M claims, Nextel radios should not be considered a permanent alternative to the radio service previously provided by Station WNBA478 because use of Nextel radios can result in inefficiencies in the administration and provision of emergency services.<sup>24</sup> In support of this contention, R/M alleges that its dispatch center can only communicate with one vehicle at a time and thus, the dispatch center must contact each radio handler individually rather than providing a broadcast dispatch which all units would hear simultaneously.<sup>25</sup> R/M argues that, in contrast with former Station WNBA478, Nextel units cannot simultaneously listen to all radio traffic.<sup>26</sup> In this connection, R/M states that a Nextel unit closer to the scene of an emergency may not hear a dispatch,<sup>27</sup> thus causing an increase in emergency response time.<sup>28</sup>

7. In further support of its *STA Request*, R/M contends that the Nextel system does not provide the same grade of service as the facilities it previously used.<sup>29</sup> According to R/M, on two different occasions, the Nextel system experienced outages that lasted over four hours.<sup>30</sup> R/M maintains that this might not be a problem for commercial users, but poses a problem for an ambulance company.<sup>31</sup> R/M also submits that the use of Nextel radios results in additional expenses for Mercury Ambulance requiring expenditure of funds that would otherwise be available for the provision of ambulance services.<sup>32</sup> R/M further asserts that, without an STA to operate a radio station until it receives a new license, the services it offers will be hindered and the reliability of its communications will be compromised.<sup>33</sup>

8. *Decision.* Based on our review of the record, we find that the Branch's action in this matter was correct under the circumstances presented. Contrary to R/M's assertion, the facts presented do

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<sup>20</sup> See *Petition* at 3.

<sup>21</sup> *Id.* at 3-4, n. 10.

<sup>22</sup> Mercury Ambulance has a mutual aid agreement with Lexington Fayette Urban County Government to provide emergency transportation services when necessary. *Id.* at 4.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 4-5.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 5 n.11.

<sup>33</sup> *Id.* at 5.

not warrant granting an STA under the provisions of Section 1.931(b)(2) of the Commission's Rules.<sup>34</sup> Nothing in the *STA Request* persuades us that there is an emergency situation<sup>35</sup> requiring the immediate use of the radio facilities of former Station WNBA478.<sup>36</sup> Instead, the record reflects that Mercury allowed Station WNBA478 to expire without renewal and that R/M Management subsequently obtained Nextel's services instead of filing an application for a new license to replace that of former Station WNBA478. R/M's failure, to date, to file a frequency coordinated application for permanent authority is particularly notable because once it does so, it will be authorized to operate the proposed station during the pendency of its application for up to 180 days.<sup>37</sup> Thus, if R/M does not believe that its communications needs are being adequately met by the alternative arrangements it has made, then it should consider whether to revisit its earlier decision not to apply for a new license to authorize operations identical or similar to those of former Station WNBA478. Indeed, R/M itself acknowledges that it does not consider the use of Nextel radios to be a permanent alternative to its previous radio operations.<sup>38</sup> Additionally, the instant request does not establish that there is any need to immediately restore or relocate the operations of the former radio station.<sup>39</sup>

9. R/M also fails to meet the other criteria for grant of an STA. It does not seek to conduct tests to determine necessary data for the preparation of a license application,<sup>40</sup> or request temporary non-recurring service where a regular authorization is not appropriate.<sup>41</sup> Nor does the situation involve circumstances that are of such an extraordinary nature that the public interest would be harmed if the *STA Request* was not granted.<sup>42</sup> Because R/M has a system in place to meet its current communications needs, we do not believe the public interest has been prejudiced by denying R/M's request. Finally, R/M has failed to demonstrate that the public interest would be harmed if its *STA Request* is denied.<sup>43</sup> We believe that the circumstances in which R/M finds itself are neither unique nor involuntary. Failure to renew a license authorization results in license expiration and the need to file for a new authorization or to find alternate means to meet communications requirements. It is the responsibility of the licensee to file timely renewal applications.

10. The circumstances presented here were well within the control of Station WNBA478's licensee. R/M seems to assert that the failure to file a timely renewal application was an oversight caused by the Corporation's acquisitions during the last decade.<sup>44</sup> However, the licensee's business decisions do

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<sup>34</sup> 47 C.F.R. § 1.931(b)(2).

<sup>35</sup> See 47 C.F.R. § 1.931(b)(2)(i).

<sup>36</sup> Cf. Texas Gas Transmission Corp., *Order on Reconsideration*, 14 FCC Rcd 8505, 8507 ¶ 6 (WTB PSPWD 1999).

<sup>37</sup> See 47 C.F.R. § 90.159(b).

<sup>38</sup> See *Petition* at 4.

<sup>39</sup> See 47 C.F.R. § 1.931(b)(2)(ii). There have been instances in which the Commission has granted STA requests for limited time periods to enable a licensee to discontinue its operations in an orderly manner. See Gene A. Smith, *Order*, DA 02-1606 (WTB CWD PRB 2002); and Celtronix Telemetry, Inc., *Order on Reconsideration*, 16 FCC Rcd 16614, 16617 ¶ 8 (WTB PSPWD 2001) (*Celtronix*).

<sup>40</sup> See 47 C.F.R. § 1.931(b)(2)(iii). See also San Francisco IVDS, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 18008, 18012 ¶ 11 (*San Francisco*) (applicant granted an STA for only thirty days to conduct field trials to determine necessary data for the preparation of an application for regular authorization).

<sup>41</sup> See 47 C.F.R. § 1.931(b)(2)(iv).

<sup>42</sup> See 47 C.F.R. § 1.931(b)(2)(v). See also Nathan Sherman Enterprises, Inc., *et al.*, *Order on Reconsideration*, 14 FCC Rcd 20662, 20664 ¶ 5 (WTB CWD PRB 1999).

<sup>43</sup> See *San Francisco*, 16 FCC Rcd at 18011 ¶ 9.

<sup>44</sup> See *Petition* at 2.

not excuse it from filing a timely renewal application.<sup>45</sup> Moreover, R/M has failed to diligently prosecute its requests for operating authority. Three years elapsed since the Station WNBA478 authorization expired and the Commission's records reflect that R/M still has not filed an application for a new license, although it indicated an intention to do so.<sup>46</sup> Thus, even had we found merit in the *STA Request*, it could not be granted because an application for regular operation has not been filed as required for grant of an STA.<sup>47</sup> Also, R/M should have requested an STA for a specific period of time not exceeding 180 days, as required by Section 309(f) of the Communications Act of 1934, as amended,<sup>48</sup> and Section 1.931(a)(3) of the Commission's Rules.<sup>49</sup> Instead, R/M requested an STA "until grant of an application for a new license."<sup>50</sup> Moreover, although the record is silent as to exactly when R/M ceased operation of the facilities associated with former Station WNBA478, it is apparent that the station was operated for a substantial period of time without Commission authorization. Accordingly, we are referring this matter to the Commission's Enforcement Bureau for such action as it deems appropriate.<sup>51</sup>

#### IV. CONCLUSION

11. As noted by the Commission, acting on STA requests—whether granting or denying them—imposes an additional processing burden on the Commission's staff leaving less time to process other applications.<sup>52</sup> To avoid abuse of this process, STA requests are dismissed except under the extraordinary circumstances contemplated in the Rules. For the reasons set forth above, we find no basis for reversing the Branch's decision. The Branch's action was warranted based on the facts presented, and was consistent with Commission precedent. Therefore, we deny R/M's *Petition*.

12. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the *Petition for Reconsideration* filed by R/M Management Co., Inc., on May 28, 2002, IS DENIED.

13. 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

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<sup>45</sup> See *Celtronix*, 16 FCC Rcd at 16618 ¶ 10.

<sup>46</sup> See *Federal Express Corporation, Memorandum Opinion and Order*, 15 FCC Rcd 4289, 4292 ¶ 13, 4294 ¶ 20 (WTB PSPWD 2000).

<sup>47</sup> 47 C.F.R. § 1.931(a)(3).

<sup>48</sup> 47 U.S.C. § 309(f).

<sup>49</sup> 47 C.F.R. § 1.931(a)(3).

<sup>50</sup> *STA Request* at 1.

<sup>51</sup> See, e.g., *Southeast Telephone, Inc., Order*, 15 FCC Rcd 15702, 15703-04 ¶ 5 (WTB CWD PRB 2000); *Florida Power and Light Company, Notice of Apparent Liability for Forfeiture*, 14 FCC Rcd 7203 ¶ 1 (WTB ECID 1999).

<sup>52</sup> Revision of Part 21 of the Commission's Rules, *Notice of Proposed Rulemaking*, CC Docket No. 86-128, 104 FCC 2d 116, 125-26 ¶ 19 (1986).