

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

In the matter of)
CHARLES W. FORTNER)
Finder's Preference Request)
For Station KNHK827)
Licensed to J.E. Sussman)
d/b/a Fox Systems)
Dayton, Ohio)

ORDER

Adopted: January 21, 2003

Released: January 22, 2003

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

1. This Order addresses an Application for Review filed by J.E. Sussman ("Sussman") on December 28, 2001. Sussman seeks review of a decision by the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau ("Branch"), which granted a Petition to Correct the Commission's Records ("Petition") filed by Charles W. Fortner ("Fortner").

2. We dismiss Sussman's Application for Review, because it fails to comply with our procedural requirements for the filing of applications for review of Commission actions. In particular, Commission records do not reflect that the Application for Review was filed with the Commission's Office of the Secretary, as required by section 1.115(f) of the Commission's rules.

3. Moreover, even if Sussman's Application for Review had complied with the Commission's filing requirements, we would have dismissed it because Sussman has failed to establish that she has been aggrieved by the action which is the subject of the Application for Review.

1 See In re Petition of Charles W. Fortner to Correct the Commission's Records, In the Matter of Charles W. Fortner, Finder's Preference Request for Station KNHK827 Licensed to J.E. Sussman d/b/a Fox Systems, Order, DA 01-2691 (CWD rel. Nov. 21, 2001) ("November 2001 Order").

2 Sussman remains licensed under call sign KNHK827 for two frequencies, 864.5625 MHz and 865.5625 MHz.

3 See 47 C.F.R. § 1.115(f).

4 See 47 C.F.R. § 1.115(d).

5 See November 2001 Order.

6 See 47 C.F.R. § 1.115 (a).

Commission's rules provides in part that only a person that has been aggrieved by any action taken pursuant to delegated authority may file an application for review.⁷ Commission records reflect that the three target frequencies previously licensed to Sussman cancelled automatically on July 21, 1995, for permanent discontinuance of operations.⁸ Sussman's was not aggrieved by the Branch's decision to grant Fortner's Petition, because Sussman's claim to the three target frequencies (861.5625 MHz, 862.5625 MHz and 863.5625 MHz) awarded to Fortner was denied and became a final administrative action. This action was final because: 1) Sussman did not file a petition for reconsideration of the *July 1995 Letter Order*, which reduced Fortner's initial finder's preference award against Sussman's Station KNHK827 from five frequencies to three frequencies; and 2) the Commission denied Fortner's appeal of the reduction of his initial finder's preference award from five frequencies to three frequencies.⁹

4. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. §154(i), and sections 0.331, 1.115 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.115, the Application for Review filed by J.E. Sussman on December 28, 2001 is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

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

⁷ See C.F.R. § 1.115(a).

⁸ See Letter re "Notice to Target Licensee of Automatic License Cancellation of Frequencies" from Gary L. Standford, Associate Bureau Chief, Wireless Telecommunications Bureau, to J.E. Sussman, dated July 21, 1995 ("*July 1995 Letter Order*").

⁹ In this case, Fortner sought reconsideration of the *July 1995 Letter Order*, which the Bureau denied on February 3, 1997. See Letter from W. Riley Hollingsworth, Deputy Associate Bureau Chief, Office of Operations, Wireless Telecommunications Bureau, to Dennis C. Brown, Esq., dated February 3, 1997 ("*PFR Denial Letter*"). Fortner appealed the *PFR Denial Letter*, which the Commission denied on October 21, 1999. See In the Matter of Charles W. Fortner, Finder's Preference Request for Station KNHK827 Licensed to J.E. Sussman d/b/a Fox Systems, *Memorandum Opinion and Order*, FCC 99-303 (1999).