

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

In the Matter of)	
)	
SUNSET BUS AND COMMERCIAL, INC.)	FCC File No. 0000473177
)	
Application for Authorization to Construct and)	
Operate a New Other Industrial/Land)	
Transportation Station at Las Vegas, Nevada)	
)	
and)	
)	
VSS ENTERPRISES, LLC)	
)	
Petition to Deny Application for Authorization to)	
Construct and Operate a New Other)	
Industrial/Land Transportation Station at Las)	
Vegas, Nevada)	
)	
and)	
)	
Joint Request for Commission Action)	

ORDER

Adopted: February 14, 2003

Released: February 14, 2003

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

1. *Introduction.* On May 18, 2001, Sunset Bus and Commercial, Inc. (Sunset) filed the above-captioned application for authorization to construct and operate a new Industrial/Land Transportation station at Las Vegas, Nevada. On June 8, 2001, VSS Enterprises, LLC (VSS) filed a petition for reconsideration of a decision by the Public Safety and Private Wireless Division (Division), Licensing and Technical Analysis Branch (Branch) denying VSS's request to correct its license for trunked Business Station KNNF731. On June 15, 2001, VSS filed a petition to deny Sunset's application. On June 20, 2001, Sunset filed an opposition to VSS's petitions. Subsequently, the parties reached an agreement to settle these proceedings, and on November 21, 2001 jointly requested that we approve the agreement. For the reasons discussed below, we approve the settlement agreement, dismiss the application and the petition to deny, and dismiss the petition for reconsideration in part.

2. *Background.* In 1997, the FCC consented to and granted an assignment/modification application to assign the license for Station KNNF731, Las Vegas, Nevada, from Gold Coast Hotel and Casino to Showboat Operations, Inc. (Showboat), and to relocate the transmitter. While the modified license correctly listed the transmitter's new street address, there was a typographical error with respect to the geographic coordinates. Specifically, the requested latitude was 36-09-19 North, but the modified license listed the latitude as 39-09-19 North, a difference of approximately two hundred miles. The error resulted in the frequencies assigned to Station KNNF731 -- 898/937.4500 MHz, 899/938.4125 MHz, and 899/938.4250 MHz -- appearing to be unassigned in the Las Vegas area. In July 2000, the FCC consented to the assignment an the license for Station KNNF731 from Showboat to VSS.

3. On October 4, 2000, the FCC granted Readymix, Inc. (Readymix) a license to operate Station WPRI751, Las Vegas, Nevada, on frequency 899/938.4125 MHz (the Readymix frequency), at a site approximately six miles from the actual site of Station KNNF731. On March 5, 2001, VSS filed an informal petition requesting that the FCC correct the latitude listed for Station KNNF731, and rescind or modify Readymix's license for Station WPRI751.¹ The Branch dismissed the request on May 9, 2001, on the grounds that Section 1.106 of the Commission's Rules² requires that petitions for reconsideration be filed within thirty days of the action for which reconsideration is sought. VSS however, had filed its request well more than thirty days after both issuance of the modified license for its Station KNNF731 and the grant of the license for Station WPRI751 to Readymix.³

4. On May 18, 2001, Sunset filed the above-captioned application to operate on 898/937.4500 MHz and 899/938.4250 MHz (the Sunset frequencies) in Las Vegas, at a site approximately six miles from the actual site of Station KNNF731. On June 8, 2001, VSS filed a petition for reconsideration of the Branch's decision dismissing its informal request.⁴ On June 15, 2001, VSS filed a petition to deny Sunset's application.⁵ Sunset filed an opposition to VSS's petitions. VSS filed a reply to Sunset's opposition. On September 20, 2001, VSS filed an application to modify its license for Station KNNF731 to correct the latitude.⁶ On November 21, 2001, VSS and Sunset jointly requested that the Commission approve a settlement agreement between the parties to resolve these matters, and license the Sunset frequencies to VSS. We note that the agreement does not address the Readymix frequency.⁷

5. On January 22, 2002, the Branch granted VSS's modification application. On February 8, 2002, the Industrial Telecommunications Association, Inc. (ITA) requested rescission of the grant.⁸ ITA argues that the grant was improper with respect to the Readymix frequency because VSS's requested location is too close to the authorized site of Readymix's Station WPRI751, and improper with respect to the Sunset frequencies because VSS's requested location is too close to the site requested in the earlier-filed Sunset application.⁹

¹ Letter dated March 2, 2001 from Suzanne E. Rogers, Esq., counsel for VSS, to Kelly Lawver, Wireless Telecommunications Bureau.

² 47 C.F.R. § 1.106.

³ See Letter dated May 9, 2001 from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Suzanne E. Rogers, Esq., counsel for VSS.

⁴ VSS Petition for Reconsideration (filed June 8, 2001).

⁵ Sunset Petition to Deny (filed June 15, 2001).

⁶ FCC File No. 0000598897 (filed Sept. 20, 2001, amended Oct. 4, 2001 and Jan. 15, 2002). The application also sought to add frequency pair 896/935.8875 MHz.

⁷ We will address the Readymix frequency in another proceeding. The Division is working with the frequency coordinators for VSS and Readymix to develop the most equitable and effective arrangement concerning that frequency. See Letter dated December 2, 2002 from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, to Industrial Telecommunications Association and Personal Communications Industry Association.

⁸ Letter from Ronald G. Franklin, Director, Spectrum Operations and Analysis, ITA, to Mary Shultz, Federal Communications Commission (received Feb. 8, 2002).

⁹ *Id.* at 1-2. ITA also contends that frequency pair 896/935.8875 MHz should not have been assigned to VSS because it already has been assigned to the American Association of Railroads for nationwide geographic use. *Id.* at 1 (citing Petition of Association of American Railroads (AAR) for Modification of Licenses for Use in Advanced Train Control Systems and Positive Train Control Systems, *Order*, 16 FCC Rcd 3078 (WTB PSPWD 2001)). We are addressing this frequency in another proceeding. Specifically, in a *Memorandum Opinion and Order* released today, we propose to modify the license for Station KNNF731 by deleting frequency pair 896/935.8875 MHz.

(continued....)

6. *Discussion.* Section 1.935 of the Commission's Rules permits parties that have filed applications that are mutually exclusive with one or more applications to enter into an agreement to resolve the mutual exclusivity.¹⁰ In addition, parties that have filed a petition to deny an application and then seek to withdraw or request dismissal of the petition must obtain the approval of the Commission.¹¹ We encourage settlement of conflicts in order to eliminate the need for further litigation and the expenditure of further time and resources by the parties and the Commission,¹² and to speed service to the public.¹³ In this instance, we believe that these interests would be served by approving the proposed settlement between VSS and Sunset. Further, we also believe that approval of the settlement agreement is in the public interest because it allows us to correct the 1997 licensing error with respect to the Sunset frequencies without detriment to any Commission licensee.

7. *Conclusion.* We grant the Joint Petition for Approval of the Settlement Agreement between VSS and Sunset, and approve the settlement agreement between those parties. Accordingly, we dismiss the Sunset application and the VSS petition to deny that application. We also dismiss that portion of VSS's petition for reconsideration of the Branch's May 9, 2001 action that relates to the Sunset frequencies. Although the settlement agreement does not resolve all of the issues pending with respect to Station KNNF731, we believe that it is in the public interest to resolve these issues now in order to clarify Sunset's status and VSS's authority to operate on frequency pairs 937.450/898.4500 MHz and 938.425/899.4250 MHz, and to avoid any further operational and licensing uncertainty regarding these frequencies.

8. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.935 of the Commission's Rules, 47 C.F.R. § 1.935, the Joint Motion for Approval of Settlement Agreement, filed November 21, 2001 by VSS Enterprises, LLC, and Sunset Bus and Commercial IS GRANTED and the settlement agreement between those parties IS APPROVED.

9. IT IS FURTHER ORDERED that application FCC File Number 0000473177, filed by Sunset Bus and Commercial, Inc., on May 18, 2001, SHALL BE DISMISSED WITH PREJUDICE, and the petition to deny application FCC File Number 0000473177, filed by VSS Enterprises, LLC, on June 15, 2001, IS DISMISSED.

10. IT IS FURTHER ORDERED that petition for reconsideration filed by VSS Enterprises, LLC, on June 8, 2001, IS DISMISSED IN PART with respect to frequency pairs 898/937.4500 MHz and 899/938.4250 MHz.

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Industrial Telecommunications Association, Inc., *Memorandum Opinion and Order*, DA 03-446 (WTB PSPWD rel. Feb. 14, 2003).

¹⁰ 47 C.F.R. § 1.935.

¹¹ *Id.*

¹² See, e.g., Garin Strategic Research Group LLC, *Order*, DA 02-3574, ¶ 2 (EB TCD rel. Dec. 24, 2002); Knology, Inc., *Order*, DA 02-2524, ¶ 4 (EB MDRD rel. Oct. 8, 2002).

¹³ See State of New Hampshire, *Memorandum Order and Opinion*, 14 FCC Rcd 3607, 3615 ¶ 17 (WTB 1999) (citing Amendment of Parts 1 and 21 of the Commission's Rules and Regulations Applicable to the Domestic Public Radio Services (Other than Maritime Mobile), *Report and Order*, Docket No. 19905, 60 FCC 2d 549, 558-59 (1976)).

11. 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