

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

In the Matter of Applications of)
)
DELTA VALLEY RADIOTELEPHONE CO.,) FCC File Nos. 0003792209-0003792212
INC.)
)
To Renew Licenses for Stations KMA616,)
KMA743, KMJ224, and KMM630)

ORDER

Adopted: March 29, 2012

Released: March 30, 2012

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. In this Order, we grant in part, deny in part, and dismiss in part a petition filed by Paging Systems, Inc. (PSI) to deny the above-captioned applications of Delta Valley Radiotelephone Co., Inc. (Delta Valley) to renew its licenses for site-based Paging and Radiotelephone Stations KMA616, KMA743, KMJ224, and KMM630. Based on the record developed in this proceeding, we conclude that Delta Valley has permanently discontinued operation on certain frequencies and at certain locations. We will process its renewal applications accordingly.

2. Background. Delta Valley filed the above-captioned renewal applications in 2009. PSI filed a petition to deny the applications with respect to particular frequencies, as follows: Station KMA616 (152.15 MHz), Station KMA743 (152.21 MHz), Station KMJ224 (454.200 MHz), and Station KMM630 (152.18 MHz).1 PSI asserted that the Delta Valley stations had not been operating and/or providing service to subscribers on those frequencies for more than ninety days and therefore the authorizations for those frequencies were not available to be renewed.2

3. In support, PSI offered a declaration of David Kling (Kling), who stated that he had monitored the frequencies in the relevant locations for unspecified periods during 2001, 2002, 2003, and 2009, and found no use being made of the spectrum other than by PSI.3 He also stated that the property manager of the Medico-Dental Building in Stockton, California, which is location 1 for Station KMA616, told him that Delta Valley did not have a transmitter there, and that he found no transmitter on frequency 152.15 MHz on the roof of the building.4 Kling stated that he also visited 5323 East Carpenter Road in Stockton, which is the location of Station KMM630,5 and did not detect any signal from Delta Valley, but

1 Petition to Dismiss or Deny, filed May 8, 2009 (Petition). Delta Valley filed an Opposition on May 21, 2009 (Opposition). PSI filed a Reply on June 3, 2009 (Reply). PSI holds geographic-area overlay licenses for the four frequencies at issue: 152.15 MHz (WPZG953), 152.18 MHz (WPZG954), 152.21 MHz (WPVE241), and 454.200 MHz (WPVE250).

2 See Petition at 4.

3 See id. at Attachment at 1.

4 See id.

5 It also is location 3 for Station KMA616, but Station KMA616 is not authorized for frequency 152.15 MHz at that location, so the site is not relevant to PSI's claim that Delta Valley discontinued operations on that frequency.

he does not state that he was able to inspect the equipment in the radio shacks.⁶

4. In response, Delta Valley stated that its subscriber base had shrunk in recent years, and the amount of traffic it transmitted was small.⁷ It conceded that it did, in fact, deconstruct its site at the Medico-Dental Building, as well as at 3502 Kroy Way in Sacramento, which is location 5 of Station KMA743,⁸ but asserted that its other facilities using the challenged frequencies were constructed and operational.⁹

5. In 2010, PSI submitted additional declarations in which Kling stated that he continuously monitored frequencies 152.21 MHz and 152.15 MHz in the Stockton area from October 8, 2009 to February 3, 2010 (a 119-day period), and detected no transmissions.¹⁰ In 2011, PSI withdrew its objection to the renewal of the license for Station KMJ224.¹¹

6. In 2012, the Wireless Telecommunications Bureau's Mobility Division directed Delta Valley, pursuant to Section 308(b) of the Communications Act of 1934, as amended,¹² to provide additional information regarding the construction and operational status of the locations of Stations KMA616 and KMA743 where Delta Valley was authorized to transmit on the challenged frequencies.¹³ Delta Valley replied that the facilities are constructed and have remained operational without interruption, but are now used to provide service for internal personnel rather than paid subscribers.¹⁴

7. *Discussion.* Under section 1.955(a)(3) of the Commission's rules, "[a]uthorizations automatically terminate, without specific Commission action, if service is permanently discontinued."¹⁵ Section 22.317 of the Commission's rules, which applies to the Public Mobile Services including the Paging and Radiotelephone Service, provides that

any station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued, unless the applicant [sic] notified the FCC otherwise prior to the end of the 90 day period and provided a date on which operation will resume, which date must not be in excess of 30 additional days.¹⁶

⁶ See *id.*

⁷ See Opposition at 1.

⁸ See *id.* at 2-3.

⁹ See *id.* at 4. Delta Valley also concedes that it permanently discontinued the following operations, which are not addressed in PSI's Petition: Station KMA616 frequencies 72.22 MHz, 72.58 MHz, 75.64 MHz, and 75.74 MHz; Station KMA743 frequencies 72.06 MHz and 72.90 MHz; and Station KMJ224 frequencies 72.62 MHz and 72.86 MHz. *Id.* at 2-3.

¹⁰ See declarations attached to Letters from Audrey Rasmussen to Ruth Milkman, Chief, Wireless Telecommunications Bureau, dated March 2 and April 14, 2010.

¹¹ See Letter from Audrey Rasmussen to Roger Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, dated February 10, 2011.

¹² 47 U.S.C. § 308(b).

¹³ See Letter from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Delta Valley Radiotelephone Co., Inc., dated February 2, 2012.

¹⁴ See Letter from Robert H. Schwaninger, Jr. to Scot Stone, Federal Communications Commission, dated March 1, 2012, at 2.

¹⁵ 47 C.F.R. § 1.955(a)(3).

¹⁶ 47 C.F.R. § 22.317.

8. A claim of permanent discontinuance founded principally on monitoring must be supported by continuous, not intermittent, monitoring.¹⁷ Kling's sporadic monitoring for unspecified periods between 2001 and 2009 falls short of what is required to demonstrate permanent discontinuance of operation. Consequently, we deny PSI's Petition with respect to Delta Valley's operation of Station KMM630 on frequency 152.18 MHz.¹⁸ In addition, we dismiss the Petition as moot with respect to Delta Valley's operation of Station KMJ224 on frequency 454.200 MHz, because PSI withdrew its objection to that authorization.

9. With respect to Stations KMA616 and KMA743, however, we conclude based on the record before us that Delta Valley permanently discontinued operations on frequencies 152.15 MHz and 152.21 MHz because it failed to serve subscribers for ninety continuous days. Therefore, the authorizations for those frequencies automatically terminated. We grant the Petition with respect to these frequencies.

10. Delta Valley's licenses will be granted only with respect to the frequencies and locations for which the evidence before us does not establish deconstruction or permanent discontinuance of operation. Specifically, the licenses will be renewed as follows:

Station KMA616: frequency 454.250 MHz

Station KMA743: frequencies 72.06 MHz, 72.90 MHz, and 454.325 MHz¹⁹

Station KMJ224: frequency 454.200 MHz

Station KMM630: renewed in full.

11. Accordingly, 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 sections 1.948, 1.955 and 22.317 of the Commission's rules, 47 C.F.R. §§ 1.948, 1.955 and 22.317 the Petition to Dismiss or Deny filed by Paging Systems, Inc. on May 8, 2009, IS GRANTED IN PART, DENIED IN PART, AND DISMISSED AS MOOT IN PART, as set forth above.

12. IT IS FURTHER ORDERED that applications FCC File Nos. 0003792209-0003792212 SHALL BE GRANTED IN PART as set forth in paragraph 10, *supra*, and otherwise DISMISSED.

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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁷ See National Ready Mixed Concrete Co., *Memorandum Opinion and Order*, 23 FCC Rcd 5250 at ¶ 11 (2008) ("a claim of permanent discontinuance of operations that relies materially on the complainant's contention that the licensee has not been heard on the authorized frequencies must, under Commission precedent, be supported by continuous monitoring"); see also University of Southern California, *Memorandum Opinion and Order*, 16 FCC Rcd 2978, 2982 ¶ 11 (WTB 2001) (sporadic monitoring of a channel does not make a *prima facie* case that a licensee has permanently discontinued operations).

¹⁸ Also, PSI's assertions that that Delta Valley neglected to file customer proprietary network information or make Universal Service Fund payments, see Petition at 3 n.1., and was suspended by the California Franchise Tax Board in 1979, see Reply at 5, do not establish that Delta Valley discontinued operation of the subject stations. See James L. Crawford d/b/a Wavelink JLC Communications Sites, *Memorandum Opinion and Order*, DA 99-1951, ¶ 3 (WTB CWD rel. Oct. 1, 1999).

¹⁹ The authorization for frequency 454.325 MHz will be renewed for locations 1 and 4 only.