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

93-61

In the Matter of	
BP Oil Company	No. 342513
Application for Private Land Mobile and General Mobile Radio Services	
In the Matter of	No. 343031
Burbank-Glendale-Pasadena Airport	
Application for Private Land Mobile and General Mobile Radio Services	
In the Matter of	No. 344498
Salt Lake City Airport Authority	
Application for Private Land Mobile and General Mobile Radio Services	
In the Matter of	No. 345273
Orlando-Orange Co. Expressway Authority	
Application for Private Land Mobile and General Mobile Radio Services	
In the Matter of	No. 347230
Vulcan Chemicals, Inc.	
Application for Private Land Mobile and General Mobile Radio Services	

ORDER

Adopted: August 20, 1993; Released: October 13, 1993

By the Commission:

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I. INTRODUCTION/BACKGROUND

DISPATCHED BY

1. On March 11, 1993, we adopted the *Notice of Proposed Rule Making* in PR Docket No. 93-61, proposing to replace our existing interim rules governing the licensing and operation of Automatic Vehicle Monitoring (AVM) systems with new permanent provisions, and to rename the service the Location and Monitoring Service (LMS).[1] In respects relevant here, our proposed permanent rules include a rule change that would separate narrowband and wideband LMS systems. Specifically, we proposed that all narrowband systems be licensed in the 902-904, 912-918, and 926-928 MHz bands, and that all wideband pulse-ranging systems be licensed in the 904-912 and 918-926 MHz bands. Under our current rules and practices, in effect for nearly twenty years, licenses for both wideband and narrowband systems have consistently been issued on a shared, non-exclusive basis in the 904-912 and 918-926 MHz bands.[2]

2. Our rule making in PR Docket No. 93-61 remains outstanding. During the pendency of the rule making, North American Teletrac and Location Technologies, Inc., through their joint venture, PacTel Teletrac (PacTel) filed an Application for Freeze, Petition for Stay, and Application for Review,[3] all of which, along with several pleadings filed in response thereto,[4] are presently before us. In its Application for Freeze, PacTel asks us to freeze all additional awards of AVM licenses and special temporary authorizations in the 904-912 and 918-926 MHz bands pending completion of PR Docket No. 93-61. Relatedly, in its Application for Review and Petition for Stay, PacTel asks us to review the grant of several specific AVM licenses and to stay the grant thereof until its Application for Review has been ruled on. For the reasons stated herein, PacTel's Application for Freeze and Application for Review are denied, and its Petition for Stay is dismissed as moot.

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[1] Notice of Proposed Rule Making, PR Docket No. 93-61, 8 FCC Rcd 2502 (1993) [hereinafter *Notice*].

[2] *Id.* at 2504. The remaining bands, 903-904 and 926-927 MHz, are currently licensed only on a developmental basis for narrowband-type systems. There has, to date, been very little activity in these bands.

[3] North American Teletrac and Location Technologies, Inc., Application for Freeze, PR Docket No. 93-61 (filed May 21, 1993); North American Teletrac and Location Technologies, Inc., Petition for Stay, File Nos. 342513, 343031, 345273, 347230, 344498 (filed May 21, 1993); North American Teletrac and Location Technologies, Inc., Application for Review, File Nos. 342513, 343031, 345273, 347230, 344498 (filed May 21, 1993). PacTel also filed a Supplemental Reply on May 25, 1993, and a Reply to Oppositions to Application for Freeze on June 16, 1993. On June 23, 1993, PacTel withdrew from its Application for Review and Petition for Stay those portions challenging Application File No. 344498.

[4] Amtech Corporation, Opposition to Application for Freeze, PR Docket No. 93-61 (filed June 4, 1993); Association of American Railroads, Opposition to Application for Freeze, PR Docket No. 93-61 (filed June 7, 1993); Pinpoint Communications, Inc., Opposition to Application for Freeze, PR Docket No. 93-61 (filed June 4, 1993); Amtech Corporation, Opposition to Petition for Stay, File Nos. 342513, 343031, 344498, 347230 (filed June 9, 1993); Amtech Corporation, Opposition to Application for Review, File Nos. 342513, 343031, 344498, 347230 (filed June 9, 1993); Mark IV IVHS Division, Opposition to Application for Review and Petition for Stay, File No. 345273 (filed June 9, 1993); MobileVision, L.P., Comments in Support of Teletrac's Petition to Deny, File Nos. 347483, *et al.*, (filed June 18, 1993); Southwestern Bell Mobile Systems, Inc., Informal Comments Concerning North American Teletrac and Location Technologies, Inc. Application for Freeze, PR Docket No. 93-61 (filed June 28, 1993); New Jersey Highway Authority, *et al.* Opposition to Application for Freeze, PR Docket No. 93-61 (filed June 22, 1993).

II. DISCUSSION

3. In each of its pleadings, PacTel premises its request for relief on the assertion that only one wideband pulse-ranging system per segment was intended to be accommodated in the 904-912 and 918-926 MHz bands. On this basis, PacTel challenges the Private Radio Bureau's decision to license narrowband operators and more than two wideband systems per market on these frequencies. In particular, in its Application for Freeze, PacTel argues that one of our existing interim rules, 47 C.F.R. § 90.239(c), requires separation of wideband and narrowband AVM systems and that the continued licensing of both types of operations in the same allocation, as well as the licensing of more than one wideband system per segment, will cause unacceptable interference to existing wideband operators, such as PacTel, and may undermine the objectives enunciated in the *Notice*. Similarly, in its Application for Review, PacTel challenges several recent narrowband and wideband AVM license grants on the ground that the issuance thereof is contrary to the interim rule. PacTel also contends in this pleading that the Private Radio Bureau transgressed its due process rights by issuing the challenged licenses without first ruling on petitions to deny filed by PacTel. In its Petition for Stay, PacTel urges that stay of the grant of the challenged licenses during the pendency of its Application for Review is necessary to protect its system from interference, and that its request satisfies the four-pronged showing prerequisite to issuance of a stay.[5]

4. Of the seven parties responding to PacTel's pleadings, only one, MobileVision, L.P., supports PacTel's position. The remaining commenters are in unanimous disagreement with PacTel's underlying argument concerning the lawfulness of our current licensing practices Section 90.239. In addition, these commenters unanimously contend that the relief PacTel requests is inappropriate because it asks us to prejudge the outcome of PR Docket No. 93-61.

5. At the outset, as discussed at length in the *Notice*, we disagree with PacTel's assertion that only one wideband system per segment was intended to be accommodated in the 904-912 and 918-926 MHz bands. PacTel raised this argument in its Petition for Rule Making in PR Docket No. 93-61. In rejecting PacTel's contention, we stated that we did not find sufficient evidence in any of our past proceedings or in the interim rule to support this view. Specifically, we stated that the interim rule was written in a manner intended to promote technological and marketplace development of AVM systems, a goal that would be undermined by restrictive licensing methods. In addition, we noted that at the time the interim rule was adopted, exclusive licensing had not yet been introduced in the private land mobile services.[6] As aforementioned, since its adoption nearly twenty years ago, we have consistently interpreted Section 90.239 to permit sharing, and have issued hundreds of AVM licenses on a shared basis. We remain convinced of the correctness of this interpretation. Whether or not we will find it in the public interest to adopt permanent rules that grant LMS licensees some measure of exclusivity is an issue that remains open to question, to be resolved after examination of the complete record in PR Docket No. 93-61.

6. On similar grounds, we agree with those parties who assert that the method for licensing LMS systems is a point placed in issue by the *Notice*, and that consequently, the relief PacTel requests in its Petition for Freeze, Application for Review, and Petition for Stay is inappropriate because the grant thereof would prejudge our outstanding rule making. Although we proposed in the *Notice* to separate narrowband and wideband operations, we did not state definitively that separate licensing was required or even necessarily most appropriate. On the contrary, we stated that we remain open to alternative methods for future licensing of LMS systems. To hold at this point that narrowband and wideband AVM operations must be licensed separately, or that only one wideband system should be allowed in each segment of the 904-912 and 918-926 MHz bands, would imply that we had already selected a licensing scheme without regard to the commenters' views on this heavily contested issue.

7. An award of the relief PacTel requests is inappropriate for the additional reason that PacTel has failed to demonstrate that absent the grant of its request for freeze, either it or the public interest will suffer irreparable harm. Significantly, in the *Notice* we explicitly advised all AVM licensees that because of the scope of our proposals, the final rules eventually adopted could require any licensee, regardless of the type of system or frequencies involved, to modify its operations.[7] In view of this proviso putting all AVM licensees on notice, PacTel cannot be heard to complain of irreparable harm, particularly if we have not yet made any final decisions with respect to our pending proposals. Furthermore, although it is within our discretion to impose a freeze on additional licensing, we generally have done so only where we have found that a failure to do so may inhibit our regulatory options.[8] No such showing has been made here.

8. Finally, with regard to PacTel's claim that the issuance of the licenses challenged in its Application for Review violated its due process rights, we note that PacTel has overlooked the fundamental fact that the rules governing private radio applications and proceedings do not contemplate the filing of petitions to deny. *See generally* 47 U.S.C. §§ 309(b), 309(d)(1); 47 C.F.R. §§ 1.901-1.981. Accordingly, the Private Radio Bureau committed no error, constitutional or otherwise, in granting the applications at issue without specifically addressing the petitions to deny. Rather, the Bureau appropriately treated the petitions to

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[5] *See* Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977) (petitioner seeking issuance of a stay must demonstrate (1) a substantial likelihood of success on the merits, (2) that failure to grant the stay would cause irreparable injury, (3) that grant of the stay will not harm other interested parties, and (4) that grant of the stay is in the public interest).

[6] *See* 8 FCC Rcd at 2504 n.29.

[7] *Notice*, 8 FCC Rcd at 2507 n.56.

[8] *See, e.g.*, Kessler v. FCC, 326 F.2d 673 (D.C. Cir. 1963); In re Acceptance of 929-930 MHz One-Way Paging Applications, DA No. 91-1257, 6 FCC Rcd 6024 (1991). It is generally our practice, during the pendency of a proposal to amend our licensing mechanisms, to continue using existing licensing procedures. For example, during the pendency of our rule making in PR Docket No. 91-72, 6 FCC Rcd 2017 (1991), in which we broadly proposed to restructure licensing in the Special Emergency Radio Service by creating the Emergency Medical Radio Service, we continued licensing pursuant to usual practices. Likewise, although our *Notice* in PR Docket No. 92-235, 7 FCC Rcd 8105 (1992), contains proposals that completely overhaul existing private radio licensing procedures, we are continuing to license according to our usual methods during the pendency of the proceeding.

deny as informal objections pursuant to 47 C.F.R. § 1.41 and found nothing that justified denying the applications. In light of our discussion in the foregoing paragraphs, we agree with the Bureau that the grant of the applications was proper.[9]

9. Accordingly, IT IS ORDERED that the Application for Freeze and Application for Review filed by North American Teletrac and Location Technologies, through their joint venture, PacTel Teletrac, are DENIED.

10. IT IS FURTHER ORDEERED that the Petition for Stay filed by North American Teletrac and Location Technologies, through their joint venture, PacTel Teletrac, is DISMISSED as moot.

11. For additional information with regard to this *Order*, contact Steve Sharkey, Rules Branch, Private Radio Bureau, (202) 634-2443.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

[9] In view of our decision to deny PacTel's Applications for Review of the grant of the applications in questions, we dismiss its request for stay of those grants as moot.