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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Part 90 of the) PR Docket No. 93-61
Commission's Rules To Adopt)
Regulations for Automatic Vehicle)
Monitoring Systems)

To: The Commission

DOCKET FILE COPY ORIGINAL

**CONSOLIDATED OPPOSITION
TO
PETITIONS FOR RECONSIDERATION**

Metricom, Inc. ("Metricom"), pursuant to Section 1.429(f) of the Commission's Rules, by its attorneys, hereby submits this Consolidated Opposition to the Petitions for Reconsideration filed by Pinpoint Communication Networks, Inc. ("Pinpoint") and Teletrac License, Inc. ("Teletrac") in the above-referenced proceeding. Metricom is a member of the Part 15 Coalition (the "Coalition") and supports the Coalition's Consolidated Opposition (including the Opposition to the Petition of Amtech Corporation); Metricom's Opposition is being filed to support and supplement the Coalition's Opposition.

I. INTRODUCTION

1. The Commission issued a Report and Order in 1995, allocating spectrum for the location and monitoring service ("LMS") and prescribing certain interference standards for LMS and Part 15 devices that operate in the same frequency band.^{1/} The LMS

^{1/} Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Report and Order, 10 FCC Rcd 4695 (1995) (the "Report and Order").

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proceeding was highly contested and the Commission developed an extensive record. Metricom, a pioneer in the development of state-of-the-art, spread spectrum, packet radio systems operating pursuant to Part 15 of the Commission's Rules, was a very active participant throughout the proceeding, and made significant contributions to the record.

2. Pinpoint and Teletrac each filed a Petition for Reconsideration of the Report and Order (the "Original Petition"), requesting certain changes to the Commission's new rules governing LMS.^{2/} In March 1996, in partial response to the Petitions for Reconsideration filed by, among others, Pinpoint and Teletrac, the Commission issued an Order on Reconsideration.^{3/} The Order on Reconsideration clearly stated that its purpose was to address certain issues raised in petitions for reconsideration of the Report and Order to facilitate the expeditious construction and operation of grandfathered LMS systems,^{4/} and that remaining issues raised in petitions for reconsideration would be addressed in a later Memorandum, Opinion and Order.^{5/} Pinpoint and Teletrac have

^{2/} See Petition for Reconsideration of Pinpoint Communications, Inc., dated April 24, 1995; and, Petition for Partial Reconsideration and Clarification of AirTouch Teletrac, dated April 24, 1995.

^{3/} Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Order on Reconsideration, FCC 96-115, released March 21, 1996 (the "Order on Reconsideration").

^{4/}Order on Reconsideration, ¶ 1.

^{5/}See Order on Reconsideration, ¶ 1; n.2; and, ¶ 7.

each filed a petition for reconsideration of the *Order on Reconsideration* (the "Second Petition").

II. PINPOINT'S AND A PORTION OF TELETRAC'S SECOND PETITIONS SHOULD BE DISMISSED AS REPETITIOUS

3. Under Section 1.429(i) of the Commission's Rules, an order disposing of a petition for reconsideration which modifies rules adopted by the original order is, *to the extent of such modification*, subject to reconsideration. If the subject rule is not modified, it is well settled that the Commission may dismiss the petition for reconsideration as repetitious.^{6/} Pinpoint's Second Petition is patently only a rehash of arguments made previously; it requests reconsideration of provisions that the Commission already reconsidered in the *Order on Reconsideration*. The same is true of one of the major arguments contained in Teletrac's Second Petition relating to the two kilometer rule. Therefore, the Commission should dismiss as repetitious Pinpoint's and the offending portion of Teletrac's Second Petitions.

A. Pinpoint's Second Petition Does Not Raise Any New Issues and Does Not Address Any Modification of the Rules by the Order on Reconsideration

^{6/}*See Policies and Rules Concerning Local Exchange Carriers*, FCC 96-38, 2 Comm. Reg. (P&F) 331, ¶ 10 (rel. Feb. 9, 1996) ("Section 1.429(i) of the Commission's rules allows the Commission to dismiss as repetitious a party's second petition for reconsideration that raises no new arguments."); *Amendment of Part 69*, 10 FCC Rcd 1570 (1994); *Amendment of Part 90*, 9 FCC Rcd 3420 (1994); *Waiver of Section 90.621(b)*, 8 FCC Rcd 7619 (1993); *But See National Exchange, Inc.*, 1 FCC Rcd 682 at ¶ 9 (where arguments were previously fully considered and rejected by the Commission, the petition for reconsideration may be dismissed as repetitious. "We will nevertheless respond to NEX's renewed objections because doing so will not delay resolution of this proceeding.")

4. In its Second Petition, Pinpoint ineptly attempts to link two separate and distinct Commission provisions -- the testing provisions and the hierarchical provisions -- in an unsuccessful effort to argue that the Commission has adopted a new standard in its *Order on Reconsideration*. The testing standard (clearly articulated in the *Report and Order* at ¶ 82) is necessary to qualify who can use the band; the testing standard's purpose is to ensure that various users in the band can coexist.^{7/} The testing standard is distinct and separate from the standard used by the Commission to resolve interference disputes within the band, hereinafter referred to as the "hierarchical standard." This distinction seems to have eluded Pinpoint.

5. In its Second Petition, Pinpoint discusses the testing standard and then makes the uninformed allegation that the hierarchical standard is part and parcel of the testing standard. While quoting from the *Report and Order* that Part 15 operations are secondary, Pinpoint then states that "on the other hand, the *Reconsideration Order* requires LMS operators not to 'degrade,

^{7/}The Commission stated that:
to ensure that the coexistence of the various services in the band is as successful as possible and to identify whether further refinements in our rules are necessary, we will condition grant of each MTA multi-lateration license on the licensee's ability to demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to Part 15 devices. *Report and Order* at ¶ 82.

obstruct, ...interrupt' or 'negatively affect' Part 15 operations."^{8/} This language from the *Reconsideration Order* appears in the discussion of interference testing, and does not relate, in any way, to resolution of band hierarchy conflicts. In fact, in the section of the *Order on Reconsideration* dealing with hierarchical concerns, the Commission specifically states that:

we attempted to balance the equities and interests of each use of the 902-928 MHz band, including multilateration LMS systems and Part 15 users, without undermining the established relationship between unlicensed operations and licensed Services. In this connection we affirmed that unlicensed Part 15 devices in the 902-928 MHz band are secondary and, as in other bands, may not cause harmful interference to and must accept interference from all other operations in the band.^{9/}

6. The Commission's Orders are very clear that the hierarchical standard (which operates to resolve interference concerns after testing is completed and LMS users are qualified to use the band) does not, as Pinpoint urges, alter the allocation status of users in the band. Pinpoint is, therefore, wrong when it asserts that the Commission created a new standard in the *Order on Reconsideration* for protecting Part 15 devices "which is more protective than any secondary or primary service enjoys."^{10/} The *Order on Reconsideration*, at ¶ 18, makes it clear that this is not the case. Furthermore, because the testing standard has not yet

^{8/}Pinpoint Second Petition at 3, citing *Reconsideration Order*, ¶ 15.

^{9/}*Order on Reconsideration*, ¶ 18 (citations omitted).

^{10/} Pinpoint Petition at 2.

been established, the Commission cannot be said to have established a new standard.

7. In fact, in clarifying the testing standard, the Commission was directly responding to issues raised by Pinpoint in its Original Petition. The very language that Pinpoint complains about in the *Order on Reconsideration*, that LMS systems may not be operated in such a manner as to "degrade, obstruct or interrupt Part 15 devices to such an extent that Part 15 operations will be negatively affected," is in the *Order on Reconsideration* as a direct result of Pinpoint's complaint about the testing standard language in its Original Petition.^{11/} The Commission was not, in any manner, creating a new standard as Pinpoint alleges. Rather, the agency was attempting to clarify its existing standard in accordance with Pinpoint's request.

B. Teletrac's Two Kilometer Relocation Argument is Repetitious and Should Be Dismissed

8. Teletrac's Second Petition argues that the Commission should reconsider the rule that LMS licensees who choose to modify their stations to comply with the new band plan may relocate to a site that is no more than two kilometers from the site specified in the original license.^{12/} However, as Teletrac recognized, the

^{11/}Pinpoint stated, in its Original Petition, that the term "unacceptable interference" as used in 90.353(d) of the rules was "totally vague." In the *Order on Reconsideration*, the Commission was merely clarifying the testing standard's meaning of the words "unacceptable interference." The Commission was not creating any new standard.

^{12/} Teletrac Petition at 3-4.

Commission established this rule in the *Report and Order*.^{13/} Teletrac filed its Original Petition, as did several other parties, to challenge this provision. The Commission denied Teletrac's reconsideration request in the *Order on Reconsideration*, and the Commission did not modify its decision regarding the two kilometer rule in the *Order on Reconsideration*.^{14/} Therefore, Teletrac's attempt to yet again challenge the two kilometer rule in its Second Petition is repetitious and should be dismissed.

III. TELETRAC'S ARGUMENT CONCERNING SAFE HARBOR AND PART 15 RULES IS NOT A PROPER SUBJECT FOR RECONSIDERATION AT THIS STAGE IN THE PROCEEDING

9. Teletrac, in its Second Petition, makes the nonsensical and totally unsupported allegation that "the safe harbor rule embodies a presumption that Part 15 devices will not cause interference to multilateration LMS licensees and may continue to operate, provided that they are operated pursuant to the Part 15 rules as they existed when the safe harbor rule was adopted."^{15/} So, if a Part 15 device operates under any Part 15 rules which were not in effect at the time the safe harbor rules were adopted, the safe harbor presumption of non-interference is somehow extinguished. Teletrac offers not one shred of evidence or support for its creative reading of the safe harbor provisions. This is not surprising because there is no evidence to support such a reading.

^{13/} See *Report and Order* at ¶ 63; Teletrac Petition at 3.

^{14/} *Order on Reconsideration* at ¶ 39.

^{15/} Teletrac Second Petition at pp. 11-12, citing 47 C.F.R. § 90.362 (sic); *LMS Reconsideration Order* at ¶ 20 (emphasis added).

10. Assuming Teletrac is referring to § 90.361 of the rules (Teletrac cites the non-existent § 90.362), nothing in § 90.361 states that the presumption in the safe harbor rules self-destructs if the Commission alters the Part 15 rules which were in effect at the time the safe harbor rules were adopted. The applicable portion of § 90.361 states:

Operations authorized under parts 15 and 97 of this chapter may not cause harmful interference to LMS systems These operations will not be considered to be causing harmful interference . . . if they operate in accordance with the provisions of parts 15 or 97^{16/}

11. Similarly, the *Order on Reconsideration* contains no provision limiting the presumption in the safe harbor rules to operations under the Part 15 rules existing at the time of the adoption of the safe harbor rules. Paragraph 20 of the *Order on Reconsideration* merely states: "[W]e hereby clarify that if Part 15 devices operate within the 'safe harbor' provision they will be deemed not to cause harmful interference to LMS operators."

12. Finally, it has to be noted that Teletrac is aware of the deficiencies in its reading of § 90.361 for it asks the Commission to modify § 90.361 to give legitimacy to its reading of that rule. Teletrac states: "the Commission should modify the current rule to provide that only those Part 15 devices authorized under the rules now in effect may take advantage of the safe harbor."^{17/} If §90.361 can be read as Teletrac urges it be read, why is any change

^{16/}47 C.F.R. § 90.361

^{17/}Teletrac Petition at 12.

to the language of the rule necessary? The obvious answer is that a change is necessary because § 90.361 does not, and cannot be read to, provide that the safe harbor presumption self-destructs if the Commission alters the Part 15 rules in effect at the time it adopted the safe harbor provisions.

13. Accordingly, Teletrac's request for "clarification" is improper at this stage of the proceeding because it does not seek clarification, or reconsideration, of any issue. Rather, it seeks a substantial modification of § 90.361. Such a request is clearly outside of the parameters of a petition for reconsideration at this point in the proceeding and should, therefore, be dismissed.

IV. CONCLUSION

14. For the reasons discussed above, Pinpoint's, Teletrac's and Amtech's petitions for reconsideration should be dismissed and/or denied.

Respectfully submitted,

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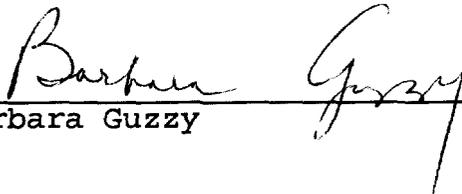
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Consolidated Opposition to Petitions for Reconsideration was mailed via U.S. mail on this day of July 5, 1996 to the parties listed below.


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