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FEDERAL COMMUNICATIONS COMMISSION  
DEPARTMENT OF TELECOMMUNICATIONS

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
)  
Amendment of Part 90 of the )  
Commission's Rules to Provide )  
for the Use of the 220-222 MHz Band )  
by the Private Land Mobile )  
Radio Service )  
)  
Implementation of Sections 3(n) and 332 )  
of the Communications Act )  
)  
Regulatory Treatment of Mobile Services )  
)  
Implementation of Section 309(j) of the )  
Communications Act — Competitive )  
Bidding )

PR Docket No. 89-552

GN Docket No. 93-252

PP Docket No. 93-253

To: The Commission

PETITION FOR RECONSIDERATION

Paul Rutter, Robert Zammito, ROKK Associates, Arundel Trunked Partnership, Gerald Crozier, PCK Systems, Judith K. Warden, Bruce Jones, James R. Jensen, James Byrnes III, Norma Beckett, and Michael Sample (jointly, the Petitioners),<sup>1</sup> by their attorneys, respectfully request partial reconsideration of the Commission's Memorandum Opinion and Order on Reconsideration the matter of Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, \_\_\_\_\_ FCC Rcd

<sup>1</sup> Paul Rutter is licensee of station WPFI336. Robert Zammito is licensee of station WPCE521. ROKK Associates operates two stations, namely, WPCW428 and WPBU529. Arundel Trunked Partnership is authorized for station WPCW469. Gerald Crozier is licensee of station WPCW503. PCK Systems operates station WPCV999. Judith K. Warden is licensee of station WPBQ236. Bruce Jones is licensed for station WPCQ473. James R. Jensen is operator of station WPCV922. James Byrnes III is the licensee of station WPCQ532. Norma Beckett is licensee of station WPCV604. Michael Sample is licensee of station WPCD806.

\_\_\_\_\_ (FCC 98-93 Released May 21, 1998) (MO&O). In support of their position, the Petitioners show the following.

Each of the Petitioners was represented earlier in the proceeding by the manager of its SMR system, Police Emergency Radio Service, Inc. (PERS). Although the Commission's records will not reflect the names of the Petitioners earlier in the proceeding, they did, in fact, participate through the filings of PERS.

In association with other licensees and under the management of PERS, the Petitioners operate a wide area 220 MHz band SMR system that serves approximately 2,200 subscriber mobile units. The system provides essential communications services to emergency medical services providers, a utility company, a State Department of Corrections, municipal and private refuse services, couriers in the health care field, a private car service, elderly services, roadside auto repair services, and numerous persons in the trades and professions.

The system is fully integrated through the central switch so that a mobile unit in the service area of one station can communicate with a mobile unit in the service area of any of the other stations. The wide area system provides integrated service over nearly nearly 19,000 square miles of the New England. Were the Commission to deny the instant Petition, the 2,200 subscribers would have no reasonable alternative to meeting their communications needs, because no other 220 MHz band system is available which provides comparable service. Although the Commission has scheduled a date for commencing an auction for 220 MHz band

geographic area SMR licenses, there can be no assurance that any person will bid for any of the areas served by the Petitioners, nor can there be any assurance that any winning bidder will actually construct a system that would meet the needs of Petitioners' customers. Accordingly, to meet the needs of Petitioners' end users, the Petitioners respectfully request reconsideration of the MO&O.

The Commission allocated and made Phase I assignments of SMR systems in the 220 MHz band with great hopes for the success of new entrepreneurs. The Commission's hopes were not widely fulfilled. In the dismal landscape into which the 220-222 MHz band eroded, Petitioners' integrated system is an oasis in which persons who need commercial radio communications service can obtain competitive, cost-effective service which meets their needs. Denial of reconsideration would destroy this island of effective use of the spectrum which the Commission assigned in Phase I. There can be no assurance that anything resembling the effectiveness of Petitioners' system would ever replace it. To avoid such unnecessary waste, the Commission should reconsider its actions with a view toward maintaining existing, effective 220 MHz band SMR service.

Each of the Petitioners filed a request for Special Temporary Authority to construct and operate its station at a location which was different from the initially authorized location. Each of Petitioners' STA requests was received by the Commission on January 23, 1996, and was granted on January 29, 1996. In its MO&O, the Commission "conclude[d] that a licensee who had taken delivery of its base station transceiver on or before January 26, 1996, must have been

granted an STA on or before January 26, 1996, in order to be allowed to seek permanent authorization at its STA site". By that decision, the Commission denied Petitioners' Petition for Reconsideration of the Second Report and Order in the above captioned matter. Herein, Petitioners show that the Commission's own explanation in support of its decision requires the grant of Petitioner's Petition for Reconsideration of the Second Report and Order.

To allow any 220 MHz band SMR licensee to relocate, the Commission adopted in 1996 a formula which imposed a limit on the distance by which a 220 MHz band SMR station could be relocated. A licensee who had taken possession of its transceiver(s) and obtained STA on or before January 26, 1998, was permitted to file an application for relocation to the STA site. Each of Petitioners' sites for which Special Temporary Authority was granted farther from the station's existing was in excess of the maximum relocation permitted by Rule Section 90.753. Accordingly, if Petitioners were to modify their licenses to obtain regular authority at the STA sites, the Commission's MO&O provided that they must have obtained STA on or before January 26, 1998.

The Commission's decision to adhere to a deadline for STA issuance of January 26, while perhaps not unreasonable in its general applicability, was unreasonable when applied to the Petitioner's cases. The Commission stated correctly at paragraph 194 of the MO&O that "the Commission's regulations caution applicants to file STA applications at least 10 days prior to the date of proposed operation," and Petitioners have no disagreement with the Commission's position that "a licensee who filed an STA application after January 23, 1996, could not

reasonably have expected to receive an STA prior to the construction deadline." The Petitioners' STA applications were received by the Commission on January 23, 1996, and, accordingly, by the Commission's logic, it was reasonable for the Petitioners to have expected to have received timely STA grants. The Commission's Rules account for an administrative delay of ten days, and the Petitioners' STA application filings were inside the window provided by the Commission's Rules. Because the Petitioners were reasonable in expecting grants of STA in a timely manner, the Commission should give the Petitioners and their customers the benefit of the unreasonable delay in the Commission's grant actions. The Commission should revise its action to allow relocation in accord with an STA, the request for which had been filed on or before January 23, 1996.

The Commission was in error in stating that "licensees were able to apply for STAs at any time during the planning or construction of their base stations. They had no reason to delay filing their STA applications," *id.* The Commission may have forgotten that there was a substantial period of time, beginning on December 15, 1995, and continuing for approximately one month, that the Commission was closed for business for unprecedented reasons for an unprecedented period of time. First, the Commission was closed because there were no funds available for operations. Immediately thereafter, the Commission was closed because of inclement winter weather. Petitioners' situation was not an emergency, that is, there was no imminent jeopardy to the safety of life or property, and Petitioners had no reason to believe that they could file STA applications with an agency which was not open for business. When the Commission reopened after the politically and meteorologically imposed closings, the Petitioners

filed their STA applications promptly. Therefore, the Commission cannot reasonably blame the Petitioners or punish them and their customers for delay in filing their STA applications.

In explaining its determination to extend the opportunity to relocate without regard to the relocation formula only to persons who "have obtained Special Temporary Authority," 11 FCC Rcd. at 3672-73 (paras. 13-15), the Commission read into paragraph 16 a requirement that was not included in paragraph 16 and cannot reasonably be read into paragraph 16. In paragraph 15, the Commission established a standard for persons who had completed construction, one of the elements of which was that the licensee have an STA. In paragraph 16, the Commission established a standard to "provide similar relief to licensees that are in the *process* of constructing their base station at their STA site," (emphasis in original). The only, sole, solo, singular requirement established by paragraph 16 was that the licensee "certify that they had taken delivery of their base station transceiver on or before the adoption date of this Order". Nowhere, for persons who were in the process of constructing did the Commission require that they have an STA on or before the adoption date of the Order. Had the Commission intended to establish having an STA on or before January 26 as a requirement for persons covered by paragraph 16, it would have included the requirement in paragraph 16 as it included the requirement in paragraph 15.<sup>2</sup> Because the Commission had not established the requirement of

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<sup>2</sup> Only one of the five Commissioners now serving was serving on January 26, 1996. While the Commission may often be able to recall what it intended and explain itself by a refreshed recollection, the present situation, an objective interpretation is required. Where, as here, a determination of intent could have a punitive effect on existing licensees, the Commission should interpret the written words strictly. Paragraph 16 should be read for what it says, and not for what it might have said had it been written differently. Words which are not present in paragraph 16 should not be read into paragraph 16.

having an STA in paragraph 16, the Commission should reconsider its decision and extend the relocation opportunity to persons who met the sole requirement set forth in paragraph 16 of having taken delivery of their base station transceiver on or before January 26, 1996. Because all of the Petitioners had so taken delivery of their base station transceivers, the Commission should extend the relocation opportunity to each of the Petitioners.

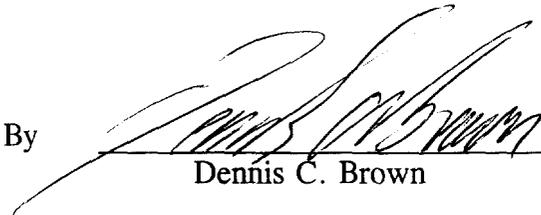
The Commission was in error in stating at paragraph 191 of the MO&O that "as of January 26, 1996, the final modification and relocation procedures had been announced and thus there no longer was any need for an STA. After that date it would have only been necessary to issue an STA in order to meet a licensee's needs in an emergency situation". By its own terms, the Second Report and Order did not become effective until 30 days after publication of a summary thereof in the Federal Register. Paragraph 41 of the Second Report and Order did not open the opportunity to file relocation applications until 30 days after publication of a summary in the Federal Register. For the long gap between January 26, 1996, and thirty days after publication in the Federal Register, there certainly was a need for a licensee to have Special Temporary Authority to operate at a location other than the initially authorized site. Since the need for an STA did not vanish until long after January 26, the Commission was unreasonable in not extending the relocation opportunity to persons who had filed STA applications as of January 23, 1996.

Conclusion

For all the foregoing reasons, the Petitioners respectfully request that the Commission reconsider its action and grant the relief requested herein.

Respectfully submitted,  
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