

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Request For Amendment of the) RM-9405
Commission's Rules Regarding The)
Establishment of a Public Service Radio)
Pool In The Private Mobile Frequencies)
Below 800 MHz)

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

TO: The Commission

COMMENTS OF MRFAC, INC.

MRFAC, Inc., by its counsel, hereby comments on the Petition for Rulemaking filed by UTC, The Telecommunications Association ("UTC"); American Petroleum Institute ("API"); and Association of American Railroads ("AAR"; collectively the "Petitioners"). MRFAC does not take issue with the Petitioners' argument that consolidation of the Radio Services has increased the level of interference which their industries are experiencing -- MRFAC predicted consolidation would have this result in its multiple filings during the Re-Farming proceeding.¹ Rather, MRFAC takes issue with the methods chosen by the Petitioners to solve the problem, methods which would entail serious negative consequences for manufacturers. Details follow.

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¹ See, e.g., Comments filed by Manufacturers Radio Frequency Advisory Committee, Inc. (MRFAC's predecessor) on January 15, 1992 at 10-15; Comments of the Coalition of Industrial and Land Transportation Land Mobile Radio Users (which included MRFAC) filed May 28, 1993 at 8 et seq.; Reply Comments of the Coalition of Industrial and Land Transportation Radio Users filed July 30, 1993 at 2-4.

STATEMENT OF INTEREST

MRFAC is a certified Part 90 frequency coordinator and a trade association advocating the spectrum needs of a cross-section of American business and industry. The preponderance of its membership is drawn from manufacturing concerns, many of them representing the backbone of American industry. From its offices in Herndon, Virginia MRFAC provides a range of frequency coordination and related engineering and application services. Through its advocacy efforts MRFAC speaks for the interests of true private radio users, i.e. those which utilize their radio facilities solely for internal safety and productivity requirements.

MRFAC members and manufacturers generally will be adversely affected if the relief sought by the Petition -- among other things, the appropriation of frequencies shared harmoniously by manufacturers, on the one hand, and utilities, pipelines, and railroads, on the other hand -- is granted. MRFAC members have an important stake in the disposition of the Petition, which stake must be considered.

BACKGROUND

The Petition seeks creation of a separate and exclusive "Public Service Pool," eligibility for which would be limited to the Petitioners' companies, and the spectrum inventory for which would be derived in large measure from frequencies shared for many years with other industrial and business users. Indeed, the Petition seeks to bifurcate the newly-created Industrial/Business Pool and reverse the Commission's two-pool consolidation pool.

In support the Petition argues that theirs are "critical infrastructure industries"; that Congress has recognized this by carving them out of the Commission's

auction authority; that their members have suffered instances of interference from carriers which have jeopardized public safety; and that the way to deal with this is to create a separate frequency pool for their industries only. In this regard the Petition contends that other industries cannot demonstrate that their communications requirements are “essential to the protection of the nation’s core infrastructure and public safety” (*id.* at 7 note 9); and that eligibility for the proposed Public Service Pool should be restricted to their industries and others whose communications needs are “sufficiently related to public safety.....” *Id.* at 20.

The Petition then goes on to lay claim to not only those frequencies for which the Petitioners’ industries have enjoyed exclusive access, but also frequencies which the Petitioners have shared with other industries; i.e. no less than 61 percent of shared low band frequencies, 8 percent of frequencies shared in the 70 MHz band, 52 percent of the frequencies shared in high band; and 61 percent of shared UHF frequencies. *Id.* at 23.

Insofar as existing systems are concerned, the Petition argues that their systems should be awarded protected contours combined with a requirement that the concurrence of the appropriate “Public Service Radio Pool coordinator” be obtained.

DISCUSSION

MRFAC does not take issue with a basic premise of the Petition; namely, that consolidation has undermined the user compatibility so essential to safe, effective and harmonious frequency sharing. Indeed, MRFAC repeatedly urged the Commission not to take action in re-farming which would jeopardize sharing by like kinds of users and lump all manner of disparate users and uses into a grab-bag, catch-all pool. MRFAC and

other like-minded users even proposed a specific consolidation plan which sought to balance the agency's desire for fewer discrete Radio Services with a decent regard for historic sharing patterns.²

Unfortunately, the Commission chose to disregard this advice. See Second Report and Order in PR Docket No. 92-235, FCC 97-61, 6 Communications Regulation (P&F) 730, 736-37 (1997). This result is what we now have before us: A pleading by one group of industries seeking de-consolidation in the name of interference protection.

While consolidation has not lived up to the Commission's expectations, the Petition does not offer the appropriate solutions. Indeed, it is arbitrary in its selection of entities deemed eligible for inclusion in the proposed Pool, and unjustified in its proposal to populate that Pool with an enormous number of frequencies essential to the productivity and safety of all other industries.

As to the former, the proposal overlooks many instances where manufacturing complexes provide municipal fire and rescue services for nearby towns and communities. Indeed, large manufacturing complexes maintain emergency response teams which are the first responders to life-threatening situations. These teams are more akin to true public safety services than many systems operated by the Petitioners.

Similarly, many manufacturers maintain their own electrical and gas distribution systems: A problem in these systems (e.g. in the transport of volatile

² See Consolidation Plan filed November 20, 1995 by Coalition of Industrial and Land Transportation Radio Users.

chemicals on a manufacturing complex) can have profound safety implications for nearby towns and communities.

Nor are the Petitioners' companies unique in their need to comply with governmental safety regulations. Manufacturers operate under a host of safety (e.g. OSHA and EPA) regulations, a number of which mandate immediate availability of radio communications.

Similarly, the Petition overlooks applications by the forest products and taxi industries -- industries which have the highest rates of death by accident and homicide, respectively, for any occupations in the U.S. Indeed, it overlooks uses by the entire U.S. airline industry. Is the airline industry or the manufacturing industry any less important a part of the nation's critical infrastructure? Certainly not to the workers, nearby residents and passengers affected.

At the same time, the Petition is over-inclusive. For example, there is nothing in the Petition which would appear to exclude for-profit commercial communications services provided by utility companies. Thus far, numerous carriers like the Southern Company have operated at 800 MHz or above. With exclusivity and trunking below 512 MHz, there is every reason to expect a proliferation of such systems below 800 MHz. If the only test of eligibility for the proposed Pool is the fact that an entity happens to fall within one of the three industrial classifications, many of the frequencies allocated to that Pool could end up being used primarily for non-safety related communications in one of the three industries, while manufacturers' safety applications are frequency-starved.

Insofar as the transfer of spectrum shared with other industries is concerned, Petitioners' members have shared these frequencies for decades with other heavy industrial user groups including, in particular, manufacturers and forest product companies (see Attachment for a tabulation of this sharing prior to consolidation). The sharing relationships between manufacturers and the Petitioners' industries have been particularly harmonious over the years. (At the same time, none of the frequencies in question were shared with the railroads -- a service which has a storehouse of exclusive frequencies (202 by MRFAC's count) available for its own use.) The Petition does not address this point, much less answer it.

Furthermore, the Balanced Budget Act of 1997 does not provide new Congressional guidance supporting the creation of Petitioners' separate pool. Id. at 7. While the legislative history to the auction exemption for safety communications systems mentions, by way of example, the Petitioners' industries,³ the language which counts -- namely the statute -- makes it clear that the exemption applies to all "private internal radio services used by State and local governments and non-government entities [such as manufacturers]... that (1) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public."⁴

In other words, the Budget Act provides no warrant for the creation of a separate Pool. In fact, even as to the more limited subject of auction exemptions, if the Budget Act stands for anything, it is for the proposition that it is the use to which a

³ H. Rpt. 105-49, Congressional Record, p. H6173 (June 29, 1997).

⁴ P.L. 105-33, Section 3002(a)(2) amending Section 309(j)(2) of the Communications Act. (emphasis added).

particular radio system is or would be put -- not the identity of the user -- which determines whether a particular license should be auction-exempt.

Likewise, there is no merit to the notion that a separate pool must be created for the Petitioners' exclusive use in order to avoid "[c]omplications" which may arise in licensing frequencies available for both auctionable and non-auctionable uses. Id. at 18. While the Commission will need to address this issue (and presumably will in the forthcoming notice of proposed rulemaking on Part 90 auction implementation), that is no reason to lurch to the special carve-out which the Petitioners seek.⁵ It is quite clear that solutions can and will be found without the need for creating a special exemption for the Petitioners.

The Petitioner's proposal to protect existing systems via protected contours with a requirement for mandatory concurrence likewise goes too far. The large, well-staffed coordination offices of the three Petitioners are well-equipped to review applications coordinated by other groups and lodge objections to those which appear problematic.⁶ Certainly, given the Petitioners' safety concerns there should be no reservation on their part to pursuing this measure of self-help. In other words, they do not need mandatory concurrence, especially with respect to shared channels and least of all as

⁵ The Commission is addressing just this sort of issue in connection with auction-exempt non-commercial educational broadcast applications found to be mutually-exclusive with commercial (i.e. auctionable) applications. See Reexamination of the Comparative Standards for Noncommercial Educational Applicants, FCC 98-269, Communications Regulation (P&F) Current Service 73-8113 (1998).

⁶ For this reason there is no basis for the licensing freeze which two of the Petitioners requested in June. See Petition at 25 note 28.

against manufacturers and other industrial groups such as forest products with which the Petitioners' companies have shared frequencies for decades.⁷

* * *

This is not the first time the Petitioners have raised a claim for a separate pool. UTC, API and AAR all filed comments in the re-farming proceeding seeking a special carve-out for their industries, while supporting consolidation for everyone else.⁸ The Commission, after considering those proposals, rejected them in favor of the two Pool approach we have today, combined with special coordination prerogatives for exclusive Power, Petroleum, and Railroad frequencies. See Second Report and Order, supra, 6 Communications Regulation (P&F) at 136-37. The Petition offers nothing new which should cause the Commission to depart from that determination. On the contrary, proper coordination notification to, and attention by, the Petitioners offers an effective solution to their concerns. If, despite this, the Commission should choose to revisit its determination, any separate frequency pool should be based strictly on safety-related

⁷ MRFAC observes with the Petitioners that commercial systems generally do not satisfy manufacturers' specialized needs any more than they satisfy the Petitioners'. See Petition at 17. MRFAC likewise observes that manufacturers are facing just as much a spectrum shortage as the Petitioners' industries. See id. at 11. Neither argument, therefore, supports the request for special treatment.

⁸ Actually, UTC suggested earlier in Re-farming that pools should be created based on historic sharing patterns and contiguous spectrum blocks. This led it to propose consolidation among the then-Power, Petroleum, Railroad and Forest Products Radio Services, as well as possibly the Manufacturers and Telephone Maintenance Services. See Comments of UTC filed May 28, 1993 at 9. As the Attachments show, UTC's observation about historic sharing patterns was correct.

uses, not the nature of the user. In no event should frequencies which have been shared for decades be diverted to the exclusive use of the Petitioners.

Respectfully submitted,

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Its Counsel

SHARED 450-470 MHz FREQUENCIES¹

FREQUENCIES (MHz)	IX	IF	IS	LX	IB	IP	IW	IT
451.175 - 451.675	10	10				10	10	10
451.700 - 451.750		2				2		
452.100 - 452.450 ²		8		8				
456.175 - 456.675 ³	10	10				10	10	10
456.700 - 456.750 ⁴		2				2		
462.475 - 462.525	3	2				2	2	2
467.475 - 467.525 ⁵	2	2				2	2	2

¹ Does not include paging or splinter frequencies.

² These LX frequencies are shared by IF in four States: Washington, Oregon, Idaho and Montana.

³ Paired with 451.175 - 451.675

⁴ Paired with 451.700 - 451.750

⁵ Paired with 462.475 - 462.525

SHARED 150 MHz FREQUENCIES⁶

FREQUENCY (MHz)	IX	IF	IS	LX⁷	IB⁷	IP	IW	IM
152.300 - 152.420 ⁸				7	7			
152.465		1	1	1				
152.480		1	1		1			
152.870 - 153.035			7			1		6
153.050 - 153.320	19	19				19		
153.335 - 153.395	5	5	5			5		
153.425 - 153.680		14				14	14	
154.45625 - 154.47875		4						
154.625		1	1		1			
157.725		1	1	1				
157.740		1	1		1			
158.145 - 158.265		7				7	7	
158.280 - 158.430	6	6				6		
158.355 - 158.370		2				2		
158.460		1	1		1			

⁶ Does not include paging or splinter frequencies.

⁷ Frequencies shared by LX and IB are geographically separated, IB use being confined to rural areas.

⁸ Paired with 157.560 through 157.680 MHz.

CERTIFICATE OF SERVICE

I, Joseph C. Fezie, hereby certify that a true copy of the foregoing "Comments of MRFAC, Inc." has been mailed to the following by First Class United States mail, postage prepaid, this 23rd day of December, 1998:

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