

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

In the Matter of)
)
Amendment of the Commission=s Rules) RM-9405
Regarding the Establishment of Public Service)
Radio Pool in the Private Mobile Frequencies)
Below 800 MHz)

To: The Commission

**REPLY COMMENTS
OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION, INC.**

The Personal Communications Industry Association, Inc. (APCIA≅), through counsel and pursuant to Section 1.405 of the Commission=s Rules, respectfully submits its Reply Comments in the above-captioned proceeding.

1. BACKGROUND

In its original Comments, PCIA stated its belief that the Petition for Rule Making filed by the Association of American Railroads (AAAR≅), the American Petroleum Institute (AAPI≅) and UTC is unwarranted, premature, has no factual basis and fails to recognize the important safety functions of virtually every internal radio user. The Commission=s new Refarming Rules have only recently been implemented, and the Petition at best illustrates a coordination system which must continue to be improved. At worst the Petition illustrates how certain users continue to fail to comply with the Commission=s desire to improve spectrum efficiency in the band.

PCIA=s Comments provided an extensive demonstration that safety is an important part of many private radio systems, and that the continued availability of spectrum for industries other than

those represented by the Petitioners is critical to the public health and safety. The narrow view of safety services implicit in the Petition ignores these critical radio uses and could lead to compromises in safety which equal or exceed those implicated by the Petitioners.

PCIA stated that the creation of a new Pool as requested by the Petitioners will not provide the Petitioners the Aprotection≅ they seek. Rather, this Aprotection≅ is already fully available to the Petitioners and eligible licensees in the Commission=s current Rules. The balkanization which the Petitioners promote will take spectrum management back to the inefficiencies which existed prior to Refarming. The Petition can only be seen as a request for reversal of the Commission=s decision in the ARefarming≅ proceeding, wherein the Commission consolidated the radio services, but provided that applicants seeking to utilize frequencies previously allocated for utilities, oil companies and railroads must continue to utilize the previous coordinator for those channels.¹

II. REPLY COMMENTS

¹Second Report and Order, PR Docket No. 92-235, 12 FCC Rcd 14307 (1997).

Most of the primary points made in PCIA's filing were echoed by other parties. It is abundantly clear that: (1) the control of interference with regard to the requested spectrum is entirely within the Petitioners' control;² (2) the Petition can only be viewed as untimely Petition for Reconsideration of the Commission's Refarming Order;³ (3) the Aharm≡ which the Petitions claims is as speculative today as it was when originally raised by the Petitioners in the Refarming proceeding;⁴ and (4) calling all other users Anon-critical≡ is not only an insult, but a gross lack of recognition of the important safety-related communications of many private users.⁵

The Comments filed in support of the Petitioner were filed, not surprisingly, by members of one of the Petitioners' trade associations. Besides being virtually identical in verbiage, what is most notable is the lack of documentary evidence of actual difficulty occurring as a result of the Commission's Refarming decision. In fact, it can be argued that the number of interference cases is no higher today than prior to the consolidation of the private pools.⁶

In addition, one point made by both MRFAC and Petroleum is that the Petitioners have not sought to exclude their members from engaging in carrier activities on these channels, similar to

²See, for example, Comments of MRFAC, Inc. (AMRFAC≡).

³See, for example, Comments of Industrial Telecommunications Association, Inc. (AITA≡).

⁴See, for example, Comments of Petroleum Communications, Inc. (APetroleum≡).

⁵See, for example, Comments of Aeronautical Radio, Inc. (AARINC≡).

⁶PCIA is referring to genuine interference cases, as compared to situations where an incumbent licensee is merely complaining of any co-channel user from any service being licensed on what the licensee has been led to believe is an exclusive channel.

Southern Company=s activities on 800 MHz Business and Industrial/Land Transportation Pool frequencies.⁷ It would seem that such activities are acceptable when the licensee is a member of one of the Petitioners= associations, but not if they are not members.

In its Comments, PCIA pointed out how the Petitioners are in actuality warehousing spectrum. MRFAC takes this point farther, noting the hundreds of channels (202 to be exact) available to the railroad industry on an exclusive basis. Given the tremendous growth in traffic via automobiles/trucks and air versus the stagnated (or diminishing) growth by rail, it is difficult to fathom why such a wealth of spectrum must remain fallow.

IV. CONCLUSION

⁷See, Comments of MRFAC at 5, Comments of Petroleum at 3-4.

The Petitioners have sought to set themselves apart from the rest of the private radio industry by: (1) excerpting the wrong language from the Balanced Budget Act of 1997;⁸ (2) misleading the Commission as to the amount of interference caused as a direct result of the new Refarming Rules; (3) misleading the Commission by ignoring the safety aspects of other private radio users; and (4) failing to explain why their own coordination activities have been unsuccessful in preventing the interference of which they complain. The Petition is merely a late-filed Reconsideration of the Refarming Order, and another attempt by the Petitioners to do what they could not do in the Refarming proceeding X i.e. warehouse additional spectrum. Until such time as the new Refarming rules have been able to become effective, and coordination procedures completely worked out, the Petition is premature and must therefore be rejected.

⁸Comments of MRFAC at 6.

WHEREFORE, the premises considered, it is respectfully requested that the Commission DISMISS the Petition for Rulemaking filed by the American Petroleum Institute, the Association of American Railroads and UTC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ruth A. Buchanan, a secretary in the law office of Shulman, Rogers, Gandal, Pordy & Ecker, P.A. hereby certify that I have on this 7th day of January, 1999 sent via first class mail, postage prepaid, a copy of the foregoing Reply Comments to the following:

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