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Office of the Secretary
Federal Communications Commission
445 12th St SW Room TW-B204
Washington, DC 20554

Subject: Comments on WT Docket No. 99-87
Formal Comments by Merrill T. See

Merrill T. See participated in the Private Land Mobile Radio Services radio communications field and did so since 1953. Publisher of the former popular newspaper "The Rattler," and an active opponent of monopoly coordinators and elimination of the users right to choose his own source of frequency coordination under FCC Rule 90.175, M.T. See is well versed in the multiple licensing of radio transmitting equipment in the mobile radio services.

In this matter concerning certain Part 90 frequencies in the Private Mobile frequencies I will comment on specific segments:

1. Elimination or modifying the multiple licensing rules. (page 10)
2. Band Managers and Frequency Coordinators - - - A hidden agenda? (page 16)
3. The Federal Communications Commission's auction authority. (page 2)

1. There is not, and has never been, any provision under FCC Rule 90-185 - - - *Multiple licensing of radio transmitting equipment in the mobile radio services* - - - that requires any multiple licensees of transmitting equipment not interconnected with the public switched network (telephone system) to operate on a cost shared, non-profit basis.
See Index - FCC Rules 1982 and FCC Rules 1998.

It appears the FCC is attempting to co-mingle the requirements of FCC Part 90.179 - *Shared use of radio stations* with FCC Part 90.185 - *Multiple licensing of radio transmitting equipment in the mobile radio services* - in an agenda to benefit exactly whom is unclear at this time, but past experience indicates it won't be the public.
See Index - FCC Rules 1982 and FCC Rules 1998.

FCC Part 90.179 - *Shared use of radio stations* and FCC Part 90.185 - *Multiple licensing of radio transmitting in the mobile radio services* are mutually exclusive methods of licensing.

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Multiple licensing of radio transmitting equipment in the private mobile radio services has been in effect in the commission rules, prior to repeaters, as far back as 1956 or before to this persons recollection. Multiple licensing of radio transmitting equipment is a prudent tool of sound business practice applicable to governmental, business, and industrial private radio system users.

The FCC states "No consideration is paid, either directly or indirectly, by any participant to any other participant for or in connection with the use of the *multiple licensed facilities*." (47. page 10) **This statement does not appear in current FCC Rules and Regulations Part 90.185 - Multiple licensing of radio transmitting in the mobile radio services.** The FCC phrased paragraph 47 allows this sentence to be taken as standing alone. Therefore standing alone this is an incorrect statement.

Contractual financial relationships, if any, between multiple licensing users concerning the economics of equipment intensive ventures are solely the business of the participants and since contractual financial arrangements do not concern electromagnetic radiation the FCC has no business meddling in these affairs. Each mutually exclusive licensee operation is *not operated as a direct source of revenue, but rather as a means of internal communications to support the day-to-day needs of the licensee's business operations or to protect the safety of their employees, customers, or the general public.*

Concerning the Commission's concern for *alleged* non-profit entity abuse, I consider the Federal Communications Commission the pinnacle of dissimulation and hypocrisy:

Regarding the proposed elimination of multiple licensing rules, they state in para 50, page 11 "*De facto for-profit operations, on frequencies on which for-profit activities are prohibited, offends concepts of regulatory symmetry and interferes with the establishment of a level economic playing field.*" Yet a prime example of their hypocrisy is their unlawful creation of "monopoly frequency coordinators" - - - nothing more than favored *non-profit* lobbyist organizations. These *non-profit* lobbyist organizations have since 1986 reaped gross financial monopolistic windfalls by the FCC created monopoly under color of frequency coordination requisites for prospective licensees.

FCC Report and Order Pr Docket No. 83-737, In the matter of Frequency Coordination in the Private Land Mobile radio Services, released April 15, 1986 states of these "non-profit" monopolistic organizations financial windfall: "*Coordinators, however, will not be required to provide services on a non-profit basis. Third, we will not require coordinators to make their income and expense records generally available for public inspection as proposed in the Notice and by some commenters.*"

For a federal government agency with such favoritism acts lying on their back porch, to make such commentary as "*De facto for-profit operations, on frequencies on which for-profit ac-*

tivities are prohibited, offends concepts of regulatory symmetry and interferes with the establishment of a level economic playing field" from their front porch defies absurdity. "Concepts of regulatory symmetry"? What utter politically correct stated hypocrisy.

The FCC states on page 11, 50: "Accordingly, we seek comments on whether eliminating or modifying the multiple licensing rules would be appropriate."

I do not believe the FCC has shown the public adequate evidence that "*De facto for-profit operations, on frequencies on which for-profit activities are prohibited*" exists to the extent they purport.

Since there is not, and has never been, any provision under FCC Rule 90-185 - *Multiple licensing of radio transmitting equipment in the mobile radio services* that requires any multiple licensees of transmitting equipment not interconnected with the public switched network (telephone system) to operate on a cost shared, non-profit basis, *yet the FCC alleges abuse of these rules*, the FCC has the following duties:

The FCC is the sole ultimate manager of this spectrum. If it is managing the spectrum it has the data to release to the public who ask, (1) the total amount today of licensees of multiple licensed radio transmitters in the mobile radio services under FCC Rules and Regulations Part 90.185 and (2) the total amount of these licensees who are telephone interconnected under Part 90.477 FCC Rules and Regulations.

Part 90.179, *Shared use of radio transmitters* is irrelevant as it contains no provisions for multiple licensees. These users must not be included in the above paragraph request.

One must preclude the unthinkable thought that someone other than *De facto for-profit operators* would consider "cooking the books", but, - - -

The FCC is the sole ultimate manager of this spectrum. If it is managing the spectrum it has the data to release to the public who ask, (1) the total amount of licensees of radio transmitters in the mobile radio services under FCC Rules and Regulations Part 90.179 and (2) the total amount of these licensees who are telephone interconnected under Part 90.477 FCC Rules and Regulations.

This would seem necessary. In past Notice of Proposed Rulemakings, example - - - NPRM PR Docket No. 83-737, In the Matter of Frequency Coordination, the Commission made serious allegations but did not, or were unable to, provide adequate documentation to substantiate these allegations. Compare this to the **thousands of complaints** registered against their actions. I believe within Report and Order PR Docket 83-737 history there is enough precedent

to demand the FCC publish this data along with adequate documentation to substantiate allegations of *De facto for-profit operations*, on frequencies on which for-profit activities are prohibited, does exist.

I believe those (those non-apathetic with the courage and ambition) who would be the victims of this proposed action would be well advised to file along with their comments, a Freedom of Information Act request for the "De facto for-profit operations" information substantiating this NPRM. (See index)

I do believe the FCC has created a document that contains ambiguities, erroneous statements, and misinterpretation of FCC Rules and Regulations in an attempt to deceive the public and achieve a goal the public has every right to be suspicious of, therefore I believe the "*seeking of comments on whether eliminating or modifying the multiple licensing rules would be appropriate*" will be inappropriate at this time.

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2. Band Managers and Frequency Coordinators - - - A hidden agenda? (page 16)

WT Docket No. 99-87 states on page 14,(70) "When geographic area licenses are to be awarded through competitive bidding, (*when?, not if?- ed*) what role, if any, should the frequency coordinators serve?" (emphasis added)

And they also state on page 16, #88, "Today applicants for PLMRS licenses must obtain a frequency recommendation from a certified coordinator in order to prosecute a license application before the Commission. The certified coordinators base their frequency recommendations on detailed operational and technical requirements set forth in Part 90 of our Rules. In considering how private radio services should be licensed to meet current and projected needs for internal communications capacity, we seek comment on whether the public interest would be served by establishing a new class of licensee called a "Band Manager."

The FCC states page 4, 15 . . . "The Commission had certified one coordinator for each radio service in the bands below 800 MHz, but now that these frequencies have been consolidated, applicants for those PLMR frequencies generally *may use* the services of any frequency coordinator certified in the pool.(69) *This introduction of competition among coordinators was intended to foster lower coordination costs and better service to the public.*"(70)
"Moreover even below 800 Mhz, applicants still sometimes contend that *receiving a coordinator's recommendation takes too long and costs too much.* Indeed, the Commission acknowledged that the changes made to date may not be sufficient to maximize the efficiency of our PLMR licensing procedures." (72) (emphasis added)

FCC Report and Order PR Docket No. 83-737, In the matter of Frequency Coordination in the

Private Land Mobile Radio Services, released April 15, 1986 states, page 16, #28 - - - "We believe that a speed of service requirement would serve the public interest. We realize the time required to recommend a frequency may vary substantially depending on workload that the time and the specific system proposed. However, we believe, based on the comments, that *20 work days is a reasonable time frame to handle most of the coordination requests. Accordingly we expect that the speed-of-service for 90 percent of the coordination requests not exceed 20 working days. In addition, we believe interservice sharing requests warrant the same expeditious handling as in-service requests. Therefore, the same speed-of-service requirements will apply, i.e. 90 per cent of all interservice sharing requests should be handled within 20 working days.*" (emphasis added)

FCC Report and Order Pr Docket No. 83-737, also states - - - "Complaints regarding coordination fees may be filed with us. **If a coordinator abuses these standards on fees, we will move appropriately to replace that entity with some other coordinating Body.**" (emphasis added)

Given the above for the FCC, after over **13 years** of stalling inaction, to in such a cavalier attitude announce "Indeed, the Commission acknowledged that the changes made to date may not be sufficient to maximize the efficiency of our PLMR licensing procedures" is ludicrously preposterous.

The FCC stated "What role, if any, should the frequency coordinators serve?" I believe the following:

Their sham purporting to have "introduced competition into the frequency coordination process" does not see the light of day as apparent **monopoly pricing** and apparent **concerted oligopoly** - - - **conscientious parallelism pricing** - - - runs amuck unchecked by the Commission at all levels.

The FCC refuses to act on major unresolved Motions for General Counsel Declamatory Rulings dated March 12, 1993 and following amendment May 13, 1993 which challenged the monopoly coordination scheme initiated by FCC Report and Order Pr Docket No. 83-737, In the matter of Frequency Coordination in the Private Land Mobile radio Services, released April 15, 1986. Refer to 1700A1/7310-07.

A January 2, 1994 Application for review lies "stonewalled" within the Commission despite repeated demands for resolution. Refer to 1700A1/7310-07

The FCC stated "What role, if any, should the frequency coordinators serve?"

The dreadful 13 year results of FCC Report and Order PR Docket No. 83-737, In the matter of Frequency Coordination in the Private Land Mobile radio Services, released April 15, 1986,

will be difficult for the FCC to rectify. There should be no doubt multi-millions of dollars have been taken unconscionably from citizens and government entities under color of frequency coordination requirements. Those denied the rights provided them under the former FCC Rules 90.175 yet may pose a serious financial problem to the FCC..

The FCC stated "What role, if any, should the frequency coordinators serve?"

The results of FCC Report and Order Pr Docket No. 83-737, In the matter of Frequency Coordination in the Private Land Mobile radio Services, mandate "certified" monopoly/oligopoly coordination must be abolished. I feel these organizations must be decertified and play no role in any relation to or with "Band Managers."

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3. The Federal Communications Commission's auction authority. (page 2)

I fail to see what authority the Federal Communications Commission, or anyone, has to regulate, let alone sell or authorize, the right to a phenomenon.

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Index:

90.179 and 90.185, FCC Rules 1998 pages 7 and 8

90.179 and 90.185, FCC Rules 1982 pages 9 and 10

Report and Order PR Docket 83-737 pages 11, 12, 13, 14

Application for Review 1700A1/7310-07 pages 15, 16, 17.

Definitions: Oligopoly, Conscientious parallelism, page 18

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(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the site in excess of the field strength specified herein.

(d) Protection for Federal Communications Commission monitoring stations:

(1) Applicants in the vicinity of an FCC monitoring station for a radio station authorization to operate new transmitting facilities or changed transmitting facilities which would increase the field strength produced over the monitoring station over that previously authorized are advised to give consideration, prior to filing applications, to the possible need to protect the FCC stations from harmful interference. Geographical coordinates of the facilities which require protection are listed in § 90.121(c) of the Commission's Rules. Applications for stations (except mobile stations) which will produce on any frequency a direct wave fundamental field strength of greater than 10 mV/m in the authorized bandwidth of service... 85.9 dBW/m² power flux density assuming a free space characteristic impedance of 120 times pi or 377 ohms at the referenced coordinates, may be examined to determine extent of possible interference. Depending on the theoretical field strength value and existing root-mean-square or other ambient radio field signal levels at the indicated coordinates, a clause protecting the monitoring station may be added to the station authorization.

(2) In the event that calculated value of expected field exceeds 10 mV/m (-85.8 dBW/m²) at the reference coordinates, or if there is any question whether field strength levels might exceed the threshold value, advance consultation with the FCC to discuss any protection necessary should be considered. Prospective applicants may communicate with Chief Compliance and Information Bureau, Federal Communications Commission, Washington, DC 20554, Telephone (202) 632-6980.

(3) Advance consultation is suggested particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figure indicated would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether an applicant should coordinate:

- (1) All stations within 2.4 kilometers (1.5 statute miles);
(2) Stations within 4.8 kilometers (3 statute miles) with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(3) Stations within 15 kilometers (10 statute miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(4) Stations within 80 kilometers (50 statute miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(4) Advance coordination for stations operating above 1000 MHz is recommended only where the proposed station is in the vicinity of a monitoring station designated as a satellite monitoring facility in § 90.121(c) of the Commission's Rules and also meets the criteria outlined in paragraphs (d)(2) and (3) of this section.

(5) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Federal Communications Commission or modification of any authorization which will cause harmful interference.

(6) In the band 120 to 450 MHz, applicants should not expect to be accommodated if their area of service is within 100 kilometers (100 miles) of the following stations:

- 1. 120° 00' N, 10° 00' W
2. 120° 00' N, 10° 00' W
within 240 kilometers (150 miles) of the following locations:
1. 30° 00' N, 121° 00' W.

within 240 kilometers (150 miles) of the following location:
(1) 30° 00' N, 121° 00' W.

within 320 kilometers (200 miles) of the following locations:
(1) 22° 21' N, 82° 42' W.
(2) 32° 30' N, 82° 30' W.
(3) 43° 00' N, 119° 11' W.

or in the following locations:
(1) The state of Arizona.
(2) The state of Florida.
(3) Portions of California and Nevada south of 37° 10' N.

(4) And portions of Texas and New Mexico bounded by 31° 45' N, 34° 30' N, 104° 00' W, and 107° 30' W.

(5) Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques or Culebra in services in which individual station licenses are issued by the FCC, planning to construct and operate a new station at a permanent fixed location on these islands that may cause interference to the operations of the Arecibo Observatory in services in which individual station licenses are not issued by the FCC, or planning a modification of any existing station at a permanent fixed location on these islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 960, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: pcc@nasa.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD-83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC Rule Part, type of emission, and effective isotropic radiated power.

(6) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (5) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (5) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (5) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification within 20 days if the Office plans to file comments or objections to the notification.

(7) After the FCC receives an application from a service applicant or is informed by the Interference Office of notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, if appropriate. If the FCC determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(8) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

(9) Licensees planning to construct and operate a new station at a permanent fixed location on the islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 960, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: pcc@nasa.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD-83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC Rule Part, type of emission, and effective isotropic radiated power.

(10) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (9) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (9) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (9) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification within 20 days if the Office plans to file comments or objections to the notification.

After the FCC receives an application from a service applicant or is informed by the Interference Office of notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, if appropriate. If the FCC determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(3) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

(4) Licensees planning to construct and operate a new station at a permanent fixed location on the islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 960, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: pcc@nasa.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD-83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC Rule Part, type of emission, and effective isotropic radiated power.

(5) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (4) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (4) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (4) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification within 20 days if the Office plans to file comments or objections to the notification.

(6) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (4) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (4) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (4) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification within 20 days if the Office plans to file comments or objections to the notification.

(7) After the FCC receives an application from a service applicant or is informed by the Interference Office of notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification. The applicant will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, if appropriate. If the FCC determines that an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, its application may be granted.

(8) The provisions of this paragraph do not apply to operations that transmit on frequencies above 15 GHz.

(9) Licensees planning to construct and operate a new station at a permanent fixed location on the islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 960, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: pcc@nasa.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD-83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC Rule Part, type of emission, and effective isotropic radiated power.

(10) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (9) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (9) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (9) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification within 20 days if the Office plans to file comments or objections to the notification.

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the following conditions and limitations:

(a) Persons may share a radio station only on frequencies for which they would be eligible for a separate authorization.

(b) The licensee of the shared radio station is responsible for assuring that the authorized facility is used only by persons and only for purposes consistent with the requirements of this rule part.

(c) Participants in the sharing arrangement may obtain a license for their own mobile units (including control points and/or control stations for control of the shared facility), or they may use mobile stations, and control stations or control points authorized to the licensee.

(d) If the licensee shares the land station on a non-profit, cost shared basis to the licensee, this shared use must be pursuant to a written agreement between the licensee and each participant which sets out (1) the method of operation, (2) the components of the system which are covered by the sharing arrangements, (3) the method by which costs are to be apportioned, and (4) acknowledgement that all shared transmitter use must be subject to the licensee's control. These agreements must be kept as part of the station records.

(e) If the land station which is being shared is interconnected with the public switched telephone network, the provisions of § 90.477 et seq. apply.

(f) Above 800 MHz, shared use on a for-profit private carrier basis is permitted only by SMR, Private Carrier Paging, and LMS licensees. See subparts M, P, and S of this part.

(g) The provisions of this section do not apply to licensees authorized to provide commercial mobile radio service under this part.

(18 FR 26621, June 9, 1983, as amended at 47 FR 30014, Oct. 8, 1982; 43 FR 12136, Apr. 13, 1978; 54 FR 4050, Jan. 27, 1989; 54 FR 8867, Sept. 23, 1989; 57 FR 46739, Oct. 28, 1992; 59 FR 56965, Nov. 21, 1994; 60 FR 15252, Mar. 23, 1995.)

§ 90.185 Multiple licensing of radio transmitting equipment in the mobile radio service.

Two or more persons eligible for licensing under this rule part may be li-

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ensed for the same land station under the following terms and conditions.

(a) Each licensee complies with the general operating requirements set out in § 90.403 of the rules.

(b) Each licensee is eligible for the frequency/ies on which the land station operates.

(c) If the multiple licensed base station is interconnected with the public switched telephone network, the provisions of § 90.477 et seq. apply.

(18 FR 26621, June 9, 1983.)

§ 90.187 Trunking in the bands between 150 and 512 MHz.

(a) Applicants for trunked systems operating on frequencies between 150 and 512 MHz (except 220-222 MHz) must indicate on their applications (class of station code, see § 1.952 of this chapter or instructions for FCC Form 600) that their system will be trunked. Licensees of stations that are not trunked, may trunk their systems only after modifying their license (See § 90.135).

(b) In the bands between 150 and 512 MHz, trunking may be authorized under the following conditions:

(1) Where applicants for or licensees operating in the 470-512 MHz band meet the loading requirements of § 90.313 and have exclusive use of their frequencies in their service area.

(2) Trunking will be permitted on frequencies where an applicant or licensee does not have an exclusive service area, provided that all frequency coordination requirements are complied with and consent is obtained from all licensees pursuant to paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this section.

(i) Stations that have operating frequencies (base and mobile) that are 15 kHz or less removed from proposed stations that will operate with a 25 kHz channel bandwidth, stations that have operating frequencies (base and mobile) that are 7.5 kHz or less removed from proposed stations that will operate with a 12.5 kHz bandwidth or stations that have operating frequencies (base and mobile) 3.75 kHz or less removed from proposed stations that will operate with a 25 kHz bandwidth, and

(ii) Stations with service areas (37 dBu contour for stations in the 150-174 MHz band and 39 dBu contour for stations in the 421-512 MHz bands; See

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§ 90.205 that overlap a circle with radius 113 km (70 mi.) from the proposed base station. Alternatively, applicants may submit an engineering analysis based upon generally accepted engineering practices and standards which demonstrates that the service area of the trunked system does not overlap any existing stations whose service areas overlap a circle with radius 113 km (70 mi.) from the proposed base station.

(iii) The consensual agreements among licensees must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that all licensees have consented to the use of trunking. If a licensee has agreed to the use of trunking, but later decides against the use of trunking, the licensee may request that the licensee(s) of the trunked system reconsider the use of trunking. If the licensee is unable to reach an agreement with the licensee(s) of the trunked system, the licensee may request that the Commission consider the matter and assign it another channel. New licensees will only be assigned the same channel as a trunked system, if the new licensee reaches an agreement with the licensee(s) of the trunked system.

(c) Trunking of systems licensed on paging-only channels or licensed in the Radiolocation Service (subpart F) is not permitted.

(62 FR 18628, Apr. 17, 1997)

Subpart I—General Technical Standards

§ 90.201 Scope.

This subpart sets forth the general technical requirements for use of frequencies and equipment in the radio services governed by this part. Such requirements include standards for acceptability of equipment, frequency tolerance, modulation, emissions, power, and bandwidths. Special additional technical standards applicable to certain frequency bands and certain specialized uses are set forth in subparts J, K, and N.

(43 FR 54791, Nov. 22, 1978, as amended at 54 FR 4050, Jan. 27, 1989)

§ 90.203 Type acceptance required.

(a) Except as specified in paragraph (b) of this section, each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of this chapter must be of a type which has been certified for use under this part.

(1) (Reserved)

(2) Any manufacturer of radio transmitting equipment (including signal boosters) to be used in these services may request certification for such equipment following the procedures set forth in subpart J of part 2 of this chapter. Certification for an individual transmitter or signal booster also may be requested by an applicant for a station authorization by following the procedure set forth in part 2 of this chapter. Such equipment if approved will be individually enumerated on the station authorization.

(b) Certification is not required for the following:

(1) Transmitters used in developmental operations in accordance with subpart Q.

(2) Transmitters used for police and interzone stations authorized on January 1, 1985.

(3) Transmitting equipment used in the band 1427-1435 MHz.

(4) Transmitters used in radiolocation stations in accordance with subpart F authorized prior to January 1, 1974, for public safety and land transportation applications (old parts 89 and 93).

(5) Transmitters used in radiolocation stations in accordance with subpart F authorized for industrial applications (old part 91) prior to January 1, 1978.

(6) (Reserved)

(7) Transmitters imported and marketed prior to September 1, 1986 for use by LMS systems.

(c) Radiolocation transmitters for use in public safety and land transportation applications marketed prior to January 1, 1974, must meet the applicable technical standards in this part pursuant to § 2.803 of this chapter.

(d) Radiolocation transmitters for use in public safety and land transportation applications marketed after January 1, 1974, must comply with the

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—Telecommunication

Chapter I—Federal Communications Commission

§ 90.179

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s) with 1 kW or more
the primary plane of
he azimuthal direction
ng Station;
within 80 kilometers (50
with 25 kW or more
the primary plane of
he azimuthal direction
ng Station.
coordination for sta-
above 1000 MHz is rec-
y where the proposed
e vicinity of a monitor-
gnated as a satellite
sion's Rules and also
eria outlined in para-
(3) above.
mission will not screen
o determine whether
tation has taken place.
licants are advised that
ion can avoid objections
ederal Communications

Commission or modification of any au-
thorization which will cause harmful
interference.

(e) In the band 420 to 450 MHz, ap-
plicants should not expect to be ac-
commodated if their area of service is
within 160 kilometers (100 miles) of
the following locations:

- (1) 41°45' N, 70°32' W,
- (2) 64°17' N, 149°10' W,
- (3) 48°43' N, 97°54' W,

within 240 kilometers (150 miles) of
the following location:

- (1) 39°08' N, 121°26' W

within 320 kilometers (200 miles) of
the following locations:

- (1) 28°21' N, 80°43' W,
- (2) 30°30' N, 86°30' W,
- (3) 34°09' N, 119°11' W,

or in any of the following locations:

- (1) the state of Arizona,
- (2) the state of Florida,
- (3) portions of California and Nevada
south of 37°10' N,
- (4) and portions of Texas and New Mexico
bounded by 31°45' N, 34°30' N, 104°00' W and
107°30' W.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066,
1082, 1083; 47 U.S.C. 154, 303, 307)
[43 FR 54791, Nov. 22, 1978, as amended at
44 FR 77167, Dec. 31, 1979; 47 FR 10853,
Mar. 12, 1982; 47 FR 34420, Aug. 9, 1982]

§ 90.179 Cooperative use of radio stations
in the mobile and fixed services.

(a) Licensees of radio stations au-
thorized under this part may share
the use of their facilities with other
eligible persons, subject to the follow-
ing conditions and limitations.

(1) Sharing of radio facilities may
occur only on frequencies for which all
participants would be separately eligi-
ble for assignment.

(2) All facilities to be shared must be
individually owned by the licensee,
jointly owned by the participants and
the licensee, leased individually by the
licensee, or leased jointly by the par-
ticipants and the licensee.

(3) The licensee must maintain
access to and control over all facilities
authorized under its license.

(4) Facilities may be shared only: (i)
Without charge; or (ii) on a non-profit
basis, with contributions to capital and
operating expenses including the cost

of mobile stations and paging receivers
operated pursuant to the licensee's au-
thorization prorated equitably among
all participants; or (iii) on a reciprocal
basis, i.e., use of one licensee's facili-
ties for the use of another licensee's
facilities without charge for either
capital or operating expense.

(5) All sharing arrangements must
be conducted pursuant to a written
agreement to be kept as part of the
station records. The arrangement for
shared use must be made directly be-
tween the licensee and the partici-
pants. Where the facilities are shared
on a cost-sharing, non-profit basis, the
agreement between the parties shall
set forth the method(s) employed for
determining the capital and operating
expenses of the shared facilities and
for allocating these costs among the
participants on a prorated basis. If the
arrangement involves no cost-sharing,
or if the sharing is on a reciprocal
basis, the agreement between the
parties must so state and must provide
sufficient details to show that this is
the arrangement.

(6) No person providing any radio
equipment, or maintenance and repair,
or dispatching, or telephone answering
services for profit for use in or in con-
nection with a shared system, and no
employee or agent of such person, may
be an officer, director, partner, or em-
ployee of the licensee of that system
or own or control the licensee of that
system.

(7) The licensee or participants in a
shared system may not provide any of
the equipment used in the system, nor
dispatch, telephone answering, or
maintenance and repair services to
any person sharing the system, except
pursuant to the terms of the cost shar-
ing agreement.

(8) A person who furnishes or has
furnished through sale, lease arrange-
ments, or otherwise any of the radio
equipment used to operate a coopera-
tively shared radio station may not
provide dispatch service to the licensee
of the radio station or to any person
cooperatively sharing operation of the
licensee's radio station.

(b) Participants in the shared ar-
rangements may obtain a license for
their own mobile units (including con-
trol points and/or control stations for

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OCT 1982

§ 90.185

control of the shared facility). If mobile stations are licensed to participants, the licensee of the shared facilities must maintain a means of isolating and deactivating, or disconnecting from the system any such mobile station, control station or control or dispatch point, or should that not be feasible, deactivating the base station transmitter(s) or repeater(s).

(c) When costs are shared, the licensee must keep records of the following:

- (1) Identity of each participant.
- (2) Date each participant commenced use.
- (3) Date each participant terminated use.
- (4) All capital and operating costs incurred for the system.
- (5) All charges to each participant and all payments received from each participant, separately stated.
- (6) The method of calculation of costs to participants.

Such records must be kept current and must be made available upon request for inspection by the Commission.

(d) When costs are shared, costs must be distributed at least once a year. A report of the cost distribution must be prepared by the licensee, placed in the station records, retained for three years, and be made available to participants in the sharing and the Commission upon request.

[47 FR 19538, May 6, 1982]

§ 90.185 Multiple licensing of radio transmitting equipment in the mobile radio service.

Two or more persons eligible for licensing under this rule part may use the same transmitting equipment under the following terms and conditions:

(a) Each licensee complies with the general operating requirements set out in § 90.403 of the rules.

(b) Each licensee is eligible for the frequency(ies) on which the licensee operates.

(c) Each licensee must have unlimited and unconditional access to the transmitter for which the licensee is authorized.

(d) No consideration shall be paid, either directly or indirectly, by any participant to any other participant

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for, or in connection with, the use of the jointly licensed facilities.

(e) No participant shall furnish to any other participant with or without charge, any equipment or service, or facility of any kind, for use in connection with the facility.

(f) A person who furnishes or has furnished through sale, lease arrangements, or otherwise any of the radio equipment used to operate a multiple licensed system may not provide dispatch service to the licensee of any radio station authorized to operate the multiple licensed system.

[47 FR 19539, May 6, 1982]

Subpart I—General Technical Standards

§ 90.201 Scope

This subpart sets forth the general technical requirements for use of frequencies and equipment in the radio services governed by this part. Such requirements include standards for acceptability of equipment, frequency tolerance, modulation, emissions, power, and bandwidths. Special additional technical standards applicable to certain frequency bands and certain specialized uses are set forth in Subparts J, K, M, and N.

§ 90.203 Type acceptance required.

(a) Except as specified in paragraph (b) of this section, each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 (of Part 2) must be of a type which is included in the Commission's current Radio Equipment List as type accepted for use under this part; or, be of a type which has been type accepted by the Commission for use under this part in accordance with the procedures in paragraph (a)(2) of this section.

(1) The Commission periodically publishes a list of equipment entitled "Radio Equipment List, Equipment Acceptable for Licensing." Copies of this list are available for public reference at the Commission's offices in Washington, D.C., and at each of its field offices. This list includes type accepted and, also, until such time as it

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may be action, appeared

(2) An omitting boosters may require equipment set forth in chapter, individual

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(b) T for the

(1) 2 mental Subpart

(2) Tr and into January

(3) Tr the band

(4) T tion sta part F 1974, fo portatio and 93)

(5) T tion sta part F cations 1, 1978.

(c) R use in p tation a January cable tec pursuant ter.

(d) R use in p tation a January requirem section

[43 FR 54 June 5, 1978]

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

FCC 86-142
36530

In the Matter of)
)
Frequency Coordination in the) PR Docket No. 83-737
Private Land Mobile Radio Services)

REPORT AND ORDER

Adopted: April 3, 1986

Released: April 15, 1986

By the Commission:

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pending of future coordination requests. Finally, as an organization representative of the affected licensees, the coordinator is uniquely qualified to provide objective and informed assistance regarding post-licensing problems. It is not unreasonable for coordinators, who will be providing a service for a fee, to have some responsibility to help resolve problems related to their recommendations. Accordingly, a licensee's first point of contact for post-licensing problems involving frequency selection will be the coordinator. We will become involved only if the coordinator and the affected parties cannot agree to a solution. We continue to retain final responsibility in this area.

27. (f) Speed-of-service - The Notice proposed that coordinators handle coordination requests within a reasonable time frame. A specific standard for speed-of-service was not proposed. All of the entities seeking recognition as coordinators stated that they intended to respond as quickly as possible to coordination requests. While most of the parties indicated that 90 per cent of the coordination requests would be disposed of within 14 to 25 days, they argued that the Commission should not set a specific speed-of-service requirement. Others, such as PLLS, contended that a turn-around time requirement is long overdue. According to PLLS, it is not uncommon in some services to wait several months for a frequency coordination. Teletech, Inc. (Teletech) also supported a speed-of-service requirement if the Commission adopted its proposal to certify one coordinator per service.

28. We believe that a speed-of-service requirement would serve the public interest. We realize the time required to recommend a frequency may vary substantially depending on workload at the time and the specific system proposed. However, we believe, based on the comments, that 20 work days is a reasonable time frame to handle most of the coordination requests. Accordingly, we expect that the speed-of-service for 90 per cent of the coordination requests not exceed 20 work days. In addition, we believe interservice sharing requests warrant the same expeditious handling as in-service requests. Therefore, the same speed-of-service requirement will apply, i.e. 90 per cent of all interservice sharing requests should be handled within 20 working days. Separate speed-of-service records must be

objection, however, to coordinator fees including reasonable costs for filing petitions and comments to a proceeding provided such filings directly affect users in the radio service the coordinator represents. This NMRA position was supported in reply comments from NABER. Teletech also expressed concern over fees. It stated that if the Commission adopted its proposal to designate a single coordinator for each of the private land mobile radio services, it would be necessary to "establish pervasive, on-going regulation to ensure that the monopoly coordinators provide non-discriminatory, quality service at a cost-based price." In addition, the National Ski Patrol System commented that frequency coordination for tax-exempt entities such as volunteer fire departments should be provided on a non-profit basis. NMRA also commented that coordinators should file annual reports demonstrating the relationship between costs and fees. SIRSA, in contrast, opposed any requirement that coordinators make their records available to the public as a matter of course.

45. We have carefully weighed the various arguments raised by the comments addressing the fees issue, and have reached the following conclusions. First, there is no support in the comments nor does there appear to be any compelling public interest reason to establish a fixed schedule of coordination fees. Therefore, we will neither mandate nor review specific frequency coordination fees on a regular basis. Second, if necessary, the coordination fees of each coordinator will be reviewed by the Commission only to ensure that they reasonably reflect the cost of providing the overall coordination service. Coordination service includes filing petitions, comments, and reply comments in Commission proceedings that may affect other users in the radio service the coordinator represents.

Coordinators, however, will not be required to provide services on a non-profit basis. Third, we will not require coordinators to make their income and expense records generally available for public inspection as proposed in the Notice and by some commenters. We are persuaded by the comments that this requirement could be very disruptive to the normal operations of the coordinator and that there is no compelling reason to require that this information be routinely made available either to the public or the Commission. We are confident that sufficient oversight of fees can be maintained by requiring that coordinators make pertinent income and expense records available to the Commission upon request. Complaints regarding coordination fees may be filed with us. If a coordinator abuses these standards on fees, we will move appropriately to replace that entity with some other coordinating body.

46. We believe this approach achieves an appropriate balancing of the various fee-related issues by providing coordinators the needed flexibility to allow for differences in the cost of coordinating

SEE PAGE
25

frequencies in the various radio services involved, while addressing concerns about monopoly pricing.

(8) Single Nationwide Point of Contact

47. In the Notice we said that certified coordinators would be free to determine their organizational structure. Thus, for example, the coordinator's organization could be comprised of volunteers, a paid staff, or a combination of both. Further, coordination could be performed at a state level, a regional level, or a national level. The only structural requirement we proposed was that each radio service coordinator establish a single nationwide point of contact to deal with the Commission.

48. All of the entities requesting to be a coordinator except one supported this approach. The one comment in opposition was filed by Eastern States Public Safety Radio League (ESPRL). ESPRL proposed to provide coordination in the Police, Local Government, and Special Emergency Radio Services but only in several New England states.

49. We believe a single nationwide point of contact is critical to our objectives in this proceeding. Radio signals do not end at jurisdictional boundaries such as state or county lines. Therefore, in cases where the actual coordination is performed at a state or regional level it may be necessary for the person performing the coordination in one state or region to discuss the impact of the proposed operation with a counterpart in other states or regions. Requiring the certified coordinator to have a single, nationwide point of contact responsible for the final coordination product will help resolve any disputes that may develop in these cases. Further, it will significantly reduce the number of coordinators that the Commission must deal with for the exchange of the paperwork involved in the licensing process, thereby promoting a more efficient process. It will minimize licensing delays and assure that all coordinators have pertinent information necessary to perform their responsibilities. Finally, it will minimize the number of points of contact involved in interservice sharing requests. Accordingly, we are requiring each certified coordinator to establish a single point of contact with the Commission. This does not preclude coordinators from utilizing local coordinators in the actual coordination process, as long as all other requirements including timeliness, are met.

(9) Facilitating New Technologies

50. In the Notice we also proposed that coordinators facilitate the introduction of new technologies into the private land

file
copy

Merrill T. See
5651 North 8th St
Kalamazoo, MI 49009
616 375 0171

August 5, 1997
Secretary
Federal Communications Commission
Washington, D.C. 20554

To the Commission:

Subject: Federal Communications Commission (FCC) failure to act on citizen Application for Review of action taken pursuant to delegated authority.
Refer to 1700A1/7310-07.

The FCC received two Motions for General Counsel Declaratory Rulings dated March 12, 1993 and an amendment May 13, 1993 concerning the matter of frequency coordination:

"Is the Federal Communications Commission required under the Communications Act Amendment act of 1982 to retain the field study engineering report as a means of frequency coordination; and in the 1986 amending of its rules to eliminate the field survey coordination option, is and has the Commission been exceeding its statutory authority."

From PL97-259, Legislative History: "The conferees do not intend to mandate the elimination of frequency coordination by way of field study engineering reports."

... and,

"I ask General Counsel for a Declaratory Ruling if the Federal Communications Commission exceeded its statutory authority of 97-PL-259 in failing to delegate frequency coordination to frequency coordination committees under 47CFR 90.175, FCC Rules and Regulations, and if the Federal Communications Commission exceeded its authority by failure to mandate these frequency coordination committees be most representative of the users of that service under 47 CFR 90.175"

15

The FCC received a petition for reconsideration of the Motion for Declaratory Ruling dated August 24, 1993/September 23/1993 and received a January 2, 1994 Application for Review of action taken pursuant to delegated authority. The FCC has in an unconscionable and totally sleazy manner ignored this citizens Application for Review.

Careful study of my Motions for a Declaratory Ruling and the enclosed legislative history clearly indicates the FCC made grossly false statements in their August 2, 1993 reply to my Motion for a Declaraty Ruling.

Since January 2, 1994, the FCC has denied me my right to participate in a federally protected activity in this matter and I do not take this lightly. In view of the questions against the FCC's integrity over this matter the FCC has a duty to fulfill the requirements of my original Motion for Declaratory Ruling through to this Application for Review in complete thus exposing what I feel I have shown as Federal Communication fraudulent representation of facts.


Merrill T. See

addendum:

1. March 12, 1993 Motion for Declaratory Ruling. Incorporated by reference as if fully set forth herein.
2. March 12, 1993 Motion for Declaratory Ruling. Incorporated by reference as if fully set forth herein.
3. May 13, 1993 Amendment to Motion for Declaratory Ruling. Incorporated by reference as if fully set forth herein.
4. See FCC August 2, 1993 reply to Motions for Declaratory Ruling and amendments. Incorporated by reference as if fully set forth herein.
5. August 24, 1993 and September 23, 1993 Petition for Reconsideration of Motion for Declaratory Ruling. Incorporated by reference as if fully set forth herein.

6. See FCC November 18, 1993 Memorandum Opinion and Order, adopted November 18, 1993, released November 30, 1993. Incorporated by reference as if fully set forth herein.

7. January 2, 1994 Application for Review of action taken pursuant to delegated authority with Page 1 of 9 pages incorporated by reference as if fully set forth herein.

8. August 10, 1987 Legal Opinion, Jeremiah Courtney, Law Offices of Bloonston and Mordkofsky, Washington, D.C. Incorporated by reference as if fully set forth herein.

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Definitions:

Oligopoly:

Economic condition where only a few companies sell substantially similar or standardized products. *U.S. v. E.I. DuPont DeNemours & Co.*, D.C. Del., 118 F. Supp.41, 49. Oligopoly markets often exhibit the lack of competition and low output of monopoly markets. *Harkins Amusement Enterprises, Inc. v General Cinema Corp.*, C.A.Ariz., 850 F2d 477, 490. See also Conscientious parallelism, Monopoly.

Conscientious parallelism:

Refers to the situation alleged to result in markets where there are few sellers and where, although lacking an express agreement, the sellers appear to establish their prices in "consciously parallel" fashion: also known as the interdependence theory" of oligopoly pricing. *Shapiro v. General Motors Corp.* DCMd., 472 F. Supp.636, 647

Merrill T. See Profile

Born Chicago, Illinois Feb. 1, 1928.

Relocated to Kalamazoo, 1936.

Age 17 enlisted in United States Army Air Force Jan 28, 1946.

Graduated Aircraft Radio Operator and Mechanic MOS 2756, Scott Field, Illinois, December 14, 1946.

Instructor: International Morse Code and Aircraft Radio Operating and Mechanic, Scott Field, Illinois. Taught American and Chinese Nationalist Air Force students art of Aircraft International Morse Code Radio Operating. December 14, 1946 - June 23, 1947.

19th Troop Carrier Squadron, Hickam Field Oahu, Territory of Hawaii, the "Southern Cross Airways": Aircraft Radio Operator. Hawaiian Islands, South, Southwest, Western Pacific, July 1947 through 1948 terminating at Bergstrom Field, Austin Texas, Jan 30, 1949.

Employed by Radio Corporation of America, (RCA) as Federal Communications Commission licensed field engineer, two way mobile radio communications and television field technician,

Other employments:

International Business Machines,
(IBM) Customer Service Technician.
Self employed 1956, to date: Private
Land Mobile two way radio communications Sales and service.

Other:

Arch top Jazz and Hawaiian Steel
guitarist. Kodokan certified Black
Belt Judo Judoka and instructor.
Speak, read and write Japanese lan-
guage.

Historic Research: The mysterious
disappearance of aviators Amelia
Earhart and Fred Noonan.

Jogger, Ballroom dance, retired mo-
torcyclist, own and maintain 275
tree apple orchard.

Extra Class Licensed Amateur Radio
Station operator, W8BGZ, since
1947. Graduate Kalamazoo Valley
Community College and Western
Michigan University.

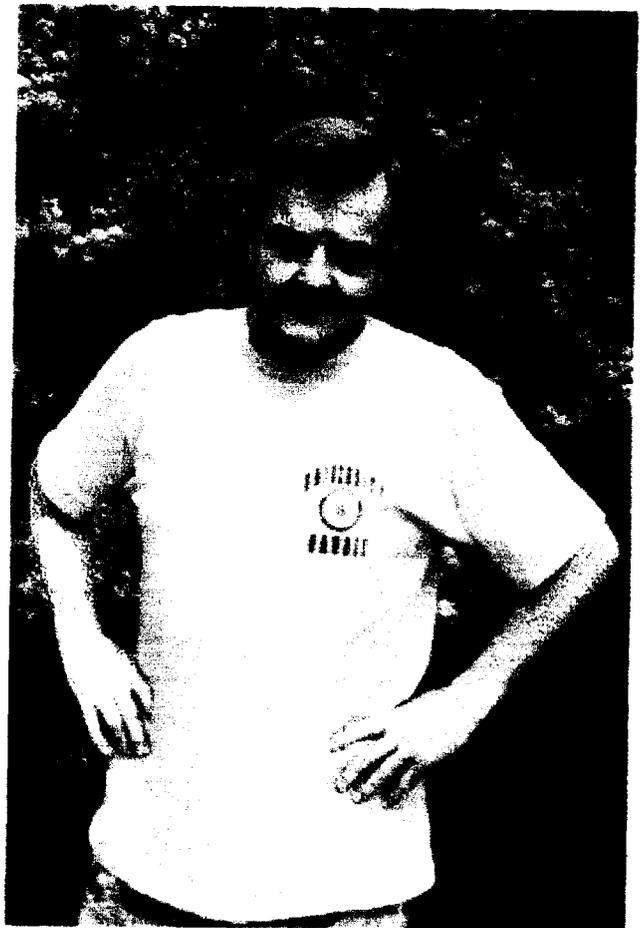


Photo June 1998