

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Replacement of Part 90 by Part 88 to)
Revise the Private Land Mobile Radio)
Services and Modify the Policies)
Governing Them)
)
Examination of Exclusivity and Frequency)
Assignment Policies of the Private Land)
Mobile Services)
)
To: The Commission

PR Docket No. 92-235

PETITION FOR CLARIFICATION AND/OR RECONSIDERATION

The law firm of Blooston, Mordkofsky, Jackson & Dickens ("BMJD"), on behalf of numerous private radio clients and pursuant to Section 1.429 of the Commission's Rules [47 C.F.R. § 1.429], hereby requests clarification and/or reconsideration of the *Second Memorandum Opinion and Order* ("*Second MO&O*") in PR Docket No. 92-235 (the "Refarming Docket"),¹ insofar as it modifies Section 90.267(a)(3) of the Commission's Rules. This rule permitted licensees operating on the former "UHF offset" frequencies to operate low power base or fixed transmitters as "mobiles" under the station license without requiring each fixed transmitter to be licensed individually. BMJD is concerned that the Commission's modification of Section 90.267(a)(3) may be interpreted to require its clients -- companies that operate extensive networks of low power transmitters, or that may need to shift the location of these facilities from time to time during the course of business -- to continually file modification applications just to provide the coordinates of all low power transmitters in their system. As described

¹ The *Second MO&O* was published in the *Federal Register* on July 6, 1999, at 64 Fed. Reg. 36258.

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below, these companies rely on the regulatory flexibility that the Commission has traditionally afforded to low power users. The elimination of Rule Section 90.267(a)(3), without clarification that incumbent licensees may continue their Commission-sanctioned practice of licensing an operating area rather than each individual transmitter, is not in the public interest and would impose unacceptable financial and administrative burdens on incumbent licensees and the FCC.

I. BACKGROUND

BMJD represents numerous businesses that utilize low power radio systems 24-hours a day for internal security purposes, for fire and emergency alarms to ensure the safety of workers and property, and to monitor the operation of industrial machinery, and otherwise to facilitate the smooth operation of their businesses. These licensees include companies such as 3M Corporation (“3M”) and Caterpillar, Inc. (“Caterpillar”), whose industrial and manufacturing operations depend on low power radio systems and the licensing flexibility afforded by the Commission’s Rules.

II. THE PUBLIC INTEREST IS NOT SERVED BY REQUIRING THE LICENSING OF EVERY LOW POWER TRANSMITTER

Paragraph 36 of the *Second MO&O* is not entirely clear in its wording. The final sentence of this paragraph states that “to reduce the potential for harmful interference and provide for more accuracy in the frequency coordination process, the Commission removes the requirement in 47 C.F.R. Sec. 90.267 that all stations on designated low power channels be licensed as mobile.”² BMJD seeks clarification of this language, because if it is intended to require the licensing of each and every fixed low power

² Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Memorandum Opinion and Order*, FCC 99-68 (rel. April 13, 1999).

transmitter, such ruling would be wholly inappropriate for licensees that operate many low power transmitters within a defined radius, or those with ever-shifting radio operations.

Rather than requiring each fixed low power transmitter to be licensed individually, the FCC has given licensees the flexibility to provide the coordinates for the center of an operating area and the radius around these coordinates in which transmitters will operate. This policy was affirmed in an earlier *Memorandum Opinion and Order* in the Refarming Docket.³ Therein, the Commission correctly observed that “situations exist where it is neither feasible nor desirable for a licensee to furnish coordinates of all transmitters in their system.”⁴ The low power radio networks of corporations such as 3M, and Caterpillar present the Commission with just such a situation. 3M and Caterpillar have sophisticated manufacturing operations that are centered around a particular city (e.g., St. Paul, Minnesota or Peoria, Illinois), but may be scattered between dozens of manufacturing plants and warehouse facilities. These companies use low power radios for alarm monitoring purposes, as well as for equipment command and control functions. Like an alarm companies, these businesses may have hundreds of low power transmitters scattered throughout a localized area. By permitting these transmitters to be licensed as mobiles, the Commission’s rules provide these businesses with the flexibility to expand or shrink their operations freely, in response to business needs.

Many businesses would be required to file hundreds, if not thousands of modification applications to keep the Commission informed of their day-to-day operational changes. This fact -- which formed the basis for the Commission’s earlier

clarification – was not apparently considered when the Commission modified Rule Section 90.267(a)(3). Instead, the Commission simply announced the change as if it were not aware of its own findings that individual licensing of low power transmitters was neither feasible nor desirable in some instances.

Upon review of the *Second MO&O*, it is clear that the Commission could not have intended to depart from its mobile licensing policy for incumbent licensees. The *Second MO&O* contains no discussion of the extent of such operations on low power channels, and the significant impact such a rule change may have on incumbent licensees. The modification was designed to “remove the requirement” that stations be licensed as mobiles.⁵ Thus, one could interpret that the Commission really intended to *simplify* the regulation of low-power licensees, and not to make its rules vastly more burdensome. Under this reading, licensees with large or continually shifting low power operations could continue to license fixed transmitters as mobiles *by choice*. Such an interpretation would be reasonable under the circumstances, given the great financial and administrative burden that a poorly reasoned rule change would wreak on incumbent operators. The filing of many thousands of modification applications annually to account for new or changed operations would also place an unacceptable burden on the Commission’s limited resources.

³ Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them. *Memorandum Opinion and Order*, FCC 96-492 (rel. Dec. 30, 1996) at ¶ 69.

⁴ *Id.*

⁵ *Id.*

III. THE COMMISSION SHOULD RESTORE THE ABILITY OF BUSINESSES TO LICENSE THEIR LOW POWER OPERATIONS AS MOBILES, OR CLARIFY THAT EXISTING OPERATIONS ARE GRANDFATHERED

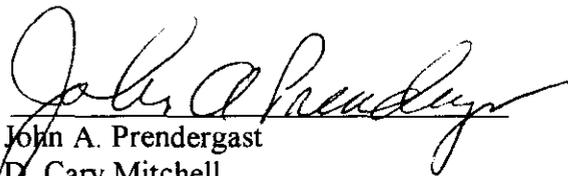
As described above, the Commission did not adequately consider its decision to eliminate mobile licensing for low power fixed transmitters. The modification of the rule was announced as a single sentence in a reconsideration order addressing frequency coordination matters, rather than considered thoughtfully in the context of a rule making. Thus, the very businesses that would be most profoundly affected by such a change did not have adequate notice that a rule they have come to rely upon might be eliminated. If the Commission is determined to move forward and require licensees to furnish coordinates of all transmitters in their systems, it should seek industry comment on this significant rule change as part of the Refarming Docket and make its decision on the basis of a complete record. If a mechanism whereby certain licensees may continue to license their low power transmitters as mobiles is not restored, the Commission should, at the very least, clarify that the operations of existing licensees are grandfathered.

IV. CONCLUSION

Nothing in the *Second MO&O* leads BMJD to believe that the Commission intended to require licensees to furnish the coordinates of every low power transmitter in their system in all circumstances. As the Commission has previously recognized, there are circumstances where doing so would impose financial and administrative burdens that would vastly outweigh any marginal benefit to be gained. Therefore, BMJD respectfully requests that the Commission should clarify and/or reconsider the *Second MO&O*, insofar as it modifies Section 90.267(a)(3) of the Commission's Rules and can be interpreted to require incumbent licensees to provide coordinates of all low power transmitters in their system.

Respectfully Submitted

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