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VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Los Angeles County Sheriff's Department***
Petition for Reconsideration of the Second Report and Order and
Further Notice of Proposed Rulemaking in WT Docket No. 00-32

Dear Ms. Dortch:

The Los Angeles County Sheriff's Department ("LASD"), by its undersigned counsel, hereby files the attached Petition for Reconsideration of the above-referenced Report and Order, released on February 27, 2002, *In the Matter of The 4.9 GHz Band Transferred from Federal Government Use*.

Please date-stamp the enclosed extra copy and return it to us in the attached self-addressed, stamped envelope. Should you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/ Todd D. Rosenberg

Todd D. Rosenberg
for O'MELVENY & MYERS LLP

Counsel to the Los Angeles County Sheriff's Department

cc: Lt. Gerald Cooper

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

In the Matter of	)	
	)	
The 4.9 GHz Band Transferred from Federal Government Use	)	WT Docket No. 00-32
	)	

PETITION FOR RECONSIDERATION

The Los Angeles County Sheriff's Department ("LASD"), by its undersigned counsel, hereby files this Petition for Reconsideration of the Federal Communications Commission's (the "Commission") Second Report and Order and Further Notice of Proposed Rulemaking released on February 27, 2002 in the above captioned proceeding (the "Second R&O").[1] For the reasons discussed herein, LASD seeks reconsideration of the Commission's decision to institute a complete ban on aeronautical mobile services in the 4.9 GHz band.

I. Summary

In the Second R&O, the Commission designated 50 megahertz of spectrum in the 4940-4990 MHz band (4.9 GHz band) for use by public safety organizations providing fixed and mobile services. The stated purpose of this allocation was to provide public safety users "with additional spectrum to support new broadband applications . . . for [, among other purposes,] incident scene management."[2] However, the Second R&O severely limits public safety organizations' use of this spectrum to facilitate incident scene management by prohibiting aeronautical mobile services. Specifically, this prohibition will prevent public safety organizations, such as LASD, from using the spectrum for helicopter video downlink even though the Second R&O recognized the potential use of the 4.9 GHz band for "real time video and imagery from surveillance helicopters and other communications from aircraft to ground command centers."[3] LASD and other public safety organizations use video downlink from helicopters to monitor motor vehicle pursuits, accident scenes, special events and fires, as well as to coordinate crowd control and tactical containment situations. Spectrum availability, however, has hampered LASD's efforts to make maximum use of this technology as public safety organizations are forced to compete with broadcasters for suitable spectrum. The 4.9 GHz band represents a key opportunity for expanded availability of spectrum needed by public safety

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1 *In the Matter of the 4.9 GHz Band Transferred from Federal Government Use*, WT Docket No. 00-32, Second Report and Order and Further Notice of Proposed Rulemaking (*Second R&O*) (rel. Feb. 27, 2002) 17 FCC Rcd 3955.

2 *See id.* at ¶ 1.

3 *See* id. at ¶ 9.

organizations to provide these services. The prohibition put in place by the Second R&O, however, would cause this opportunity to be wasted.

As a result, LASD asserts that the Commission's decision to institute a ban on aeronautical mobile services does not represent an appropriate approach to the obligation to protect radio astronomy services.[4] Rather, the Commission, without data to support its decision, created a sweeping prohibition that defies the goals it attempts to serve by reallocating the 4.9 GHz band for public safety. In the name of protecting a limited number of radio astronomy observatories, the complete ban on aeronautical mobile services represents an overly broad, ill-conceived solution to a problem that the record does not indicate even exists. Therefore, a complete ban is arbitrary and capricious on its face and must be reconsidered and altered.

II. Background

LASD with a force of 16,000 provides essential public safety services, and is charged with the protection of the lives and property of the over 9.5 million citizens of Los Angeles County, California ("LA County"). LA County is the nation's largest county, and likewise, LASD is the nation's largest sheriff's department. In furtherance of its responsibilities, LASD works diligently with other federal, state and local agencies to incorporate advanced technologies for use in public safety activities. Since 1999, LASD has used helicopter video downlink as an essential tool in performing its public safety mission and LASD is committed to increased use of this technology in the future. Moreover, other public safety agencies in the area, including the Los Angeles Police Department, the Pasadena Police Department, the Long Beach Police Department and the Orange County Sheriff's Department use helicopter video downlink. Additionally, several other municipalities in LA County are contemplating using helicopter video downlink in the near future. As demonstrated by the *ex parte* filings cited in the Second R&O, LASD is not alone in the use of this technology which has applications for other localities across the United States. Thus, LASD has a significant interest in having the Commission revisit the issue of the complete ban on aeronautical mobile use of the 4.9 GHz band.

III. Argument

A. No Data Has Been Presented to Demonstrate Current Interference Problems

The complete ban on aeronautical mobile use of the 4.9 GHz band should be reconsidered and reversed because the Commission's conclusion is not supported by the record of the rulemaking proceeding.

Although the Commission cites *ex parte* filings by several public safety organizations and a leading telecommunications equipment manufacturer as supporting "the importance of real time video and imagery from surveillance helicopters and other communications from air to ground command centers," the Commission also states that these parties "did not demonstrate that aeronautical mobile operations could operate while protecting radio astronomy," and

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[4] *See id.* at ¶ 3 (citing the preservation of radio astronomy as a condition to the transfer of the 4.9 GHz band to non-governmental use).

instituted the complete ban on aeronautical mobile use in the 4.9 GHz band.[5] Thus, the Commission placed the onus on public safety organizations to demonstrate that a complete ban on aeronautical mobile use of the 4.9 GHz band is inappropriate. LASD recognizes that the Commission's approach may have been appropriate in a context where the record supported the need for a complete ban. As the Second R&O demonstrates, however, the record is utterly devoid of support for this proposition. Thus, the Commission failed to articulate an adequate basis for the complete ban.

In support of the complete ban, the Commission cites comments filed by the National Academy of Sciences' Committee on Radio Frequencies ("CORF") as standing for the proposition that aeronautical mobile use "*would* be destructive to scientific observations."[6] In fact, CORF's comments merely state that "[s]uch aeronautical use *could* be destructive to scientific observations."[7] Additionally, CORF's comments do not even begin to analyze the question of what types of aeronautical mobile use of the 4.9 GHz band would cause problematic interference. As discussed below, there are a number of possibilities short of a complete ban that may appropriately address the concerns of radio astronomers. Aside from CORF's comments, the Commission's only other articulated rationale for the complete ban is that it is being instituted in response to the Department of Commerce's "request" that the Commission protect radio astronomy operations.[8] Standing alone, however, the need to respond to the Department of Commerce's concerns does not evidence the need for a complete ban. Therefore, the Second R&O demonstrates that the Commission's decision was not based upon the record of the rulemaking proceeding, and should be revisited.[9]

B. The Commission's Conclusions Are Not Tailored to Meet its Objectives

Confucius is attributed as warning, "not to use a cannon to kill a mosquito." Despite this admonition, as discussed above, the Commission's Second R&O does just that by instituting a nationwide ban on the use of the 4.9 GHz band for aeronautical mobile purposes without examining the possibility that more limited steps could accomplish the same result in a far more efficient manner.

The fact is that there are only a handful of radio astronomy observatories that may be affected by the use of the 4.9 GHz band for aeronautical mobile services.[10] Rather than dealing with this limited number of sites and analyzing the particular characteristics of their operations, the Commission ignored the potential for the type of more limited solutions that are commonly

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5 *See id.*

6 *See id* (emphasis added).

7 *See* Comments of the National Research Council's Committee on Radio Frequencies (April 26, 2000) at 3 (emphasis added).

8 *See Second R&O* at ¶8.

9 *See Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983) (finding that an agency must cogently explain why it has exercised its discretion in a given manner or else risk that its decision be rendered arbitrary and capricious); *see also International Ladies' Garment Workers' Union v. Donovan*, 722 F.2d 795 (D.C. Cir. 1983) (finding agency actions cannot be sustained where the agency has failed to consider significant alternatives).

10 *See* Table of Frequency Allocations, 47 C.F.R. §2.106, footnote US311 (as revised by the Second R&O).

used to remedy interference concerns. The arbitrary and capricious nature of the Commission's conclusion is demonstrated by the Commission's failure to consider such alternatives. Among the options that the Commission failed to address are geographic limitations, limitations on the altitudes from which aeronautical mobile signals could be transmitted, limitations on the duration of aeronautical mobile transmissions, the use of directional antennae and other interference-limiting technologies, spectrum sharing arrangements, frequency coordination and waiver provisions. The failure to address these options – indeed the apparent failure to consider any option other than a complete ban – demonstrates the flaws in the Commission's processes. LASD believes that appropriate, more limited solutions could be found that would avoid the need for a complete ban on aeronautical mobile use of the reallocated spectrum while protecting the interests of radio astronomers.

Even if the Commission were to ultimately decide that engineering data demonstrated that a complete prohibition of airborne mobile public safety use of the 4.9 GHz band was necessary to protect radio astronomers from interference, LASD notes, as did the Commission in the Second R&O, that the 4940-4950 MHz portion of the band is not used for radio astronomy.[11] Consequently, there is no a articulated need for the prohibition of airborne mobile operations in this segment of the 4.9 GHz band which available evidence demonstrates could support one and perhaps two digital video links. At a minimum, this would be preferable to the complete ban. Additionally, LASD supports the position being taken in other filings which seek clarification that the 4.9 GHz band can be used for aeronautical mobile uses under Part 90 of the Commission's rules.[12]

C. The Complete Ban Does Not Serve the Public Interest

Finally, we urge the Commission to take into account the public interest considerations associated with public safety use of aeronautical mobile services. The allocation of the 4.9 GHz spectrum will enhance the capabilities of many organizations committed to public health, safety and crime prevention. However, the public interest demands that the Commission not handicap these organizations with overbroad regulations at the same time as it grants the capability to use this spectrum. It is abundantly clear in these post-September 11 times that the Commission must adopt flexible rules which appropriately balance the needs of public safety organizations vis-à-vis the needs of other sectors. The complete ban on aeronautical mobile use of the 4.9 GHz band represents a failure to appropriately balance these concerns to serve the public interest.

IV. Relief Sought

LASD asks the Commission to rescind its blanket prohibition of the use of aeronautical mobile services in the 4.9 GHz band, and to adopt regulations which either (i) appropriately limit the use of the 4.9 GHz band for mobile services in the least restrictive manner necessary to support radio astronomy uses or (ii) create a methodology to examine interference issues on a case-by-case basis in order to permit the authorization of aeronautical mobile uses which do not

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11 *See* Second R&O at ¶9, n.44.

12 *See Petition for Reconsideration or Clarification of Microwave Radio Communications* (May 8, 2002).

cause problematic interference for radio astronomy observatories. As discussed above, considering the importance of aeronautical mobile uses, the relatively small number of radio astronomy observatories, and the lack of record support in this proceeding, a complete ban is an overly broad and arbitrary and capricious restriction which must be reconsidered and revised.

Respectfully submitted,

/s/ Todd D. Rosenberg

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