

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

in the Matter of)	
)	
An amendment of Part 95 of the)	
Commission's Rules to Establish)	WT Docket No. _____
a Very Short Distance Two-Way)	
Voice Radio Service)	
)	

STATEMENT IN SUPPORT OF PETITION FOR RULEMAKING

Small Business in Telecommunications ("SBT"), by its counsel, and pursuant to Section 1.405 of the Commission's Rules, respectfully submits this statement supporting the Petition for Rulemaking ("Petition") filed by the Industrial Telecommunications Association ("ITA") on August 22, 2002. In its Petition, ITA seeks to prohibit daily business communications on Family Radio Services ("FRS") frequencies. SBT strongly shares ITA's sentiment and puts forth the following in support thereof:

1. SBT is a non-profit association dedicated to representing the interests of small businesses in the telecommunications industry and the public interest in general. Therefore, SBT is an interested party in circumstances, as here, where the goals of the Commission's rules and regulations are lawfully circumvented to the detriment of the public.

2. The Commission established FRS to provide a niche, short-distance personal communications service to the general public when engaged in family, recreational or leisure

4 C.F.R. § 1.405.

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DATE: _____

activities. Nothing in the Commission's *Notice of Proposed Rulemaking*³ or *Report and Order*⁴ mentioned the use of FRS frequencies by businesses in their daily communications.

Commenting parties warned the Commission that such unintended use was likely to result,⁵ but the Commission did not address this outcome in drafting the FRS rules.

The use of FRS devices by business operators makes economic sense. There are many radio services (licensed and unlicensed) available to businesses, however, the use of FRS frequencies provides businesses with a cheap means of conducting short-distance communications for daily business activities. A one-time purchase of low-cost handsets allow businesses to avoid, *inter alia*, the costs and rigors of licensing, the ongoing cost of receiving service from another party, and the costs of expensive handheld units. Since the FRS rules do not specifically prevent business use, it is understandable why a business would employ FRS devices. However, business communications' increasing and constant use of FRS spectrum is

“Our goal in proposing to establish the FRS was to provide families, friends and associates the capability to communicate with one another over a very short range, typically a few city blocks. We envisioned the FRS as facilitating activities around the home, throughout the neighborhood, at group outings and at activities where group members become separated, either planned or inadvertently. The FRS also would be useful to hunters, campers, hikers, bicyclists and other outdoor activity enthusiasts who need to communicate with other members of their party who are out of speaking range or sight but still in the same general area.” *See, In the Matter of Amendment of Part 95 of the Commission's Rules to Establish a very Short Distance Two-Way Voice Radio Service*, WT Docket No. 95-102, 11 FCC Rcd. 12977 at ¶ 3 (1996).

In the Matter of Amendment of Part 95 of the Commission's Rules to Establish a very Short Distance Two-Way Voice Radio Service, (Notice of Proposed Rulemaking) WT Docket No. 95-102, 10 FCC Rcd. 8235 (1995).

In the Matter of Amendment of Part 95 of the Commission's Rules to Establish a very Short Distance Two-Way Voice Radio Service, (Report and Order) WT Docket No. 95-102, 11 FCC Rcd. 12977 (1996).

Id. at ¶ 15; citing, *Comments of PRSG* at 10.

impeding the intended use of FRS for other purposes (i.e., family, recreation, or leisure activities)

4 That FRS is currently employed for purposes other than those for which it was intended warrants an amendment of the FRS rules. In its Petition, ITA requests an amendment of Section 95.401(b) of the Commission's Rules.⁶ Although SBT strongly supports the ideas and concerns expressed in the Petition, SBT believes that amendment of Section 95.401(b) is not the best means for effectively addressing ITA and SBT's shared concerns. Respectfully, Section 95.401(b) is not the controlling rule section with regard to FRS operations and only serves the purpose of including FRS in the category of Citizen Band Radio Services. While Section 95.401(b) effectively defines FRS, it refers back to Subpart B of Part 95 for the rules governing FRS, including eligible use. Therefore, SBT suggests that Subpart B of Section 95 is the appropriate subpart to be amended, and more specifically, the amendment of Sections 95.191, 95.193, and 95.194.

5 Accordingly, SBT suggests that the FRS rules (Part 95, Subpart B) be amended to read as follows:

§ 95.191 (FRS Rule 1) Eligibility and responsibility

- (a) Unless you are a representative of a foreign government, **a business entity (e.g., corporation, limited liability company, partnership, limited partnership, etc.) or an individual using FRS to conduct business related communications**, you are authorized by this rule to operate a FCC certified FRS unit in accordance with the rules in this subpart. No license will be issued.
- (b) [no changes]

⁶ 47 C.F.R. § 95.401(b).

§ 95.193 (FRS Rule 3) Types of communications

- (a) [no changes]
- (b) [no changes]
- (c) [no changes]
- (d) [no changes]
- (e) [no changes]
- (f) **The operation of equipment under this Subpart B shall be limited to communications associated with household, recreational and/or leisure activities. The use of FRS frequencies for communications associated with business activities is prohibited.**

§ 95.194 (FRS Rule 4) FRS Units

- (a) [no changes]
- (b) [no changes]
- (c) [no changes]
- (d) **All manufacturers of FRS units shall provide with each unit material that informs the user that radio communications conducted with FRS units shall not be used in association with business activities.**

6 SBF avers that the foregoing proposed rule amendments adequately promote the Commission's original goals in establishing FRS. Business uses were not contemplated nor addressed in the Commission's prior FRS rulemaking proceedings, however, a plain reading of those proceedings makes it abundantly clear that FRS was not created to make business related communications cheaper. The Commission rightfully recognized a market niche in need of low-cost short distance communications (i.e., family and recreational uses), but that niche has now

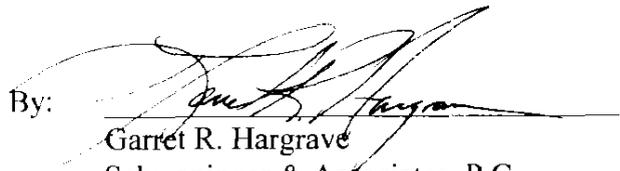
improperly expanded to encompass an overwhelming number of unintended users. The current FRS rules are ambiguous and do not strictly define the intended (and limited) uses of FRS units. That ambiguity must be resolved. SBT asserts that adoption of the above proposed rule amendments will provide that needed resolution.

The foregoing considered, SBT fully supports those concerns expressed in ITA's Petition and joins ITA to respectfully request that the Commission initiate a *Notice of Proposed Rulemaking* to amend the FRS rules (Part 95, Subpart B) so as to restrict the use of daily business communications on FRS frequencies; and to effect such an amendment by adopting the rule amendments proposed herein.

Respectfully submitted,

Small Business In Telecommunications

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing document were served by First Class U.S. Mail upon the below listed parties on this 8th day of October, 2002.

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