

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

In the Matter of)
)
“Changes Requested in Retail Point of) RM-10641
Sales of All over the counter 2 way voice)
or data equipment.”)
)
“Proposed Requirements for Ownership)
and License Tagging for:)
Part’s 5 - 15 - 18 - 74 - 80 - 90 - 95 – 97:”)
)
)
To: The Commission)

Via the ECFS

OPPOSITION TO PETITION(S) FOR RULEMAKING

Agere Systems (“Agere”) hereby offers its Opposition to the Petition(s) for Rulemaking in the above-captioned Proceeding that was (were) filed on or about November 26, 2002 by Mr. Dale E. Reich (the “Reich Petition(s)”).

As a major manufacturer of devices, and components for devices that operate under Part 15 of the Commission’s rules, as well as components for other types of wireless communications equipment, Agere is an interested party in this proceeding.

While unable to locate the publication of a Public Notice in the Federal Register, we are given to understand that the deadline for filing oppositions to the Reich Petition(s) is February 28, 2003. Therefore we believe Agere’s Opposition to the Reich Petition(s) to be timely filed.

INTRODUCTION

1. It appears from the document(s) posted to the Commission's Electronic Comment Filing System that Mr. Dale E. Reich filed two separate documents, each characterized as a "*Petition for Rule Change*," which were received by the Commission on November 28, 2002, and that the Commission has elected to combine them into a single Proceeding as RM-10641.
2. Agere believes that both Petitions are totally without merit, would impose unnecessary and unwarranted burdens on both the Commission and the retailers and manufacturers of the types of communications equipment elaborated in the Petitions, would represent an unwarranted invasion of the privacy of the purchasers of such equipment for no legitimate regulatory purpose, and that both Petitions fly in the face of Federal preemption of local regulation of radio communications devices, which the Commission reserves to itself the right to regulate.

THE FIRST REICH PETITION

3. The first of the Reich Petition(s) entitled "*Changes Requested In Retail Point of Sale of All over the counter 2 way voice or data equipment*." (sic) seeks to have the Commission impose a requirement on retailers to obtain and maintain records, for a minimum of three years, of a broad range of personal (and additional, unspecified) information, with the apparent idea that this information would somehow be of value to the Commission and "Law Enforcement Officials."
4. The gathering and maintenance of such records, as proposed in the Petition, would impose unnecessary and unwarranted burdens on both the Commission and the retailers and manufacturers of the types of communications equipment elaborated in the Petition.
5. The Petition further suggests that "*Any Retail Vendor may request the local police to look into if he has a suspicious overview that the use of the radios may not be compliance with Federal or Local Law's*." (sic)

6. Despite the poor grammatical construction of the quoted sentence from the Petition in (5) above, its obvious proposal to establish retailers and local police departments as some sort of “watchdogs” over the purchasers of such equipment is clearly inappropriate.
7. First, it represents an unwarranted invasion of the privacy of the purchasers of such equipment.
8. Second, in light of the fact of Federal preemption of state and local regulation of such radio communications devices, local police agencies have no authority or jurisdiction in such matters.
9. Finally, there is no coherent elaboration in the Petition of any problem, either actual or perceived, that the remedies sought in the Petitions might be seen to purport to address.

THE SECOND REICH PETITION

10. The second of the Reich Petition(s) entitled “*Changes Requested in Mobile & Portable Ownership & License Tagging for: Part’s 5 – 15 – 18 – 74 – 80 – 90 – 95 – 97:*” (sic) requests the establishment of “*Ownership Tagging*” for a wide variety of equipment used under a number of services, both licensed and unlicensed, that are regulated by the above-listed Parts of the Commission’s rules.
11. Again, there is no coherent elaboration in the Petition of any problem, either actual or perceived, that the remedies sought in the Petitions might be seen to purport to address.
12. The proposed “tagging” requirements, while vague and unclear as to what is actually being proposed, nevertheless are clearly intended to go well beyond the Commission’s equipment labeling requirements under its current rules, and would impose unnecessary and unwarranted burdens on both the Commission and the retailers and manufacturers of the types of

communications equipment elaborated in the Petition, as well as representing an unwarranted invasion of the privacy of the purchasers of such equipment for no legitimate purpose.

13. Furthermore, the quotes from the Petition “... *and the object is to give the law enforcement in the field a tool when having chats with fellows in the field to the effect ‘Hey-Bud you got a License’ for that radio*” (sic) and “*The ownership tagging with the minimum information would also be a aid to inquiries by local law.*” (sic) cannot help but lead to the irrefutable conclusion that what is being sought by the Petitioner is contrary to Federal preemption of local regulation and indicates an apparent intent on the Petitioner’s part to somehow extend jurisdiction and authority over such devices ... that they do not and should not have ... to local law enforcement agencies.

SUMMARY AND CONCLUSION

14. Agere again reiterates its strong opposition to both of the Reich Petitions as well as its belief that they, individually and collectively, are totally without merit.

15. For these, and the other reasons elaborated above, we respectfully request that the Commission expeditiously DENY and DISMISS both of the subject Petitions in this Proceeding without further consideration or action.

Respectfully submitted,

/s/

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