

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

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| In the Matter of |) | |
| |) | |
| Amendment of the Commission's Rules to |) | RM-10641 |
| Require Retail Vendors of Certain Radio |) | |
| Equipment to Retain Sales Data |) | |
| |) | |
| Amendment of Part's 5, 15, 18, 74, 80, 90, 95 and |) | |
| 97 of the Commission's Rules to Require |) | |
| Ownership and License Tagging of Certain Mobile |) | |
| and Portable Units |) | |

ORDER

Adopted: August 26, 2003

Released: August 27, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau

1 *Introduction* On November 26, 2002, Dale E. Reich (Reich) filed the captioned Petitions for Rule Makings (Petitions) to amend the Commission's Rules as described in the caption.¹ For the reasons set forth below, we deny the Petitions.

2 *Background* The Retail Petition seeks amendment of the Commission's Rules to require retailers of over-the-counter two-way radio equipment, including unlicensed devices, to retain for at least three years a written record of each purchaser's name, address, telephone number, and signature, and any other information the Commission may require.² Under Reich's proposal, CMRS providers and other future wireless providers would be exempt from this requirement.³ The Tagging Petition seeks to amend the Commission's Rules to require radios authorized under Parts 5, 15, 18, 74, 80, 90, 95, and 97 of the Rules⁴ that are "used off the licensee home site area" to be labeled with the owner's name and address, an indication of whether a license is required, and any FCC call sign or file number.⁵ On January 29, 2003, the Commission invited comment on the captioned Petitions.⁶ In response, we received one comment that supported the Petitions and forty-five comments that opposed the Petitions.

3 *Discussion* After consideration of the record, we do not believe that the requested revisions to the rules are necessary. We agree with the multitude of commenters that the rule changes proposed in the captioned Petitions would be extremely burdensome and costly with little or no

¹ See Petition for Rule Making, Changes Requested in Retail Point of Sales of All Over the Counter Two Way Voice or Data Equipment, filed by Dale E. Reich on November 26, 2002 (Retail Petition), Petition for Rule Making, Changes Requested in Mobile and Portable Ownership and License Tagging for Part's 5, 15, 18, 74, 80, 90, 95, 97, filed by Dale E. Reich on November 26, 2002 (Tagging Petition).

² See Retail Sales Records Petition (single page).

³ See *id.*

⁴ See 47 C.F.R. §§ 5, 15, 18, 74, 80, 90, 95, 97 (2002).

⁵ See Tagging Petition (single page).

⁶ See Petitions for Rulemaking Filed, Public Notice, Report No. 2591 (CGAB rel. Jan. 29, 2003) (both Petitions were referenced under File No. RM-10641).

demonstrated benefits.⁷ Regarding the Retail Petition, commenters note that requiring individualized labeling and retailer record-keeping would appear to extend to omnipresent consumer devices such as cordless phones, wireless speakers, garage door openers, baby monitors, remote control cars, microwave ovens, ultrasonic jewelry cleaners, and other devices that use radio waves for purposes other than communications.⁸ Commenters also note that the record-keeping burden on retailers would be “utterly unmanageable – hundreds of millions of records each year, presumably in retrievable form.”⁹ As REC Networks argues, the rules proposed in the Retail Petition would be unduly burdensome as the collection of such information would require additional storage and require additional employees to collect, maintain and retrieve the information.¹⁰ Regarding the Tagging Petition, REC Networks points out that the proposal is unworkable given that multiple users may have individual operating licenses to share radio equipment.¹¹ We agree, for example, amateur radio equipment can be shared by various family members who have individual licenses.¹² Moreover, the Tagging Petition proposes to require Part 15 devices, including Wi-Fi networking devices and other consumer devices,¹³ to be tagged if “used off the licensee home site area.”¹⁴ The Tagging Petition does not, however, address how such a requirement would be enforced.

4 Given the concerns regarding the burden and cost of the proposals, we agree with the commenters that neither the Retail Petition nor the Tagging Petition provides “any coherent elaboration of any problem, either actual or perceived, that the remedies sought in the Petitions might be seen to purport to address.”¹⁵ We also agree with the Joint Commenters who note that, except for some vague references to law enforcement, neither Petition states what the proposed rules are supposed to accomplish.¹⁶ In this respect, we note that no law enforcement agency filed comments in support of Reich’s Tagging Petition,¹⁷ rather, the one commenter supporting the Petitions bases this view on the unsubstantiated statement that “[i]t is common knowledge that Amateur Radio equipment is being utilized by person(s) without the required FCC license.”¹⁸

5 *Conclusion and Ordering Clauses* In light of the foregoing, we conclude that neither of the captioned Petitions demonstrates that any changes to the Commission’s Rules are needed at this time.

⁷ See e.g. CompUSA Inc., Intersil Corporation, Symbol Technologies, Inc., Vanu, Inc., XtremeSpectrum, Inc. (Joint Commenters) Opposition at 1-4, IEEE Regulatory Technical Advisory Group Opposition at 1-3, Agere Systems Opposition at 1-4, F.E. Brody Opposition at 4 – 6, Nikolaus E. Legget Opposition at 1-3, Information Technology Industry Council at 1 -2, Richard Miller Opposition (single page).

⁸ See Joint Commenters Opposition at 3-5.

⁹ See *id.* at 3, see also REC Networks Opposition at 2-3.

¹⁰ See REC Networks Opposition at 1-3.

¹¹ *Id.*

¹² See, e.g. *id.*

¹³ *Id.*

¹⁴ Tagging Petition at 1.

¹⁵ IEEE Regulatory Technical Advisory Group Opposition at 2, Agere Systems Opposition at 3.

¹⁶ Joint Commenters Opposition at 4.

¹⁷ The Petitions “assume a problem exists, but neither demonstrates that a problem exists nor does it demonstrate how the recommended actions would correct the problem.” John P. Reigel III Opposition (single page). See also Stuart Mulane Comments (single page) (stating that the proposals are “nonsense”).

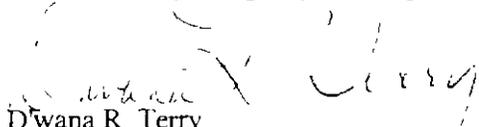
¹⁸ See Murray Green Comment in Support (single page).

Based on the record before us, we find the proposals unduly burdensome with no demonstrated public benefit. Consequently, we deny the captioned Petitions.

6 ACCORDINGLY, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.401(c)¹⁹ and (e) of the Commission's Rules, 47 C.F.R. §§ 1.401(c) and (e), the Petitions for Rule Making filed by Dale E. Reich on November 26, 2002, ARE DENIED.

7 This action is taken pursuant to delegated authority granted under the provisions of Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a) and 0.331.

FEDERAL COMMUNICATIONS COMMISSION



D'wana R. Terry

Chief, Public Safety and Private Wireless Division
Wireless Telecommunication Bureau

¹⁹ We note that both of Reich's Petitions are defective because they fail to "set forth the text or substance of the proposed rule, amendment, or rule to be repealed, together with all the facts, views, arguments and data deemed to support the action requested, [nor did the Petitions] indicate how the interests of the petitioner will be affected." See 47 C.F.R. § 1.401(c).