

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

In the Matter of:)
)
ReconRobotics, Inc.,)
) **WP Docket No. 08-63**
)
Request for Waiver of Part 90 of the)
Commission's Rules for a Video and Audio)
Surveillance System at 430-450 MHz.)

To the Commission:

**SUGGESTIONS IN SUPPORT OF
MOTION TO SET ASIDE, VACATE, OR CORRECT ORDER BY
CANCELLATION OF THE WAIVER ORDER, CONSTRUING THE APPLICATION
THEREFOR AS A PETITION FOR RULEMAKING, AND REINSTATING PROCEEDINGS
AS A NOTICE OF PROPOSED RULEMAKING CONSISTENT WITH 5 U.S.C. SECTION 553**

COMES NOW movant, JAMES EDWIN WHEDBEE, suggesting the following in support of his motion to set aside:

[1] In its Opposition, ReconRobotics alleges the Commission must construe the undersigned movant's Motion to Set Aside as an untimely filed Petition for Reconsideration. This was a bare, unfounded assertion, particularly given the nature of a Motion to Set Aside, as exemplified as follows: *“A party may obtain through full vacation of the [prior] judgement or by partial vacation or modification of that Judgement **In re Whitman 690 N.E.2d 535 Civ.R. 60(b)** is remedial and should be liberally construed so the ends of justice may be served **Kay v. Marc Glassman Inc., (1996), 76 Ohio St.3d 18, 665 N.E.2d 1102. As cited in Banfield v. Brodell 2006 Ohio 5267.**”* In other words, a Motion to Set Aside is intended to prevent an injustice that otherwise might occur but for the motion.

That the Commission may contemplate a Motion to Set Aside independent of a Petition for Reconsideration is the consistent established practice and policy of the Commission in the following instances: *“In the matter of EMR Consulting, Inc.”* DA-07-1068, Order; *“In the matter of Samuel*

Moses, et al.,” DA-06-1983, Order at 3; “*In the matter of Leonard D. Martin*,” DA-00-1551, Forfeiture Order reducing NAL; Statute at 47 USC 4(i), 154, and 402 purposefully describes setting aside Commission orders; and, in an analogous situation: “*In the Matter of Stratos Mobile Networks (USA), LLC and Marine Satellite Services, Inc., Petition for Waiver of Section 20.15(d) of the Commission's Rules*,” DA-00-82, Order.

Finally, the ends contemplated by the movant's Motion to Set Aside are distinct and separate from those in a Petition for Reconsideration, however similar the reasons and bases for both may be. In the latter case, one requests the Commission to rethink its previous decision and modify it; movant has no such intention at all. In the case of a Motion to Set Aside, the movant intends to eradicate the Commission's 'waiver' Order and moot the Petitions for Reconsideration by restyling the proceedings as they originally ought to have been construed: as a Petition for Rulemaking. Accordingly, the foregoing considered, Motions to Set Aside independent of Petitions for Reconsideration are allowed and not prohibited, and therefore, the movant's Motion to Set Aside must be considered by the Commission.

[2] In its Opposition, ReconRobotics alleges the Motion to Set Aside is untimely filed. That allegation was a bare unfounded assertion. With regard to the timeliness of the undersigned movant's motion to set aside, in **Sprint, et al. v. FCC, 315 F. 3d 369**, the Commission itself argued, and the Court of Appeals notes: “*This thirty-day deadline, the Commission maintains, may be tolled by pending motions for reconsideration, citing Central Florida Enterprises v. FCC, 598 F.2d 37, 48 n. 51 (D.C. Cir. 1978).*” Accordingly, the timely Petitions for Reconsideration of ARRL and others tolled the 30 day filing period ReconRobotics relies on in its Opposition. Furthermore, Section 1.113(a) of the Commission's rules and regulations only prescribes a 30 day limitation on the Commission setting aside, on its own motion, an Order it issues; however, no regulation limits the period for filing a Motion to Set Aside by this or any other private movant. Therefore, the Motion to Set Aside is timely filed and

must be considered by the Commission.

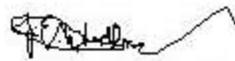
[3] The motion to set aside must be sustained if the movant substantiates that the Commission committed a clear error [*Global NAPS, Inc. v. FCC*, 247 F.3d 252, 258 (D.C. Cir. 2001)]. In this instance Footnote US217 to Section 2.106 of the Commission's rules and regulations as well as Sections 90.103(b) and 90.103(c)(21) [47 CFR 90.103(b), (c)(21)] allow the Commission to authorize Part 90 stations in a portion of the Amateur Radio and Amateur Satellite services' 70cm band if and only if those stations are: for the radiolocation service (ULS Code RS), for pulsed-ranging stations coastwise, and for spread-spectrum stations otherwise. The ReconRobotics 'waiver' relied, in clear and unmistakable error, on these regulations. The 'waiver' was in error because ReconRobotics did not propose coastwise operations, pulsed emissions, spread spectrum emissions, or radiolocation stations with its Recon Scout device. Rather the Recon Scout device utilizes analog vestigial side banded amplitude modulated video, is not geographically restricted to coastwise operation, and is intended for the public safety radio service (ULS Code PW); all in clear violation of the aforementioned rules and regulations.

Furthermore, arbitrarily and capriciously, the 'waiver' order did not contemplate the manner with which the Commission construed the application therefor; however, the nature of the proceedings leading up to the 'waiver' suggest and even beg the conclusion that the Commission knew that more than a 'waiver' was at stake, as the process underlying its grant bore a striking resemblance to a rulemaking proceeding as noted by ARRL in its Reply to the Opposition of ReconRobotics, Inc. Accordingly, given the duty to construe embodied within Section 1.41 of the Commission's rules and regulations (47 CFR 1.41) the Commission should have construed the 'waiver' request as more properly a Petition for Rulemaking in that an amendment of the foregoing regulations on which the Commission relied in its 'waiver' order would have been necessary to effectuate the purposes of the 'waiver.'

[4] The foregoing considered, the undersigned movant suggests his Motion to Set Aside is both timely and properly interposed in these proceedings; must be considered; and, in light of the substance therein, granted forthwith.

WHEREFORE, movant prays the Commission's Order consistent herewith setting aside and vacating its 'waiver' order, construing the application therefor as correctly a petition for rulemaking, and reinstating proceedings consistent with the Commission's established procedures governing petitions for rulemaking (47 CFR Section 1.411), and for such other and further relief as shall be consistent herewith.

Respectfully submitted:



James E. Whedbee, M.Ed.
SBE #26971

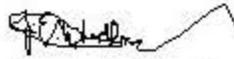
August 28, 2010

James Edwin Whedbee, M.Ed.
5816 NE Buttonwood Tree Ln.
Gladstone, MO 64119-2236
816.694.5913
Movant

CERTIFICATE OF SERVICE

THIS CERTIFIES that on this 28th day of August, 2010, an exact copy of the within and foregoing suggestions was e-mailed to parties whose names, addresses, and e-mail addresses follow this certification.

Signed:



James E. Whedbee, M.Ed.
SBE #26971

James Edwin Whedbee, M.Ed.
5816 NE Buttonwood Tree Ln.
Gladstone, MO 64119-2236
816.694.5913
Movant

SERVICE LIST:

FLETCHER, HEALD & HILDRETH, P.L.C.
Mr. Mitchell Lazarus, Esq.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0440
Counsel for ReconRobotics, Inc.

E-Mail to: lazarus@fhhlaw.com

BOOTH, FRERET, IMLAY & TEPPER, P.C.
Mr. Christopher Imlay, Esq.
14356 Cape May Road
Silver Spring, MD 20904-6011
301-384-5525
Counsel for ARRL

E-Mail to: w3kd@arrl.net

FEDERAL COMMUNICATIONS COMMISSION
445 12th St., S.W.
Washington, D.C. 20554

E-Mail(s) to: Julius.Genachowski@fcc.gov; Michael.Copps@fcc.gov; robert.mcdowell@fcc.gov;
Mignon.Clyburn@fcc.gov; MeredithAttwell.Baker@fcc.gov; Ruth.Milkman@fcc.gov; James.Schlichting@fcc.gov;
Roger.Noel@fcc.gov; Scot.Stone@fcc.gov; Jamie.Barnett@fcc.gov; David.Furth@fcc.gov; Monica.Desai@fcc.gov;
Julius.Knapp@fcc.gov; Jeff.Cohen@fcc.gov; Paul.Murray@fcc.gov