

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

In the Matter of)
)
RECONROBOTICS, INC.) **WP Docket 08-63**
)
Request for Waiver of Part 90 of the)
Commission’s Rules for a Video and Audio)
Surveillance System at 430-448 MHz)

To: The Commission

PETITION FOR RECONSIDERATION

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL), by counsel and pursuant to Section 1.429 of the Commission’s rules (47 C.F.R. §1.429), hereby respectfully requests that the Commission reconsider and rescind the letter *Order*, DA 12-138, released February 6, 2012 under the delegated authority of the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau.¹ The *Order* granted a request filed on or about January 11, 2012 by letter from counsel for ReconRobotics, Inc. (ReconRobotics) which sought modification of the 2010 waiver² granted to ReconRobotics authorizing the sale and marketing of the Recon Scout device. Specifically, ReconRobotics asked for authority to sell up to 8,000 of these devices to customers during each of the third and fourth years following equipment authorization of the device. These customers would become licensed to use them pursuant to the Waiver Order. ReconRobotics also asked that any number of devices fewer than the maximum number permitted to be sold in any

¹ This Petition for Reconsideration is being filed within thirty (30) days of the release date of the *Order*. It is therefore timely filed per Section 1.429(d).

² *ReconRobotics, Inc.*, Order, 25 FCC Rcd. 1782 (WTB/PSHSB 2010); *affirmed*, 26 FCC Rcd. 5895 (WTB/PSHSB/OET 2011) (collectively referred to herein as the “Waiver Order”).

prior year which were not sold in each of those prior years be permitted to be carried over to future years, so that the limits imposed during a given year could be exceeded by those aggregate amounts of prior-year unsold units. The *Order* of the Deputy Chief, Mobility Division released February 6, 2012, responding to the January 11, 2012 letter from ReconRobotics' counsel, stated that, for the reasons set forth in the *Order*, the Commission "need not revisit the (annual) Recon Scout sales limits every two years." Instead, without prior notice and without receiving public comment, and without any explanation how it arrived at the appropriate annual sales maxima, the *Order* established an annual limit of 8,000 Recon Scout device sales for all subsequent years, and allowed unlimited "rollover" of unsold devices from prior years fewer than the annual maxima. Footnote 6 in that *Order* stated that if ReconRobotics later finds the annual sales limit of 8,000 units (plus prior year carryover amounts) to be insufficient, it may request that the limit be "increased or eliminated." ARRL requests that this letter *Order* be rescinded, as it is arbitrary, capricious and without evidentiary support. Furthermore, since it is a substantial modification of the conditions set forth in the *Waiver Order* (which conditions justified the basis for the waiver grant initially), the Commission should have sought public comment on the modification prior to issuing the letter *Order*. Inasmuch as the equipment authorization status of the device is still under reexamination,³ the

³ See, ARRL's October 4, 2010 letter to the Chief, Laboratory Division, Office of Engineering and Technology, which challenged the TCB grant of equipment authorization based on, among other things, an incorrect emission designator. That complaint remains pending and adjudicated. ReconRobotics filed an application to modify its equipment authorization grant which was subsequently granted, but it continued to specify the incorrect emission designator. The Office of Engineering and Technology recognized the error and agreed to review the matter in response to ARRL's request to do so. The Chief, Office of Engineering and Technology, by letter dated January 11, 2011 opened a "permit-but-disclose" proceeding with respect to the matter in order to investigate ARRL's equipment authorization complaint. To ARRL's knowledge, this proceeding is still under review by the Office of Engineering and Technology.

Commission's decision to abandon oversight of the interference potential of the device is untimely. As good cause for this Petition, ARRL states as follows:

1. The 2010 *Waiver Order* authorizing the sale and marketing of the Recon Scout device using channels in the 430-448 MHz band contained several material conditions. ReconRobotics was permitted to market the Recon Scout, and public safety eligibles were authorized to license and use the device in the 430-448 MHz band *subject to those conditions*. The waiver was granted *notwithstanding the acknowledged interference potential of the device both to and from Amateur Radio stations* because of those conditions.⁴ One of the specific conditions included in the *Waiver Order* was that sales of the device in the first year following equipment authorization would be limited to 2,000 units. During the second year after the equipment authorization grant, ReconRobotics was permitted to market up to 8,000 units of the device. The Commission stated that “(f)uture sales of the Recon Scout will be reconsidered at the end of this period.” Footnote 41 to that condition stated that “...near the end of the second year of the waiver period, ReconRobotics may request authorization to sell additional units in subsequent years.” The *Waiver Order* never indicated that the consideration of such limits would be done *ex parte*. In its April 15, 2011 *Order on Reconsideration*⁵ of the *Waiver Order*, the Commission claimed that the Bureaus involved in that decision “concluded that the low power, infrequent use, *and limited number of Recon Scouts*

⁴ The *Waiver Order* concluded at Paragraphs 9 and 10 that though there was interference potential to Amateur Radio from the Recon Scout device, that potential could be managed by the various conditions placed on its operation as set forth in the Order, and that potential interference to the Recon Scout from Amateur Radio transmissions in some instances was not a sufficient justification for prohibiting its operation in all instances.

⁵ DA 11-675, 26 FCC Rcd. 5895 (WTB/PSHSB/OET 2011).

significantly reduced the possibility of interference to amateur operations.” (emphasis added).

2. Thus, in 2010, the Commission authorized the marketing, sale and use of a total of ten thousand of these devices, which have acknowledged interference potential to and from stations in the Amateur Radio Service, subject to a review at the end of the two-year period after equipment authorization. Since the sales limitation was a material condition of the issuance of the waiver grant in the first place, it is apparent that the review was intended to be (and should have been) substantive rather than perfunctory. Predictably, though without any factual basis for doing so in terms of assessment of the actual interference potential of the device at the end of the two-year initial evaluation period, ReconRobotics decided to avail itself of the opportunity to seek a liberalization of the permitted sales condition on the waiver grant. ReconRobotics requested an extension of the annual limit of 8,000 units for two additional years (i.e. the third and fourth years following the equipment authorization grant), together with rollover sales of units below the maximum permitted number from prior years.

3. Instead of asking for public comment on the propriety of any extension of the sales cap for these devices, however, and instead of conducting a review of the interference potential of this device pursuant to the 2010 *Waiver Order* after the initial evaluation period of the ten thousand unit sales of the device, the February 6, 2012 letter *Order* simply eliminated the periodic review process for the number of units sold. It also arbitrarily established for all subsequent years an ongoing limit of 8,000 units that can be sold annually without FCC oversight or interference evaluation, together with permanent, apparently continuous rollover of the aggregate number of units fewer than 8,000 sold in

any given year, to any subsequent year or years. This was done without any substantive evaluation of the effect of deployment of the first ten thousand units of the device whatsoever. Thus, the letter *Order* effectively abandoned the limits on the number of Recon Scout devices sold and deployed. It abandoned the Commission's oversight of those limits, despite the fact that the limits were a specific element of the Commission's finding that the interference potential from these devices was "significantly reduced." It did this without any advance notice to the parties that participated in this proceeding that it was being done.

4. By way of justification for the arbitrary specification of 8,000 annual unit sales, for the unlimited rollover sales provision, and for the elimination of FCC's periodic review of deployment of the number of units, the Mobility Division's letter *Order* stated that:

"Applications for customer licensing of the Recon Scout remain pending, but ReconRobotics states that it has received no complaints of verified (sic) interference from operation of Recon Scouts pursuant to an experimental license. We conclude that we need not revisit the Recon Scout sale limit every two years. Consequently, we now establish an annual limit of 8,000 units, with a rollover of unused sales."

There are several problems with this. There is absolutely no history of (legal) operation of the Recon Scout devices relative to their interference potential in the 430-448 MHz band that could justify the above conclusion of the Mobility Division. Prior to the date on which the Mobility Division's letter *Order* was issued, not one permanent license had been issued by the Commission for use of this device by buyers of it anywhere in the United States.⁶ Therefore, the two-year period during which the Commission assumed

⁶ There was illegal operation of the device in and prior to 2010, inasmuch as ReconRobotics had been actively marketing and selling these devices illegally in the United States prior to a grant of equipment authorization. This illegal operation took place for an unspecified time period prior to the enforcement

that the interference potential of up to ten thousand Recon Scout devices would be assessed prior to reevaluation of the appropriate number of these devices to be deployed didn't provide any record evidence at all, because no licenses for those devices were granted during the reassessment period. Not having had the benefit of the two-year reassessment period, the elimination of future Commission oversight of and establishment of any fixed maximum number of unit sales of the Recon Scout is obviously premature.

5. The finding by the Mobility Division of an absence of interference complaints as the result of experimental license operation of the Recon Scout device is likewise baseless. The Mobility Division's finding of non-interference quoted above is premised solely on the alleged absence of complaints from ReconRobotics devices based on operation of the device pursuant to experimental license WE2XCL granted September 7, 2010 and scheduled to expire on July 7, 2012.⁷ That experimental license authorized operation at 82 specific sites around the country on a mobile (around a centerpoint) basis. However, of those 82 sites, ***only 7 of them permitted the use of the 430-448 MHz band. The remaining 75 sites specified operation of the device only in the band 2449-2455 MHz.***⁸ Therefore, that experimental license operation is an improper foundation for a finding of non-interference to or from Amateur Radio licensees in the 430-448 MHz band.⁹ It is readily apparent that there was, as of February 6, 2012 no experience with the

proceedings that were brought against ReconRobotics in 2010. See, File Nos. EB-10-CG-0011 and EB-10-LA-0001, and the Order and Consent Decree, DA 11-1188, released July 13, 2011.

⁷ There has been to date no publicly available evaluation of the results of this "experiment" filed by ReconRobotics with the Commission.

⁸ The sites at which use of the 430.92-436.92 MHz band is permitted by WE2XCL are Minnetonka, MN; Oceanside, CA; San Bernardino, CA; South St. Paul, MN; Glencoe, MN; Alameda County, CA; and St. Petersburg, FL.

⁹ Nor is the experimental license consistent with the Waiver Order. The experimental license permits operation at 430.92-436.92 MHz, but the *Waiver Order* requires that the first Recon Scout device deployed

interference potential of these devices on a deployed basis that could justify the actions taken by the Mobility Division in the letter *Order*.

6. In general, reliance on the manufacturer of a radiofrequency device for a determination of the number of interference complaints¹⁰ received and an evaluation of those complaints makes no sense. The manufacturer would not be the recipient of the complaints; the agency deploying the device would receive them. Even with respect to the experimental license operation, it is not clear what level of oversight was exercised at the 7 sites where the 430-92-436.92 MHz operation may have occurred, and by whom. Since the experimental license waived the station identification requirements during experimental operation, there is no reason to believe that any radio Amateur receiving interference could have known to whom to complain anyway. Though coordination of experimental operation was required with the Society of Broadcast Engineers and with fixed service licensees (both requirements presumably related to use of the 2449-2455 MHz band at all of the experimental operation sites) there was no coordination requirement with respect to ARRL. Therefore, no conclusions can be drawn from the experimental operation with respect to the interference potential of the Recon Scout device in the 430-448 MHz band, and especially not with respect to the 436-442 MHz

in a given area be deployed in the 436-442 MHz band; the second in the 442-448 MHz band; and the 430-436 MHz band be used only where both other channels are already in use. The discrepancy between the experimental license operation and the *Waiver Order* is nowhere explained. Each of the licenses recently granted by the Commission for use of the Recon Scout device specifies the band 436-442 MHz ONLY. That being the case, the experimental license operation of the Recon Scout device serves as a predicate for nothing at all by way of interference potential evaluation because it specifies a completely different band than that authorized by the *Waiver Order* and that specified in any of the license applications granted thus far by the Commission.

¹⁰ What the Deputy Chief, Mobility Division means by “verified interference” complaints is not clear. Did ReconRobotics receive any “unverified” interference complaints? What constitutes verification of an interference complaint from ReconRobotics’ perspective? What justification did the Mobility Division have for reliance on this manufacturer for truth and candor on this subject, in light of the compliance record of this manufacturer to date?

band (where no experimental operation took place at all) the frequency range of the licenses granted thus far for this device.

7. Given the foregoing, the letter *Order* is arbitrary and capricious and was issued without any substantial justification for the abandonment of the Commission's oversight of the interference potential of this device. ReconRobotics' January 11, 2012 letter should not have been acted upon and no additional units of the device over the initial ten thousand authorized by the *Waiver Order* should be authorized unless and until (1) there is substantial evidentiary basis for evaluating the effects of this device in the 430-448 MHz band; and (2) after a fair and objective evaluation has been conducted, following notice to all parties to this proceeding.

Therefore, for all of the above reasons, ARRL, the National Association for Amateur Radio, respectfully requests that the Commission reconsider, rescind and vacate the February 6, 2012 letter *Order* of the Deputy Chief, Mobility Division, Wireless Bureau granting ReconRobotics' request to modify the conditions of the *Waiver Order*. ARRL further requests that the Commission not permit any increase in the number of units of the Recon Scout over the previously authorized ten thousand without a full and complete examination of incidents of interference, after a reasonable opportunity for

evaluation of the operation of the device in accordance with the foregoing by the
Commission, after notice to all parties to this proceeding.

Respectfully submitted,

**ARRL, THE NATIONAL ASSOCIATION FOR
AMATEUR RADIO**

225 Main Street
Newington, CT 06111-1494

By: Christopher D. Imlay
Christopher D. Imlay
Its General Counsel

BOOTH, FRERET, IMLAY & TEPPER, P.C.
14356 Cape May Road
Silver Spring, MD 20904-6011
(301) 384-5525

March 6, 2012

CERTIFICATE OF SERVICE

I, Christopher D. Imlay, do hereby certify that I caused to be mailed, via first class U.S. Mail, postage prepaid, a copy of the foregoing **PETITION FOR RECONSIDERATION** to the following, this 6th day of March, 2012.

Mitchell Lazarus, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Counsel for ReconRobotics, Inc.

Christopher D. Imlay

Christopher D. Imlay