

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

In the Matter of)
)
ReconRobotics, Inc.,) WP Docket No. 08-63
Request for Waiver of Part 90 of the)
Commission's Rules)

To the Commission:

REPLY TO OPPOSITION TO MOTION NUNC PRO TUNC

Comes now the Movant, JAMES EDWIN WHEDBEE, respectfully replying to the Opposition filed by ReconRobotics as follows.

Movant filed a motion – not a petition for reconsideration – and motions are not subject to the time constraints of petitions if we are to read the strict letter of the law on what the Commission may or may not do. Opposition counsel knows the waiver was granted for ReconRobotics' convenience. There already existed a licensed service for which Recon Scouts could have been licensed (two such services, in fact): Subpart Q of Part 90 of the Commission's rules allows developmental licensing and rulemaking for new products; and under the Order in WP Docket No. 10-72, it is Movant's belief that all of ReconRobotics' clients could have operated – legally – the Recon Scout devices as long as the operator of the device possessed an amateur radio license. To even have standing under the WAIT Radio case for a waiver, one must first be aggrieved by existing rules and regulations or not have a licensed alternative to the communications being proposed; otherwise, one could merely grant waivers on a whim, which is arbitrary and capricious. Simply put, the 'safety valve' requirement the court cited for the grant of a waiver in the WAIT Radio case is not met, and therefore, the 'waiver' is not lawful because existing regulations permit Recon Scouts to be licensed through 'regular channels,' if you will.

The Commission has fallen hook-line-and-sinker for the representations of ReconRobotics throughout the process, and with no disrespect intended, the Commission works for me as a taxpayer and licensee and, frankly, should do better than just do whatever industry tells it to do all other rules and regulations to the contrary notwithstanding. As evidence for this accusation, the Movant directs the Commission's attention to Section 5.51 of its own rules and regulations which proscribe experimentally licensing of transmissions for which a license may be obtained through other means (here reference Subpart Q of Part 90, Part 97, et al.) In spite of this, the Commission grants ReconRobotics an experimental license (against which Movant directed an objection to the Commission and for which he never received a response) for 82 locations just licensed by the Public Safety and Homeland Security Bureau, when all along, those same sites should have been developmentally licensed under Part 90. A TCB just granted equipment authorization not once but twice under Part 2 for equipment under a Part 15 test protocol in error when the protocol should have been under Part 90, and even then, it was for a 100-108 kHz wide analog NTSC video emission for which, if the images are to be useful, the laws of physics don't allow. (*Reference the undersigned's Reply in the Petition for Reconsideration of the Commission's denials of certain Petitions to Deny for the mathematical proofs, if you wish.*) You see, for all intents and purposes, these Recon Scout devices should meet the same spectral purity requirements as do analog Low Power TV Broadcast Station transmitters, but that's not what's happening. Question remains: how could one 'persuade' a TCB to issue an equipment authorization using the wrong protocol and the wrong bandwidths? Better still: why is the Commission being so lax in examining this conduct? Furthermore, there is the unilateral and inexplicable decision the Commission made to recharacterize the Movant's prior motion to set aside as a petition for reconsideration, even though the Movant explicitly cited the Court of Appeals in prior precedent which directs that such motions are permissible in their own right. Again, no disrespect intended, but following some careful introspection, the Commission owes us all several in-

depth analyses and explanations.

Since the original motion to set aside by this Movant was not addressed, the Movant is within his right still to demand the Commission do so and, in the process, repair the unmitigated disaster this 'waiver' Order will unleash on both the law enforcement community as well as the amateur radio community, both of whom often work cooperatively rather than competitively. Therefore, the Movant is entitled to a grant of this and his prior motions and for such other and further relief as shall be consistent herewith.

WHEREFORE, the foregoing considered, Movant undersigned respectfully requests the Commission sustain his extant Motion to reinstate and reconsider his original Motion to Set Aside the "Waiver" Order, DA 10-291 as amended, grant the Motion to Set Aside, cancel each existing license (Exhibit "A") it has previously granted under these proceedings, or alternatively redesignate the grants thereof as developmental pending further proceedings, and for such other and further relief as shall be consistent herewith.

Respectfully submitted:



14 MARCH 2012

JAMES EDWIN WHEDBEE, M.Ed., M.P.A.
Society of Broadcast Engineers #26971
MOVANT

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CERTIFICATE OF SERVICE

THIS CERTIFIES that a true copy of the within and foregoing Reply was e-mailed this 14th day of March, 2012, to:

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Washington, DC 20554

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Federal Communications Commission
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Public Safety & Homeland Security Bureau
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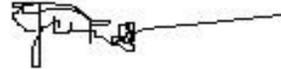
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The Honorable Claire McCaskill
United States Senate
Washington, DC 20510

Respectfully submitted:



14 MARCH 2012

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Society of Broadcast Engineers #26971
MOVANT

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EXHIBIT 'A' – 01 MARCH 2012 LICENSEES UNDER PETITION FOR RECONSIDERATION

File No. Application Date Filer

0004270113 City of Salina (filed 6/3/10; amended 8/24/10)

Petition to Deny Applications 8/4/2010 ARRL
Petition to Deny Applications for Cond. Authority 8/6/2010 Whedbee
Ex Parte Suggestion to Consolidate/Expedite 8/7/2010 Whedbee
Opposition to Petitions to Deny 8/16/2010 ReconRobotics
Reply to Opposition of ReconRobotics 8/16/2010 Whedbee
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Reply 9/7/2010 Whedbee

Petition for Declaratory Ruling 9/11/2010 Whedbee

Informal Request via § 1.41 of FCC Rules 2/26/2011 Whedbee

0004323710 Manatee County Sheriff's Office (filed 7/15/10; amended 8/25/10)

Petition to Deny Applications 8/4/2010 ARRL
Petition to Deny Applications for Cond. Authority 8/6/2010 Whedbee
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0004323903 Township of Hilltown (filed 7/15/10; amended 8/25/10)

Petition to Deny Applications 8/4/2010 ARRL
Petition to Deny Applications for Cond. Authority 8/6/2010 Whedbee

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0004323989 Berrien County Emergency Mgmt (filed 7/15/10)
Petition to Deny Applications 8/4/2010 ARRL
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Informal Request to Strike Oppositions per § 1.41 9/11/2010 Whedbee
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0004323990 Juneau Police Department (filed 7/19/10; amended 8/25/10)
Petition to Deny Applications 8/4/2010 ARRL
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Opposition to Amended Petitions to Deny 9/7/2010 ReconRobotics
Reply 9/7/2010 Whedbee
Petition for Declaratory Ruling 9/11/2010 Whedbee
0004327769 County of Allen (filed 7/19/10; amended 8/25/10)
Petition to Deny Applications 8/4/2010 ARRL
Petition to Deny Applications for Cond. Authority 8/6/2010 Whedbee
Ex Parte Suggestion to Consolidate/Expedite 8/7/2010 Whedbee
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Reply 9/7/2010 Whedbee
Petition for Declaratory Ruling 9/11/2010 Whedbee
0004327793 Waco Police Department (filed 7/19/10; amended 8/25/10)
Petition to Deny Applications 8/4/2010 ARRL
Petition to Deny Applications for Cond. Authority 8/6/2010 Whedbee
Ex Parte Suggestion to Consolidate/Expedite 8/7/2010 Whedbee
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Reply 9/7/2010 Whedbee
Petition for Declaratory Ruling 9/11/2010 Whedbee
0004327816 Grand Forks Police Department (filed 7/19/10; amended 8/25/10)
Petition to Deny Applications 8/4/2010 ARRL
Petition to Deny Applications for Cond. Authority 8/6/2010 Whedbee
Ex Parte Suggestion to Consolidate/Expedite 8/7/2010 Whedbee
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Reply 9/7/2010 Whedbee
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0004327954 La Porte County Sheriff's Office (filed 7/19/10; amended 8/25/10)

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Reply 9/7/2010 Whedbee
Petition for Declaratory Ruling 9/11/2010 Whedbee

0004329762 County of San Mateo (filed 7/20/10; amended 8/25/10)

Petition to Deny Applications 8/4/2010 ARRL
Petition to Deny Applications for Cond. Authority 8/6/2010 Whedbee
Ex Parte Suggestion to Consolidate/Expedite 8/7/2010 Whedbee
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0004329770 Placer County Sheriff's Office (filed 7/20/10; amended 8/25/10)

Petition to Deny Applications 8/4/2010 ARRL
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0004329788 Fishers Police Department (filed 7/20/10; amended 8/25/10)

Petition to Deny Applications 8/4/2010 ARRL
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0004329833 Topeka Police Department (filed 7/20/10; amended 8/25/10)

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Reply 9/7/2010 Whedbee
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0004330231 City of Norfolk (filed 7/21/10; amended 8/25/10)
Petition to Deny Applications 8/4/2010 ARRL
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0004330276 Anaheim Police Dept. H/S Bureau (filed 7/21/10; amended 8/25/10)
Petition to Deny Applications 8/4/2010 ARRL
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0004330295 City of Sunnyvale (filed 7/21/10; amended 8/25/10)
Petition to Deny Applications 8/4/2010 ARRL
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0004330345 City of Irwindale Police Department (filed 7/21/10; amended 8/25/10)
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0004330375 Tulsa Police Department (filed 7/21/10; amended 8/25/10)
Petition to Deny Applications 8/4/2010 ARRL

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0004330395 City of Des Plaines P.D. (filed 7/21/10; amended 8/25/10)

Petition to Deny Applications 8/4/2010 ARRL
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0004330433 Johnson County Sheriff's Office (filed 7/21/10; amended 8/25/10)

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Petition for Declaratory Ruling 9/11/2010 Whedbee

Informal Request via § 1.41 of FCC Rules 2/26/2011 Whedbee

0004330452 Rockland County Sheriff's Office (filed 7/21/10; amended 8/25/10)

Petition to Deny Applications 8/4/2010 ARRL
Petition to Deny Applications for Cond. Authority 8/6/2010 Whedbee
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0004330803 Williamson County Sheriff's Office (filed 7/21/10; amended 8/25/10)

Petition to Deny Applications 8/4/2010 ARRL
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0004330938 Bradenton Police Department (filed 7/21/10; amended 8/25/10)

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0004330952 Lakeland Police Department – SWAT (filed 7/21/10; amended 8/25/10)

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0004330988 Union County Sheriff's Office (filed 7/21/10; amended 8/25/10)
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0004331004 Lafayette Police Department (filed 7/21/10)
Petition to Deny Applications 8/4/2010 ARRL
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0004331029 Alachua County Sheriff's Office (filed 7/21/10; amended 8/25/10)

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0004331064 Seminole County Sheriff's Office (filed 7/21/10; amended 8/25/10)
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0004331678 Cook County Sheriff PD (filed 7/22/10; amended 8/25/10)

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0004331681 Mesquite Police Department (filed 7/22/10; amended 8/25/10)

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0004331692 City of Henderson (filed 7/22/10; amended 8/25/10)

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0004331714 Cedar Rapids Police Department (filed 7/22/10; amended 8/25/10)

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0004331737 St. Louis County Police Department (filed 7/22/10; amended 8/25/10)

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0004331812 Thibodaux Police Department *(filed 7/22/10; amended 8/25/10)*
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0004331906 Florence Police Department *(filed 7/22/10; amended 8/25/10)*
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0004331911 St. Clair County Sheriff's Office *(filed 7/22/10; amended 8/25/10)*
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0004331979 Buffalo Cty. Sheriff's Office *(filed 7/22/10; amended 8/25/10; amended again 8/3/11)*
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0004331982 Bryan Police Department *(filed 7/22/10; amended 8/25/10)*
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0004331984 Collier County Sheriff's Office (filed 7/22/10; amended 8/25/10)
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0004331991 Joliet City Police Department (filed 7/22/10; amended 8/25/10)
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0004331994 Eustis Police Department (filed 7/22/10; amended 8/25/10)
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0004332028 Otter Tail County Sheriff's Office (filed 7/22/10; amended 8/25/10)
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0004332058 Goodyear Police Department (filed 7/22/10; amended 8/25/10)

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000433278 Riverside Police Department (filed 7/23/10; amended 8/25/10)

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000433302 Calvert County Sheriff's Office (filed 7/23/10; amended 8/25/10)

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000433316 Huntington Park Police Department (filed 7/23/10; amended 8/25/10)

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000433336 Shasta County Sheriff's Office (filed 7/23/10; amended 8/25/10)

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0004333409 Volusia County Sheriff's Office (filed 7/23/10; amended 8/25/10)

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0004333431 New York Police Department – TARU (filed 7/23/10; amended 8/25/10)

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0004333448 Grand Prairie Police Department (filed 7/23/10; amended 8/25/10)

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0004333550 Glendale Police Department (filed 7/23/10; amended 8/25/10)

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0004333561 Town of Scarborough (filed 7/23/10; amended 8/25/10)

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000433571 Rock Springs Fire Department (filed 7/23/10; amended 8/25/10)

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000433579 City of Marietta (filed 7/23/10; amended 8/12/10; amended again 8/25/10)

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0004334593 Plymouth Police Department (filed 7/26/10; amended 8/25/10)

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0004334597 Allen County Sheriff's Department (filed 7/26/10; amended 8/25/10)

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0004336311 Sacramento County Sheriff's Office (filed 7/27/10; amended 8/25/10)

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0004336333 Chandler Police Department (filed 7/27/10; amended 8/25/10)

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0004336348 Natrona County Sheriff's Office (filed 7/27/10; amended 8/25/10)

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0004336417 Carbon County Sheriff's Department (filed 7/27/10; amended 8/25/10)

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0004337230 Pinellas County Sheriff's Office (filed 7/28/10; amended 8/25/10)

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0004337276 Cincinnati Police Department (filed 7/28/10; amended 8/25/10)

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0004341313 Texas Department of Public Safety (filed 8/2/10; amended 8/25/10)

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0004341325 State of Arizona (filed 8/2/10; amended 8/25/10)

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0004341350 Anniston Police Department (filed 8/2/10; amended 8/25/10)

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0004344532 City of Wilson Police Department (filed 8/4/10; amended 8/25/10)

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0004344564 CA Dept. of Corrections/Rehabilitation (file 8/4/10; amended 8/25/10)

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0004345093 Miami-Dade Police Department (filed 8/5/10; amended 8/25/10)
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0004345125 Atlantic City Police Department (filed 8/5/10; amended 8/25/10)
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0004345139 Grand Rapids Police Department (filed 8/5/10; amended 8/25/10)
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0004345171 Memphis Police Department (filed 8/5/10; amended 8/25/10)
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0004346580 Charles County Sheriff's Office (filed 8/6/10; amended 8/25/10)
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0004346605 Reno Police Department (filed 8/6/10; amended 8/25/10)
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0004346626 Benton County Sheriff's Office (filed 8/6/10; amended 8/25/10)
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0004346678 Gilroy Police Department (filed 8/6/10; amended 8/25/10)
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0004346697 County of Hawaii (filed 8/6/10; amended 8/25/10)
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0004348020 Springfield Police Department (filed 8/9/10; amended 8/25/10)
Informal Objection pending Petition to Deny 8/10/2010 Whedbee
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0004348657 County of San Bernardino (filed 8/9/10; amended 8/25/10)
Informal Objection pending Petition to Deny 8/10/2010 Whedbee
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0004349756 St. Mary's County Sheriff's Office (filed 8/10/10; amended 8/25/10)
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0004349765 Larimer County Sheriff's Office (filed 8/10/10; amended 8/25/10)
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0004351768 State of Idaho (filed 8/12/10; amended 8/25/10)
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