

Before the
Federal Communications Commission
Washington DC 20554

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

Opposition to Petition for Reconsideration

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March 16, 2012

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ReconRobotics, Inc. opposes the Petition for Reconsideration relating to sales limits filed on March 6, 2012, by ARRL, the national association for Amateur Radio.

A. BACKGROUND

ReconRobotics initiated the captioned proceeding in 2008 with a Request for Waiver to enable certification of a surveillance robot called the Recon Scout.¹ Among other proposed conditions, ReconRobotics offered to limit marketing under the waiver to not more than 2,000 units during the first twelve months following certification, and not more than 8,000 units during the second twelve months.²

ARRL, along with other amateur radio interests, opposed other aspects of the waiver,³ but no one objected to the marketing limits. The Commission subsequently granted the waiver, and incorporated ReconRobotics's suggested sales limits for the first two years.⁴ The Commission

¹ ReconRobotics, Inc., Request for Waiver of Part 90 of the Commission's Rules, (filed Jan. 11, 2008).

² *Id.* at 15-16.

³ Comments of ARRL (filed May 27, 2008). There was no opposition apart from the amateur radio community.

⁴ *ReconRobotics, Inc.*, Order, 25 FCC Rcd 1782 at ¶ 11 (Wireless Telecom. Bur. and Public Safety & Homeland Security Bur. 2010) (*Waiver Order*).

added, “Future sales of the Recon Scout will be reconsidered at the end of this period,”⁵ and explained in a footnote, “That is, near the end of the second year of the waiver period, ReconRobotics may request authorization to sell additional units in subsequent years.”⁶ ARRL, along with two individual amateur licensees, petitioned for reconsideration of the waiver grant,⁷ which the Commission denied.⁸

Toward the end of first two years of the waiver period, ReconRobotics accepted the Commission’s invitation to request authorization for additional years.⁹ But ReconRobotics did not seek an increase in the numbers. Rather, it asked the Commission to authorize future sales at the same level of 8,000 units per year that had characterized the second year of the waiver.¹⁰ The Commission granted the request, and did not impose a termination date, so the 8,000 units/year limit will continue to apply unless and until the Commission rules otherwise.¹¹ ARRL now seeks reconsideration of that grant.

⁵ *Id.* (footnote omitted).

⁶ *Id.* n.41.

⁷ Petition for Reconsideration of ARRL (filed March 24, 2010).

⁸ *ReconRobotics, Inc.*, 26 FCC Rcd 5895 (Wireless Telecom. Bur., Public Safety & Homeland Security Bur., and Office of Engineering and Technology 2011) (*Waiver Reconsideration Order*).

⁹ Letter from Mitchell Lazarus, counsel for ReconRobotics, Inc. to Rick Kaplan, Chief, Wireless Telecommunications Bureau, and James Arden Barnett, Jr., Chief, Public Safety and Homeland Security Bureau (Jan. 11, 2012).

¹⁰ *Id.* ReconRobotics also asked that permitted but unused limits from prior years be carried forward into subsequent years.

¹¹ Letter from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Mitchell Lazarus, DA 12-138 (Feb. 6, 2012) (*Sales Limits Letter*).

ARRL presents three grounds.

First, ARRL characterizes the *Sales Limits Letter* as a “substantial modification” to the waiver conditions that requires prior notice and comment.¹² We disagree. ReconRobotics did not seek to increase the annual sales limits, but merely to hold them constant through later years. Rather than “effectively abandon” the limits on the numbers of Recon Scout devices, as ARRL alleges,¹³ the *Sales Limits Letter* simply keeps those limits at a level consistent with the original *Waiver Order*.

Second, ARRL objects that ReconRobotics’s equipment authorization is under reexamination, so that extending the sales limits is “untimely.”¹⁴ ARRL refers to its having challenged the 100 kHz bandwidth specified in ReconRobotics’s certification. ReconRobotics has recently addressed the bandwidth issue in detail, and not will further burden the record here.¹⁵ We do restate, however, that a certification remains valid unless and until the Commission revokes it. Revocation is rare, and requires a hearing.¹⁶ ARRL’s implication that a mere challenge to a certification, however unfounded, suffices to limit operation has no basis in the Commission’s Rules or the Communications Act.

¹² ARRL Petition at 2, 4-5.

¹³ ARRL Petition at 5.

¹⁴ ARRL Petition at 2-3 & n.3.

¹⁵ See Opposition to Petitions for Reconsideration of ReconRobotics, Inc. in File Nos. 0004270113 *et al.* and WP Docket No. 08-63 at 5-9 (filed March 12, 2012).

¹⁶ 47 C.F.R. § 2.939(b); 47 U.S.C. § 312.

Third, ARRL argues the Commission has not had enough experience with the Recon Scout to justify extending the sales limits.¹⁷ Prior to the *Sales Limits Letter*, ARRL says, with considerable emphasis, “not one permanent license had been issued by the Commission for use of this device”¹⁸ But ARRL fails mention the reason for an 18-month delay in the issuance of those licenses. ARRL and one of its members (acting as an individual) had filed scores of Petitions to Deny against all of the license applications submitted by ReconRobotics’s customers. The Commission subsequently found those petitions to be without merit and granted the licenses.¹⁹ But the delay in licensing that ARRL holds up as an obstacle is one of its own making.

ARRL acknowledges that ReconRobotics holds an experimental license, but attempts to minimize its value in providing the Commission with experience useful in judging interference potential. ReconRobotics has operated under the license for almost five years, since May 2007. Seven of the sites are licensed to use 430.92-436.92 MHz. ARRL questions the sufficiency of seven sites,²⁰ and objects that the experimental frequency band is not exactly coincident with the band used by the units delivered first to each licensee.²¹

Here ARRL strays into an area of judgment calls that are committed to the Commission’s discretion. Despite ARRL’s best efforts to make an *a priori* case for interference, the Commission confirmed that “the Recon Scout was not likely to cause interference to other

¹⁷ ARRL Petition at 5-8.

¹⁸ ARRL Petition at 5 (underline and italics in original).

¹⁹ *Applications for Public Safety Pool (Conventional) Licenses*, File Nos. 0004270113 *et al.*, Order, DA 12-123 (Public Safety and Homeland Security Bur. released Feb. 6, 2012).

²⁰ ARRL Petition at 6-7.

²¹ ARRL Petition at 6-7 n.9.

services,” including amateur radio.²² ARRL now argues, in effect, that ReconRobotics’s five years’ of experience under its experimental license is inadequate to “prove the negative,” *i.e.*, to prove that the Recon Scout does not cause interference to amateur radio. In principle, of course, no amount of experience can absolutely prove a negative; even if ten thousand Recon Scout operations come off without incident, there is always the mathematical possibility that the ten-thousand-and-first will cause trouble. Someone has to draw the line, and say at what point the experience to date justifies extending the prior sales limits. Congress has delegated that responsibility to the Commission.

The waiver and licensing proceedings have subjected ReconRobotics to more than four years of uncertainty and delay, almost entirely at the hands of ARRL and its allies in the amateur community. Having lost every substantive decision in both proceedings, ARRL now seeks yet again to inject a further element of uncertainty into ReconRobotics’s operations going forward. As before, this threatens only to keep the Recon Scout away from first responders, many of whom have told the Commission that they need the device to save lives.²³

The Commission, based on both its detailed pre-waiver evaluation and on successful operation under the experimental license, was fully justified in extending the waiver sales limits without numerical change. We note additionally that the Recon Scout must operate in a

²² *Waiver Reconsideration Order* at ¶ 4.

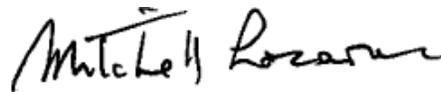
²³ *See* WP Docket No. 08-63.

secondary status to all other licensed services, including amateur radio,²⁴ and must carry labeling to that effect.²⁵

CONCLUSION

ARRL has failed to provide grounds adequate to justify overturning the *Sales Limits Letter*. The Commission should deny reconsideration.

Respectfully submitted,



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²⁴ *Waiver Order* at ¶¶ 7, 11.

²⁵ *Waiver Reconsideration Order* at ¶ 14.

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that true copies of the foregoing Opposition of ReconRobotics, Inc. to the Petition for Reconsideration of ARRL has been mailed first class, postage prepaid, this 16th day of March, 2012, to the attached service list, except that persons having an address at the Federal Communications Commission in Washington, DC were served by hand.

A handwritten signature in black ink, appearing to read "D. Lunt", with a long horizontal flourish extending to the right.

Deborah N. Lunt

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