

LAND MOBILE COMMUNICATIONS COUNCIL

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MEMBERS

AAA June 30, 2004
AAR D'wana Terry
AASHTO Chief, Public Safety and Critical Infrastructure Division
AMTA Wireless Telecommunications Bureau
APCO Federal Communications Commission
API 445 Twelfth St. SW, Room 4-C330
ARINC Washington D.C. 20554

CSAA

Re: Coordination of Exclusive Use Channels

FCCA

Dear Ms. Terry:

FIT

IAFC

On December 21, 2001 the Federal Communications Commission adopted a Memorandum Opinion and Order¹ affirming earlier decisions by the Wireless Telecommunications Bureau(WTB)² and the Public Safety and Private Wireless Division(PSPWD)³ concerning when an FCC-certified Part 90 Frequency Advisory Committee (FAC) may coordinate an encumbered exclusive use frequency, as opposed to when an FAC may file an application with the Commission for an encumbered exclusive use frequency.

IAFWA

IMSA

ITA

ITSA

MRFAC

NASF

PCIA

TIA

TLPA

UTC

The matter stems from an occurrence in which an FAC coordinated an application for an exclusive use 470-512 MHz band frequency on which the incumbent license had expired. The other FACs were simultaneously notified of the coordinated application. However, the FAC did not file the application with the FCC at that time and instead held the application until the status of the incumbent license changed from "Expired" to "Cancelled" on the Commission's ULS database. This had the practical effect of reserving the channel, making it unavailable for assignment to any other party, during the time between when the

¹ See In the Matter of License National Science and Technology Network, Inc., Station WPLT688, Glendale, California, File No. D099699 and Application to Modify License of Mobile Relay Associates, Inc. Station WIL337, Malibu, California, File No. D100478, *Memorandum Opinion and Order*, rel. December 28, 2001.

² See In the Matter of Mobile Relay Associates, Inc. Application for Authorization and Petition for Reconsideration of License Granted to National Science and Technology Network, Inc. for Station WPLT688 at Glendale, California, FCC File No. D100478, *Order on Further Reconsideration*, rel. January 18, 2001.

³ See In the Matter of Mobile Relay Associates, Inc. Application for Authorization and Petition for Reconsideration of License Granted to National Science and Technology Network, Inc. for Station WPLT688 at Glendale, California, FCC File No. D100478, *Order*, rel. December 17, 1999.

coordination took place and when the application was actually filed with the Commission.

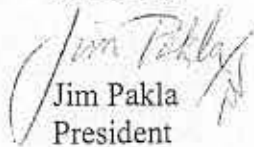
At least one other potential applicant for the subject channel objected to the FAC's actions and filed a formal Petition for Reconsideration of the grant of the application. The PSPWD, WTB and ultimately the Commission affirmed that the FAC acted properly stating that "the Commission permits a coordinator to select a channel associated with an expired license for recommendation to the Commission before the channel is actually available on the Commission's licensing database and to evaluate and coordinate an application prior to its being available so that the application can be filed when the channel becomes available. However, an application for such a channel cannot be submitted to the Commission before the channel becomes available for licensing."⁴

More recently, it has come to the attention of LMCC that some FACs are handling applications for encumbered exclusive use channels in different ways. LMCC believes this is inadvisable and that all FACs should handle such applications in the same manner. LMCC's members have agreed to implement a standard that varies from the direction the Commission has provided in the cited *Orders* and does not take advantage of the leeway allowed.

LMCC's member FACs **will not coordinate or file** an application for an exclusive use frequency encumbered by an expired license until the status of the incumbent license changes from "Expired" to "Cancelled" in the Commission's ULS database. This is essentially the standard that most FACs followed until the subject case raised the issue at the Commission and LMCC believes this is a cleaner and more equitable way for all FACs to operate. The standard applies to all bands in which exclusive use channels are available including the 470-512 MHz, 800 MHz and 900 MHz bands as well as FB8-licensed channels in the VHF and UHF bands.

LMCC takes this opportunity to advise the Commission of our decision to adopt this standard and to request the Commission's cooperation in the disposition of any applications that do not adhere to it, when brought to the Commission's attention. LMCC would be happy to meet with you and your staff to discuss the matter further if you wish to do so.

Sincerely,


Jim Pakla
President

cc: Herb Zeiler
Tracy Simmons

⁴ See *Order on Further Reconsideration*, ¶ 9.