

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

In the Matter of)
)
Public Notice on) CB Docket No. BO 16-251
Regulatory Flexibility Act)

To: The Commission

COMMENTS ON PUBLIC NOTICE

The Land Mobile Communications Council (“LMCC”) hereby submits its comments on the Public Notice, DA 16-792, “FCC Seeks Comments Regarding Possible Revision or Elimination of Rules” (the “Notice”).

Introduction

The LMCC is a non-profit association of organizations representing virtually all users of land mobile radio systems, providers of land mobile services, and manufacturers of land mobile radio equipment. The LMCC acts with the consensus and on behalf of the vast majority of public safety, business, industrial, transportation and private commercial radio users, as well as a diverse group of land mobile service providers and equipment manufacturers. Membership includes the following organizations:

- American Association of State Highway and Transportation Officials (“AASHTO”)
- American Automobile Association (“AAA”)
- American Petroleum Institute (“API”)
- Association of American Railroads (“AAR”)
- Association of Public-Safety Communications Officials-International, Inc. (“APCO”)
- Aviation Spectrum Resources, Inc. (“ASRI”)
- The Monitoring Association (“TMA”)
- Energy Telecommunications and Electrical Association (“ENTELEC”)
- Enterprise Wireless Alliance (“EWA”)
- Forest Industries Telecommunications (“FIT”)
- Forestry-Conservation Communications Association (“FCCA”)
- International Association of Fire Chiefs (“IAFC”)

- International Municipal Signal Association (“IMSA”)
- MRFAC, Inc. (“MRFAC”)
- National Association of State Foresters (“NASF”)
- Telecommunications Industry Association (“TIA”)
- Utilities Technology Council (“UTC”)
- Wireless Infrastructure Association (“WIA”)

These organizations, individually and collectively, work with their members and with the Commission in an effort to maximize the use of the limited spectrum resources available to private land mobile radio (“PLMR”) users.

Background

By virtue of the Notice, the Commission seeks comment on a wide variety of rules adopted during the years 2000 – 2004. The Public Notice stems from the Regulatory Flexibility Act, which prescribes as follows in Section 610(a) --

"Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. . . ." (emphasis added).

Among the Rules listed for review are 90.35(b)(2)(ii) and (iii). As explained below, these Rules should be retained without modification.¹

¹ LMCC understands that certain of its members may comment on other Part 90 rules identified for review in the Notice.

Discussion

Commission Rules 90.35(b)(ii) and (iii) are salutary measures adopted to facilitate coordination and, hence, compatibility between and among the numerous Industrial/Business radio service users that share private land mobile spectrum. The Rules were adopted in their present form in 2000, and read as follows:

§ 90.35 Industrial/Business Pool

* * * * *

(b) * * *

(2) * * *

(i) * * *

(ii) A letter symbol in the Coordinator column of the frequency table in paragraph (b)(3) of this section designates the mandatory certified frequency coordinator for the associated frequency in the table. However, any coordinator certified in the Industrial/Business Pool may coordinate applications on such frequencies provided the prior written consent of the designated coordinator is obtained. Frequencies for which two coordinators are listed may be coordinated by either of the listed coordinators.

(iii) Applications for new or modified facilities on frequencies shared prior to radio service consolidation by the former Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service and the Automobile Emergency Radio Service may be coordinated by any certified Industrial/Business Pool coordinator. However, in the event that the interference contour of a proposed station would overlap the service contour of an existing station licensed on one of these previously shared frequencies, the written concurrence of the coordinator associated with the industry for which the existing station license was issued, or the written concurrence of the licensee of the existing station, shall be obtained. For the purposes of this Section 90.35, the service contour for UHF stations is the 39 dBu contour; and the interference contour for UHF stations is the 21 dBu contour; the service contour for VHF stations is the 37 dBu contour; and the interference contour for VHF stations is the 19 dBu contour.

The Rules were revised incident to the refarming proceeding, and have remained in their present form for the past 17 years. *See* Fifth Memorandum Opinion and Order, *In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment*

Policies of the Private Land Mobile Services, 16 FCC Rcd 416 (2000) (hereinafter cited as “5th MO&O”).

Rule 90.35(b)(2)(ii) advises applicants regarding which coordinator(s) is/are responsible for coordinating specific frequencies. This is important for the proper functioning of the Commission’s private land mobile coordination and licensing regime post-refarming.

Rule 90.35(b)(2)(iii) provides specified protection for Power, Petroleum, Railroad, and Auto Emergency eligible users operating on channels that had been shared with Manufacturers and Forest Products prior to refarming, but were to be (and have been) shared by all Industrial/Business (“I/B”) users post-refarming. In lieu of protecting incumbent petroleum, power, railroad, and automobile emergency systems by specifying that coordination on the shared channels could only be done by their respective association (American Petroleum Institute, Utilities Technology Council, Association of American Railroads, and American Automobile Association), the Commission adopted the contour overlap provision as a coordination trigger: Concurrence of the coordinator associated with the industry for which the existing station license was issued, or the written concurrence of the licensee of the existing station, is required.²

The Rules have served a salutary purpose in the 17 years since their adoption: A concurrence process has been established to provide a measure of protection for existing power, petroleum, railroad, and automobile emergency systems while expanding eligibility on these channels to include all I/B users (and enabling coordination by a wide range of coordinators); at the same time, access for users in other business and industrial sectors, including in particular

² The procedural history is complicated including petitions for stay and reconsideration (filed by MRFAC and FIT), as well as Supplemental Comments proposing a consensus solution (filed by LMCC). The Supplemental Comments form the basis for the current Rules. For the details, see the 5th MO&O.

manufacturers and forest products companies, has been secured. In terms of the RFA specifically, the Rules benefit “small entities” by enhancing competition between and among coordinators for applications proposing PLMR channels, and thus help reduce applicant coordination costs.

Conclusion

Accordingly, for the foregoing reasons LMCC urges that Rules 90.35(b)(2)(ii) and (iii) be retained without modification.

Respectfully submitted,

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