

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Tektron Micro Electronics, Inc.)
)
Request for Waiver of Sections 90.20(f)(5) and)
90.259 of the Commission's Rules to Permit)
Wireless Microphone Operation in the 1427-1436)
MHz Band)

ORDER ON RECONSIDERATION

Adopted: February 22, 2000

Released: February 28, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction and Background.* On February 4, 1999, Itron, Inc. (Itron) filed a Petition for Reconsideration (Petition)¹ of a January 5, 1999, *Order*² by the Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau. The *Order* granted a waiver of Sections 90.20(f)(5) and 90.259 of our Rules,³ to Tektron Micro Electronics, Inc. (Tektron), a manufacturer of wireless microphones, to permit the use of the 1427-1435 MHz band for covert law enforcement wireless microphone operations. This *Order on Reconsideration* denies Itron's Petition.

2. *Discussion.* In its Petition, Itron, which provides and operates utility meter-reading systems that utilize the 1427-1432 MHz portion of the 1427-1435 MHz band, notes that the Division granted Tektron's waiver request without providing prior notice to the public or soliciting input from interested parties, and argues that had the waiver request been put on public notice, interested parties could have apprised the Commission of the negative consequences that could ensue from authorizing the proposed operation of Tektron's wireless microphones at 1427-1435 MHz.⁴ Itron states that the failure to seek such public comment by itself warrants reconsideration of the *Order*.⁵ We disagree. It is a

¹ Petition for Reconsideration, filed by Itron, Inc. on February 4, 1999 (Petition). An Opposition to the Petition for Reconsideration (Opposition) was filed by Tektron on February 17, 1999, and a Reply to the Opposition was filed by Itron on February 26, 1999.

² Tektron Micro Electronics, Inc., *Order*, 14 FCC Rcd 108 (WTB PSPWD 1999).

³ 47 C.F.R. §§ 90.20(f)(5) and 90.259. 47 C.F.R. § 90.259 limits the use of frequencies in the 1427-1435 MHz band to telemetry operations. 47 C.F.R. § 90.20(f)(5) permits a police licensee to use any frequency between 40 and 952 MHz for physical surveillance, stakeouts, raids and other such covert operations without special authorization from the Commission.

⁴ Petition at 1, 4.

⁵ *Id.* at 4.

matter of Commission discretion whether to give public notice of the filing of a waiver request and seek comment from the public.⁶ Itron concedes that not every waiver request need go on public notice,⁷ and we conclude that it was not an abuse of discretion to resolve this matter without soliciting comment. We believe that in this instance it was sufficient that non-parties to the proceeding could express their opposing views by filing a timely petition for reconsideration, as Itron has.⁸

3. Itron also contends that wireless microphone operations in the 1427-1435 MHz band are likely to cause harmful interference to Itron's Genesis system utility meter-reading operations.⁹ Itron states that a co-channel wireless microphone repeater with a unity gain antenna will affect any Itron device closer than 4.8 miles to the wireless microphone repeater, and that higher gain repeater antennas could affect even more of Itron's devices.¹⁰ Tektron replies that Itron overstates the interference potential, and that its own analysis shows that the worst-case interference contour would be 2.3 miles.¹¹

4. While the record indicates that there is a potential that wireless microphone operations in the 1427-1435 MHz band could cause co-channel interference to Itron's existing meter-reading operations, we agree with Tektron that the probability for actual "severe and potentially devastating interference"¹² seems slight. As Tektron indicates, the low power wireless microphone equipment would be covertly operated on a very intermittent, itinerant basis and actual operations in any given geographic location would be of short duration.¹³ Additionally, it appears that the probability of simultaneous meter-reading and covert wireless microphone operation in the same geographic area would be very small.

5. *Conclusion.* After review of the record, we conclude that the Commission's *Order* was procedurally correct and dismiss Itron's claim that the lack of public notice for Tektron's waiver request was, by itself, grounds for reconsideration of the *Order*. Additionally, we do not find Itron's argument that covert wireless microphone operation in the 1427-1435 MHz band will cause destructive interference to Itron's utility meter-reading systems to be persuasive based on the record in this proceeding.

6. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration, filed by Itron Inc. on February 4, 1999, IS DENIED.

⁶ See 47 C.F.R. § 1.925(c)(i) (codifying practice).

⁷ Petition at 4.

⁸ See 47 C.F.R. § 1.106(b)(1).

⁹ Petition at 6.

¹⁰ *Id.* See also Itron's Engineering Analysis at 3.

¹¹ Opposition at 8 and Exhibit A.

¹² Petition at 1.

¹³ Opposition at 6.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau