

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

In the Matter of)
INDUSTRIAL TELECOMMUNICATIONS)
ASSOCIATION, INC.)
Petition to Set Aside Grant of)
Application of Wayne E. Noll for New)
Industrial/Business Private Land Mobile Radio)
Station at Platte, Missouri.)
And)
WAYNE E. NOLL)
Licensee of Trunked Industrial/Business Pool)
Radio Service Station WPRH950, Platte, Missouri)

MEMORANDUM OPINION AND ORDER

Adopted: July 31, 2001

Released: August 2, 2001

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

I. INTRODUCTION

1. The Industrial Telecommunications Association, Inc., ("ITA") seeks to set aside the grant of application of Wayne E. Noll ("Noll").1 For the reasons set forth below, we deny the ITA petition.2 Additionally, on our own motion, we initiate a proceeding to modify Noll's license to specify a different frequency.

II. BACKGROUND

2. Frequency coordination in the Private Land Mobile Radio (PLMR) Services is the process by which a private organization recommends to the Commission the most appropriate frequencies for applicants in their designated radio service.3 In 1986, the Commission adopted frequency coordination rules and procedures in an effort to maximize service to the public by assuring that the assignment and management of the PLMR spectrum is performed in an efficient and effective manner.4 The Commission

1 Letter dated October 24, 2000 from Jeremy Denton, ITA Regulatory Affairs Assistant, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, PSPWD, WTB, FCC, Gettysburg, PA (ITA Letter).

2 For purposes of this matter, ITA's October 24, letter, supra, is treated as an Informal Petition for Commission Action (Petition).

3 Frequency Coordination in the Private Land Mobile Radio Services, Report and Order, 103 FCC 2d 1093 (1986).

4 Id. at 1094-1095 ¶ 2.

has stated that accurate information in the frequency coordination process is fundamental to its ability to review effectively the frequency recommendations made by FCC-certified frequency coordinators before licensing.⁵ A fundamental aspect of frequency coordination, in any radio service, is an accurate determination by the frequency coordinator as to whether there is a likelihood of potential harmful interference to the operations of existing co-channel or adjacent licensees.⁶

3. In 1997, the Commission allowed centralized trunking in the PLMR bands between 150 MHz and 512 MHz.⁷ The Commission emphasized that trunking would be permitted in those areas where exclusivity is recognized by the Commission or where an applicant/licensee has obtained the consent of all licensees whose service areas overlap a circle with a radius of 70 miles from the proposed trunked system's base station. In 2000, the Commission revised the definition of trunked systems authorized in the 150-512 MHz bands.⁸ The Commission has stated that the service area of a trunked licensee "shall be protected against co-channel and adjacent channel interference."⁹

4. On July 14, 1999, Commenco, Inc. (Commenco) was granted a license to operate trunked Industrial/Business Station WPNW290 at Kansas City, Missouri on various frequencies, including 157.6125 MHz. On October 20, 1999, Commenco was granted a license to operate trunked Industrial/Business Station WPPC498 at Spring Hill, Kansas on various frequencies, including 157.6275 MHz. On December 21, 1999, Commenco was granted a license to operate trunked Industrial/Business Station WPPH285 at Kansas City, Missouri on various frequencies, including 157.6275 MHz.

5. Wayne E. Noll filed an application for authorization to operate a single frequency, non-trunked, Industrial/Business Pool station in the Platte, Missouri area.¹⁰ The Personal Communications Industry Association (PCIA), an FCC-certified frequency coordinator, reviewed and submitted Noll's application to the Licensing and Technical Analysis Branch of the Public Safety and Wireless Division (Branch) with a certified frequency recommendation.¹¹ On September 27, 2000, the Branch, relying upon PCIA's certification, granted Noll's application for an authorization to operate conventional Industrial/Business Station WPRH950 on frequency 157.620 MHz.

⁵ *Id.* at 1148 ¶ 111, 1150 ¶ 116.

⁶ *See generally* In the Matter of American Mobile Telecommunications Association, Inc. and American Trucking Associations, Inc., *Report and Order*, DA 01-1411 (WTB PSPWD June 11, 2001) ¶¶ 13-15.

⁷ 47 C.F.R. § 90.187 (1997).

⁸ 47 C.F.R. § 90.187. The Commission's Part 90 Biennial review proceeding amended Section 90.187, but did not change the substance of the rule provision at issue here. *See* 1998 Biennial Regulatory Review, 47 C.F.R. Part 90, Private Land Mobile Radio Services, WT Docket No. 98-182, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 16673 (2000).

⁹ Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, *Third Memorandum Opinion and Order*, 14 FCC Rcd 10922, 10931 ¶ 20 (1999).

¹⁰ FCC File No. A058916 (Noll Application).

¹¹ *See* FAC No. 201100013.

6. By letter received October 26, 2000 in the Commission's Gettysburg, Pennsylvania office, another FCC-certified frequency coordinator, ITA, requested that the Commission set aside the Noll license grant.¹² ITA alleged procedural flaws in the filing of Noll's application and cited concerns over potential interference to operations by Commenco on frequencies 157.6125 MHz and 157.6275 MHz at Industrial/Business trunked Stations WPNW290, WPPH285 and WPPC498. ITA contended that Noll's operations on frequency 157.620 MHz pose a risk of interference to Commenco's operations at Stations WPNW290, WPPH285 and WPPC498 because Noll's station does not afford the required adjacent-channel interference protection to facilities licensed to Commenco.¹³ In support of its interference arguments, ITA included its interference analysis of the Noll license as granted. Specifically, ITA argued, the subject authorization was granted in error because Noll's operation on 157.620 MHz does not provide adequate protection to adjacent licensees.¹⁴ Therefore, ITA urged, the Commission should set aside the license grant.¹⁵

7. On February 15, 2001 the Branch requested that PCIA respond to ITA's interference analysis of the Noll station and propose a solution, if the Noll application had been incorrectly coordinated.¹⁶ By letter dated March 12, 2001, PCIA stated that it was possible that it had incorrectly coordinated the Noll application and proposed modifying the Noll license for Station WPRH950 by replacing frequency 157.620 MHz with 159.555 MHz.¹⁷

III. DISCUSSION

8. We believe that ITA's request is most properly characterized as an informal request for Commission action under Section 1.41 of the Commission's Rules.¹⁸ ITA argues that license set aside is warranted because Noll's license was granted in violation of Section 90.187 of the Commission's Rules.¹⁹ Specifically, ITA argues that the Noll station does not afford the required adjacent-channel interference protection.²⁰ ITA suggests that the Noll license poses a risk of harmful interference to Commenco's operations in the Platte, Missouri area.²¹ Under these circumstances, ITA contends, the grant of Noll's license should be set aside pursuant to Section 90.187 of the Commission's Rules.²² PCIA admits "that

¹² ITA Letter, *supra*.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Letter from the Licensing and Technical Analysis Branch, Federal Communications Commission, to PCIA (February 15, 2001).

¹⁷ Letter from PCIA to Licensing and Technical Analysis Branch, Federal Communications Commission (March 12, 2001).

¹⁸ 47 C.F.R. § 1.41.

¹⁹ *See* ITA Letter.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

there may be a co-channel license that was not accounted for” and recommends modifying Noll’s frequency to 159.555 MHz to resolve the problem.

9. Based upon our analysis, we conclude that the Noll application should not have been coordinated because it did not provide the requisite interference protection to Commenco’s operations. We find that initiation of revocation proceedings against Noll’s station is unnecessary in the instant case because PCIA has proposed changes to the Noll license designed to eliminate interference to Commenco’s stations. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.²³ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.²⁴ In this connection, we note that the proposed modification would serve the public interest by preserving the existing coverage areas of affected parties, prevent harmful interference, while not unduly disrupting Noll’s operations.

10. As discussed above the coordination of Noll’s application was defective. Thus, we believe that a modification of the Noll license to change the operating frequency is appropriate to prevent harmful interference to Commenco. In accordance with Section 1.87(a) of the Commission’s Rules,²⁵ we will not issue a modification order until Noll has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the modification, Noll must, within thirty days of the release date of this *Memorandum Opinion and Order*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554. If no protest is filed, Noll will have waived his right to protest the modification and will be deemed to have consented to the modification.

IV. CONCLUSION

11. For the reasons stated above, we conclude that the grant of Noll’s application was defective. As a result, we believe that the license grant to Noll was defective. Accordingly, we propose to modify Noll’s license concerning the operation of conventional I/B station WPRH950 to change the frequency from 157.620 MHz to 159.555 MHz.

V. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED, pursuant to Section 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, the Petition to set aside grant of license WPRH950 filed by Industrial Telecommunications Association, Inc. on October 26, 2000, IS DENIED.

13. IT IS PROPOSED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316(a), and Section 1.87 of the Commission’s Rules, 47 C.F.R. § 1.87, the license for Private Land Mobile Radio Services station WPRH950, held by Wayne E. Noll, BE MODIFIED to change the frequency from 157.620 MHz to 159.555 MHz.

²³ 47 U.S.C. § 316(a)(1).

²⁴ *Id.*

²⁵ 47 C.F.R. § 1.87(a).

14. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to Wayne E. Noll, P.O. Box 1067, Platte City, MO 64079.

15. 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