

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

In the matter of
PACIFIC GAS AND ELECTRIC COMPANY
Petition to Revoke grant of license for California
Metro Mobile Communications for
Industrial/Business Private Land Mobile Radio
Station, WPOY920,Twin Creeks, California
and
CALIFORNIA METRO MOBILE
COMMUNICATIONS
Licensee of Trunked Industrial/Business Pool
Station WPOY920,Twin Creeks, California

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2000

Released: August 17 2000

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

I. INTRODUCTION

1. On September 19, 2000, Pacific Gas and Electric Company (PG&E) submitted a petition seeking revocation of the above-captioned authorization granted to California Metro Mobile Communications (CMMC). For the reasons set forth below, we deny PG&E's Petition. However, on our own motion, we initiate a proceeding to modify CMMC's license for Station WPOY920, Twin Creeks, California to remove the frequency 153.6125 MHz.

II. BACKGROUND

2. Frequency coordination in the Private Land Mobile Radio (PLMR) Services is the process by which a private entity certified by the Commission recommends the most appropriate frequencies for applicants in designated radio services. 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. The Commission has stated that accurate information is fundamental to its ability to review effectively the

1 Letter from Marilou Ehrenberg, PG&E, to Office of the Secretary, Federal Communications Commission, dated Sept. 19, 2000 (Petition).

2 Frequency Coordination in the Private Land Mobile Radio Services, Report and Order, PR Docket No. 83-737, 103 FCC 2d 1093 (1986).

3 Id. at 1094-95 ¶ 2.

frequency recommendations made by FCC-certified frequency coordinators prior to licensing.<sup>4</sup> A fundamental aspect of frequency coordination, in any radio service, is an accurate determination by a FCC-certified frequency coordinator of whether the proposed operations potentially will cause harmful interference to existing co-channel or adjacent licensees.<sup>5</sup>

3. In 1997, the Commission allowed centralized trunking in the PLMR bands between 150 MHz and 512 MHz.<sup>6</sup> The Commission emphasized that trunking would be permitted only 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.<sup>7</sup> In 1999, the Commission provided applicants with an alternate means of obtaining an authorization for a trunked system by obtaining concurrence whenever the 19 dBu (UHF) or 22 dBu (VHF) interference contour from a proposed trunked station intersects the 37 dBu service contour (UHF) or 39 dBu service contour (VHF) of any existing co-channel or adjacent channel station.<sup>8</sup> In 2000, the Commission modified the definition of trunked systems authorized in the 150-512 MHz bands.<sup>9</sup>

4. On November 12, 1998, PG&E was granted a license to operate trunked Industrial/Business (I/B) Station KJX775, Vacaville, California on frequency 153.6050 MHz. On February 20, 1996, PG&E was granted licenses to operate conventional I/B Station WNF314 at Vacaville, California, on various frequencies, including 153.6050 MHz.<sup>10</sup>

5. CMMC subsequently filed an application for authorization to operate a trunked station in the Twin Creeks, California area.<sup>11</sup> The Personal Communications Industry Association (PCIA), a FCC-certified frequency coordinator, submitted CMMC's application, with a frequency recommendation, to the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division.<sup>12</sup> On September 8, 1999, the Branch granted CMMC's application to operate I/B Trunked Station WPOY920 on frequency 153.6125 MHz.<sup>13</sup>

6. By letter received September 19, 2000, PG&E requested that the Commission revoke CMMC's license.<sup>14</sup> PG&E cited concerns over potential interference to the operation of its Stations

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<sup>4</sup> *Id.* at 1148 ¶ 111, 1150 ¶ 116.

<sup>5</sup> *See generally* American Mobile Telecommunications Association, Inc. and American Trucking Associations, Inc., *Report and Order*, DA 01-1411, ¶¶ 13-15 (WTB PSPWD rel. June 11, 2001) at.

<sup>6</sup> Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14337-38 ¶¶ 56-59 (1997).

<sup>7</sup> *Id.*

<sup>8</sup> Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Third Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 10922, 10926-27 ¶¶ 6-9 (1999).

<sup>9</sup> 47 C.F.R. § 90.187. The Commission's amendment 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, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 98-182, 15 FCC Rcd 16673 (2000).

<sup>10</sup> In addition, on February 28, 2000, PG&E was granted a license to operate conventional I/B Station WPPX407 at Fairfield, California on various frequencies, including 153.6050 MHz.

<sup>11</sup> File No. A034396.

<sup>12</sup> *See* FAC # 990270014:992150507.

<sup>13</sup> *See* License for Station WPOY920.

<sup>14</sup> Petition at 1.

KJX775, WNFM314 and WPPX407 on frequency 153.6050 MHz.<sup>15</sup> Specifically, PG&E argued that the subject authorization was granted in error because CMMC did not obtain PG&E'S consent.<sup>16</sup> PG&E submitted a study from the Industrial Telecommunications Association, Inc. (ITA) showing that CMMC's interference contour (19 dBu) overlapped PG&E's service area contours (37 dBu). Therefore, PG&E urged that the Commission set aside the license grant.<sup>17</sup>

7. On February 15, 2001, the Branch requested that PCIA respond to ITA's interference analysis of the CMMC station and propose a solution, if the CMMC application had been incorrectly coordinated.<sup>18</sup> By letter dated March 12, 2001, PCIA stated that it was possible that it had incorrectly coordinated the CMMC application and proposed modifying the CMMC license for Station WPOY920 by removing frequency 153.6125 MHz.<sup>19</sup>

### III. DISCUSSION

8. As an initial matter, PCIA challenges our authority to act on the PG&E informal petition because the request should be viewed as a petition for reconsideration of the CMMC license grant and therefore is fatally flawed because it was filed more than thirty days after public notice of the license grant.<sup>20</sup> We believe, however, that PG&E's request is most properly characterized as an informal request for Commission action under Section 1.41 of the Commission's Rules.<sup>21</sup> Accordingly, we will address the merits of PG&E's request.

9. PG&E argues that license set-aside is warranted because CMMC's license was granted in violation of Section 90.187 of the Commission's Rules.<sup>22</sup> Specifically, PG&E argues that the CMMC station does not afford the required adjacent-channel interference protection.<sup>23</sup> PG&E suggests that the CMMC license poses a risk of harmful interference to PG&E's operations in the Vacaville and Fairfield, California areas.<sup>24</sup> Under these circumstances, PG&E contends, the grant of CMMC's license should be set aside.<sup>25</sup> PCIA admits "that there may be a co-channel license that was not accounted for" and recommends modifying CMMC's license by removing frequency 153.6125 MHz to resolve the problem.

10. Based upon our analysis, we conclude that the CMMC application should not have been coordinated because it did not provide the requisite interference protection to PG&E's operations. We find that initiation of revocation proceedings against CMMC's station is unnecessary in the instant case

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety Private Wireless Division, to PCIA, dated February 15, 2001.

<sup>19</sup> Letters from Don Andrew, Communications Specialist, PCIA to Branch (March 12, 2001) (PCIA Letters).

<sup>20</sup> See Letter from Christopher D. Imlay, Esq., of Booth, Freret, Imlay & Tepper, P.C. to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety Private Wireless Division, dated April 18, 2001 (citing, *e.g.*, *Reuters, Ltd. v. FCC*, 781 F. 2d 946, 951-52 (D.C. Cir. 1986); *Panola Broadcasting Co.*, 68 FCC 2d 533 (1978); *MetroMedia, Inc.*, 56 FCC 2d 909, 909-910 (1975)).

<sup>21</sup> 47 C.F.R. § 1.41.

<sup>22</sup> 47 C.F.R. § 90.187.

<sup>23</sup> Petition at 1.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

because PCIA has proposed changes to the CMMC license designed to eliminate interference to PG&E's stations. We believe that Section 316 of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.<sup>26</sup> Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.<sup>27</sup> In this connection, we note that the proposed modification would serve the public interest by preserving the existing coverage areas of affected parties and preventing harmful interference, while not unduly disrupting CMMC's operations.

11. As discussed above, the coordination of CMMC's application was defective. Thus, we believe that a modification of the CMMC license for Station WPOY920 to delete 153.6125 MHz as operating frequency is appropriate to prevent harmful interference to PG&E. In accordance with Section 1.87(a) of the Commission's Rules,<sup>28</sup> we will not issue a modification order until CMMC has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the modification, CMMC must, within thirty days of the release 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 Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554. If no protest is filed, CMMC will have waived its right to protest the modification and will be deemed to have consented to the modification.<sup>29</sup>

#### IV. CONCLUSION

13. For the reasons stated above, we conclude that the grant of California Metro Mobile Communication's application was defective. Accordingly, we propose to modify California Metro Mobile Communication's license concerning the operation of I/B trunked Station WPOY920 to delete frequency 153.6125 MHz.

#### V. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of Commission's Rules, 47 C.F.R. § 1.41, the Petition for Revocation of the license for Station WPOY920, filed by Pacific Gas and Electric Company on September 19, 2000, IS DENIED.

14. IT IS PROPOSED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, the license for Private Land Mobile Radio Services Station WPOY920, held by California Metropolitan Mobile Communications, BE MODIFIED to delete the frequency 153.6125 MHz.

15. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested to California Metropolitan Mobile Communications Inc, 3549 Haven Ave, Suite A, Menlo Park, CA 94025-1009 and to Christopher D. Imlay, Esq., Booth, Freret, Imlay and Tepper, P.C., 5101 Wisconsin Avenue, N.W., Suite 307, Washington, D.C. 20016-4120.

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<sup>26</sup> 47 U.S.C. § 316.

<sup>27</sup> 47 U.S.C. § 316(a). Section 316(a) requires that we notify the affected station(s) of the proposed modification(s), the public interest reasons for the action, and afford at least 30 days to respond.

<sup>28</sup> 47 C.F.R § 1.87(a).

<sup>29</sup> 47 C.F.R. § 1.87(g), (h).

16. 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 COMMUNICATION COMMISSION

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