

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 Comserv Consulting Services for)
New Industrial/Business Private Land Mobile)
Radio Station at Memphis, Tennessee)
and)
COMSERV CONSULTING SERVICES)
Licensee of Trunked Industrial/Business Pool)
Radio Service Station WPRH220, Memphis,)
Tennessee)

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2001

Released: August 17, 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 above-captioned authorization granted to Comserv Consulting Services (Comserv). For the reasons set forth below, we dismiss the ITA petition. Additionally, on our own motion, we initiate a proceeding to modify Comserv's license to reduce its effective radiated power (ERP) on three frequencies.

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 service. 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

1 Letter dated October 2, 2000 and received October 3, 2000 from Jeremy Denton, ITA Regulatory Affairs Assistant, to Mary Shultz, Chief, Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (ITA Letter).

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.

accurate information is fundamental to its ability to review effectively the frequency recommendations made by FCC-certified frequency coordinators in connection with the Commission's licensing determinations.⁴ A fundamental aspect of frequency coordination, in any radio service, is an accurate determination by a FCC-certified coordinator as to whether the proposed operations potential will cause harmful interference to existing co-channel or adjacent licensees.⁵

3. In 1997, the Commission allowed centralized trunking in the PLMR bands between 150 MHz and 512 MHz.⁶ 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.⁷ 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.⁸ In 2000, the Commission modified the definition of trunked systems authorized in the 150-512 MHz bands.⁹

4. Comserv filed an application for authorization to operate an Industrial/Business Pool trunked station in the Memphis, Tennessee area.¹⁰ The Personal Communications Industry Association (PCIA), a FCC-certified frequency coordinator, submitted Comserv's application, with a frequency recommendation, to the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division.¹¹ On September 28, 2000, the Branch granted Comserv's application to operate trunked Industrial/Business Station WPRH220 on six frequency pairs, including frequencies 452.1375 MHz, 452.2875 MHz, and 452.6625 MHz. The base station frequencies were authorized to operate at twenty watts ERP.¹²

⁴ *Id.* at 1148 ¶ 111, 1150 ¶ 116.

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

⁶ 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, *Second Report and Order*, PR Docket No. 92-23512, FCC Rcd 14307, 14337-38 ¶¶ 56-59 (1997).

⁷ *Id.*

⁸ 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, *Third Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 10922, 10926-27 ¶¶ 6-9 (1999).

⁹ 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, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 98-182, 15 FCC Rcd 16673 (2000).

¹⁰ File No. A053769.

¹¹ *See* FAC # 993050547.

¹² *See* License for Station WRP220.

5. By letter received October 3, 2000, another FCC-certified frequency coordinator, ITA, requested that the Commission set aside Comserv's license grant.¹³ ITA alleged procedural flaws in the filing of Comserv's application and cited concerns over potential interference to the operations of Racing Radios' Station WPQA386, Shelby County, Tennessee, on frequencies 451.1375 MHz, 452.2875 MHz, and 452.6625 MHz; Mesaba Aviation, Inc.'s Station WPPG403, Memphis, Tennessee, on frequency 451.5125 MHz; and Leading Edge Trust's Station WPQI636, Memphis, Tennessee, on frequency 452.775 MHz.¹⁴ ITA contended that Comserv's trunked operations on frequencies 452.1375 MHz, 452.2875 MHz and 452.6625 MHz pose a risk of interference to the aforementioned operations of Racing Radio, Mesaba Aviation and Leading Edge because Comserv's station does not afford the required co-channel and adjacent channel interference protection to the subject facilities licensed to Racing Radio, Mesaba Aviation and Leading Edge.¹⁵ In support of its interference arguments, ITA included its interference analysis of the Comserv license as granted. Specifically, ITA argued, the subject authorization was granted in error because Comserv's operations on 452.1375 MHz, 452.2875 MHz, and 452.6625 MHz do not provide adequate protection to co-channel and adjacent licensees.¹⁶ Therefore, ITA urged the Commission to set aside the license grant.

6. On February 15, 2001, the Branch requested that PCIA respond to ITA's interference analysis of the Comserv station and propose a solution, if the Comserv application had been incorrectly coordinated.¹⁷ By letter dated March 12, 2001, PCIA stated that there might be co-channel licensees that were not accounted for and proposed as a solution that the Comserv license for Station WPRH220 be modified by reducing the ERP on frequencies 452.1375 MHz, 452.2875 MHz, and 452.6625 MHz from twenty to ten watts.¹⁸

III. DISCUSSION

7. 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.¹⁹ ITA argues that license set aside is warranted because Comserv's license was granted in violation of Section 90.187 of the Commission's Rules.²⁰ Specifically, ITA argues that the Comserv station does not afford the required co-channel and adjacent channel interference protection.²¹ ITA contends that the Comserv license poses a risk of harmful

¹³ See ITA Letter.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Letter dated February 15, 2001 from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Federal Communications Commission, to PCIA.

¹⁸ Letter dated March 12, 2001 from PCIA to Tracy Simmons, Licensing and Technical Analysis Branch, Federal Communications Commission.

¹⁹ 47 C.F.R. § 1.41.

²⁰ See ITA Letter.

²¹ *Id.*

interference to several stations in the Memphis, Tennessee area.²² PCIA admits “that there may be a co-channel license that was not accounted for” and recommends modifying Comserv’s license to resolve the problem.

8. Based upon our analysis, we conclude that the Comserv application should not have been coordinated because the proposed operations did not provide the requisite interference protection to the operations of Racing Radio, Mesaba Aviation, and Leading Edge. We find that initiation of revocation proceedings against Comserv’s station is unnecessary in the instant case because PCIA has proposed changes to the Comserv license designed to eliminate interference to the earlier-licensed 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 the affected parties and preventing harmful interference, while not unduly disrupting Comserv’s operations.

9. As discussed above, the coordination of Comserv’s application was defective. Thus, we believe that a modification of the Comserv license to reduce the ERP on its operating frequencies is appropriate to prevent harmful interference to Racing Radio, Mesaba Aviation, and Leading Edge. In accordance with Section 1.87(a) of the Commission’s Rules,²⁵ we will not issue a modification order until Comserv has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the modification, Comserv 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, Comserv will have waived its right to protest the modification and will be deemed to have consented to the modification.

IV. CONCLUSION

10. For the reasons stated above, we conclude that the coordination of Comserv’s application was defective. As a result, we believe that the license grant to Comserv was defective. Accordingly, we propose to modify Comserv’s license for Station WPRH220 to reduce the ERP for operation on frequencies 452.1375 MHz, 452.2875 MHz, and 452.6625 MHz from twenty to ten watts in order to protect adjacent channel licensees from harmful interference.

V. ORDERING CLAUSES

11. 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 the Commission’s Rules, 47 C.F.R. § 1.41, the Petition to set aside grant of the license for Station WPRH220, submitted by ITA on October 3, 2000, IS DENIED.

²² *Id.*

²³ 47 U.S.C. § 316(a)(1).

²⁴ *Id.*

²⁵ 47 C.F.R. § 1.87(a).

12. 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, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, the license for Private Land Mobile Radio Services Station WPRH220, held by Comserv Consulting Services, BE MODIFIED by reducing the authorized ERP from twenty watts to ten watts on frequencies 452.1375MHz, 452.2875 MHz and 452.6625 MHz.

16. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to Comserv Consulting Services, 895 North White Station Road, Memphis, TN 38122, and to counsel for Comserv, Russell Taylor, Esq., Mintz, Levin, Cohn, Ferns, Glovsky & Popeo, P.C., 701 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004.

17. 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