

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

In the Matter of )
INDUSTRIAL TELECOMMUNICATIONS )
ASSOCIATION, INC. )
Petition to Revoke grant of license for Excel )
Logistics for Industrial/Business Private Land )
Mobile Radio Station, WPQK656, Riverside, )
California )
and )
EXCEL LOGISTICS )
Licensee of Conventional Industrial/Business Pool )
Station WPQK656, Riverside, California )

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 2001

Released: October 2, 2001

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

I. INTRODUCTION

1. On August 30, 2000, Industrial Telecommunications Association, Inc. (ITA) submitted a petition seeking revocation of the above-captioned authorization granted to Excel Logistics (Excel). For the reasons set forth below, we deny ITA's Petition. On our own motion, however, we initiate a proceeding to modify Excel's license for Station WPQK656, Riverside, California to change the authorized frequencies from 462.4875/467.4875 MHz to 461.0625/466.0625 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 frequency

1 Letter from Jeremy Denton, ITA, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Personal Wireless Division, Wireless Telecommunications Bureau, dated August 30, 2000 and received August 31, 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.

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 channel 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 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.<sup>7</sup> The Commission has stated that the service area of a trunked licensee "shall be protected against co-channel and adjacent channel interference."<sup>8</sup>

4. Excel filed an application for authorization to operate a conventional station in the Riverside, California area.<sup>9</sup> Personal Communications Industry Association (PCIA), a FCC-certified frequency coordinator, submitted Excel's application, with a frequency recommendation, to the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division.<sup>10</sup> On August 18, 2000, the Branch granted Excel's application to operate I/B conventional Station WPQK656 on frequencies 462.4875 MHz and 467.4875 MHz.<sup>11</sup>

5. By letter received August 31, 2000, ITA requested that the Commission revoke Excel's license.<sup>12</sup> ITA cited concerns over potential interference to the operation of previously licensed Stations WPPU412, Wrightwood, California and WPNV896, Ontario, California.<sup>13</sup> Specifically, ITA argued that the subject authorization was granted in error because Excel did not afford the adjacent channel interference protection required by the Commission's Rules.<sup>14</sup> ITA submitted a contour analysis study showing that Excel's interference contour (19 dBu) overlapped the service area contours (37 dBu) of

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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., *Memorandum Opinion and Order*, 16 FCC Rcd 12416, 12422-23 ¶¶ 13-15 (WTB PSPWD 2001).

<sup>6</sup> 47 C.F.R. § 90.187 (1997).

<sup>7</sup> 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).

<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, 10931 ¶ 20 (1999).

<sup>9</sup> File No. A056429

<sup>10</sup> *See* FAC # 201520022.

<sup>11</sup> *See* License for Station WPQK656.

<sup>12</sup> Petition at 1.

<sup>13</sup> *Id.* Station WPPU412 is licensed to US Sprint Communications, L.P., and Station WPNV896 is licensed to United Parcel Service. The license for Station WPPU412 was granted on January 12, 2000, and the license for Station WPNV896 was granted on July 14, 1999.

<sup>14</sup> *Id.*

Stations WPPU412 and WPNV896. Therefore, ITA urged that the Commission set aside the license grant.<sup>15</sup>

6. On February 15, 2001, the Branch requested that PCIA respond to ITA's interference analysis of the Excel station and propose a solution, if in fact the Excel application had been incorrectly coordinated.<sup>16</sup> By letter dated March 12, 2001, PCIA stated that it was possible that it had incorrectly coordinated the Excel application and proposed modifying the Excel license for Station WPQK656 by removing frequencies 462.4875/467.4875 MHz and replacing them with frequencies 461.0625/466.025 MHz.<sup>17</sup>

### III. DISCUSSION

7. ITA's petition is most properly characterized as an informal request for Commission action under Section 1.41 of the Commission's Rules.<sup>18</sup> ITA argues that license set-aside is warranted because Excel's license was granted in violation of Section 90.187 of the Commission's Rules.<sup>19</sup> Specifically, ITA argues that the Excel station does not afford the required adjacent channel interference protection.<sup>20</sup> ITA suggests that the Excel license poses a risk of harmful interference to stations in the Wrightwood and Ontario, California areas.<sup>21</sup> Under these circumstances, ITA contends, the grant of Excel's license should be set aside.<sup>22</sup> PCIA admits "that there may be licensees that were not accounted for" and recommends modifying Excel's license by replacing the frequencies 462.4875/467.4875 MHz with frequencies 461.0625/466.0625 MHz to resolve the problem.

8. Based upon our analysis, we conclude that the Excel application should not have been coordinated or granted because it did not provide the requisite interference protection to the operations of Stations WPPU412 and WPNV896. We nonetheless find that initiation of revocation proceedings against Excel's station is unnecessary in the instant case because PCIA has proposed changes to the Excel license designed to eliminate interference to Stations WPPU412 and WPNV896. We believe that Section 316 of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.<sup>23</sup> Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.<sup>24</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 Excel's operations.

9. As discussed above, the coordination of Excel's application was defective. Thus, we believe that a modification of the Excel license for Station WPQK656 to replace the frequencies

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

<sup>16</sup> Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety Private Wireless Division, to PCIA, dated February 15, 2001.

<sup>17</sup> Letter from Don Andrew, Communications Specialist, PCIA to Branch, dated Mar. 12, 2001.

<sup>18</sup> 47 C.F.R. § 1.41.

<sup>19</sup> 47 C.F.R. § 90.187.

<sup>20</sup> Petition at 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 47 U.S.C. § 316.

<sup>24</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.

462.4875/467.4875 MHz with 461.0625/466.0625 MHz is warranted, would further the public interest, and resolve this matter in an effective and expeditious manner. In accordance with Section 1.87(a) of the Commission's Rules,<sup>25</sup> we will not issue a modification order until Excel has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the modification, Excel 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, Excel will have waived its right to protest the modification and will be deemed to have consented to the modification.<sup>26</sup>

#### IV. CONCLUSION

10. For the reasons stated above, we conclude that the grant of Excel Logistics' application was defective. Accordingly, we propose to modify Excel Logistics's license for Industrial/Business conventional Station WPQK656 to replace the frequencies 462.4875/467.4875 MHz with the frequencies 461.0625/466.0625 MHz.

#### 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 Commission's Rules, 47 C.F.R. § 1.41, the Petition for Revocation of the license for Station WPQK656, filed by Industrial Telecommunications Association, Inc. on August 31, 2000, IS DENIED.

12. 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 WPQK656, held by California Metropolitan Mobile Communications, BE MODIFIED to replace the frequencies 462.4875/467.4875 MHz with the frequencies 461.0625/466.0625 MHz.

13. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested to Excel Logistics, 12400 Riverside Drive, Mira Loma, CA 91752.

14. 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

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<sup>25</sup> 47 C.F.R § 1.87(a).

<sup>26</sup> 47 C.F.R. § 1.87(g), (h).