

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

In the Matter of )
)
PACIFIC GAS AND ELECTRIC COMPANY )
)
Request to Revoke the Grant of the License of )
Alon Shatzki for Trunked Industrial/Business Pool )
Radio Service Station WPMU363, Milpitas, )
California )
)
And )
)
PERSONAL COMMUNICATIONS INDUSTRY )
ASSOCIATION )
)
Request to Modify the License of Alon Shatzki )
for Trunked Industrial/Business Pool Radio )
Service Station WPMU363, Milpitas, )
California )
)
And )
)
ALON SHATZKI, INC. )
)
Licensee of Trunked Industrial/Business Pool )
Radio Service Station WPMU363, Milpitas, )
California )

MEMORANDUM OPINION AND ORDER

Adopted: December 26, 2001

Released: December 28, 2001

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) requested that the Commission revoke the license for Station WPMU363, Milpitas, California, granted to Alon Shatzki, Inc. (Shatzki).<sup>1</sup> On April 12, 2001, the Personal Communications Industry Association (PCIA) requested that the Commission modify the subject license by reducing the permitted effective radiated power (ERP) to twenty-three watts.<sup>2</sup> For the reasons set forth below, we deny PG&E's request to revoke Shatzki's authorization, but take action regarding PCIA's request that we modify the subject Shatzki license by reducing the authorized ERP.

<sup>1</sup> Request to Revoke the License for WPMU363 filed by Pacific Gas and Electric Company (Sept. 19, 2000) (Request to Revoke).

<sup>2</sup> Request to Modify License by Reducing ERP filed by the Personal Communications Industry Association (Apr. 2, 2001) (Request to Reduce ERP).

## 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.<sup>3</sup> 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.<sup>4</sup> The Commission has stated that 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.<sup>5</sup> 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.<sup>6</sup>

3. In 1997, the Commission allowed centralized trunking in the PLMR bands between 150 MHz and 512 MHz.<sup>7</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>8</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 (VHF) or 21 dBu (UHF) interference contour from a proposed trunked station intersects the 37 dBu service contour (VHF) or 39 dBu service contour (UHF) of any existing co-channel or adjacent channel station.<sup>9</sup> In 2000, the Commission modified the definition of trunked systems authorized in the 150-512 MHz bands.<sup>10</sup>

4. Shatzki filed an application for authorization to operate an Industrial/Business (I/B) Pool trunked station in Milpitas, California.<sup>11</sup> The PCIA, a FCC-certified frequency coordinator, submitted Shatzki's license 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 January 4, 1999, the Branch granted Shatzki's application to operate trunked I/B Station WPMU363 on frequency 153.5225 MHz.

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<sup>3</sup> Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, PR Docket No. 83-737, 103 FCC 2d 1093 (1986).

<sup>4</sup> *Id.* at 1094-95 ¶ 2.

<sup>5</sup> *Id.* at 1148 ¶ 111, 1150 ¶ 116.

<sup>6</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>7</sup> 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. 92-235, 12 FCC Rcd 14307, 14337-38 ¶¶ 56-59 (1997).

<sup>8</sup> *Id.*

<sup>9</sup> 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).

<sup>10</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>11</sup> Application File No. A025195 (filed Aug. 27, 1998).

<sup>12</sup> See Frequency Coordination Number 981270029.

The base station was authorized to operate at 185 watts ERP.<sup>13</sup>

5. On September 19, 2000, PG&E requested revocation of Shatzki's license for Station WPMU363 because of interference concerns.<sup>14</sup> PG&E is licensed to operate Stations KME687 and WPPX407 on frequency 153.5150 MHz in Newman, Fairfield, and Oakdale, California.<sup>15</sup> It asserts that Shatzki has not provided adequate protection to PG&E's operations,<sup>16</sup> and that, moreover, Shatzki never sought PG&E's consent for the operation of Station WPMU363 as required by Section 90.187 of the Commission's Rules.<sup>17</sup> Furthermore, PG&E states that it has no intention of consenting to Shatzki's current operations because of the critical nature of its own radio communications.<sup>18</sup> In support of its assertion that Shatzki's station operations cause harmful interference, PG&E submitted findings made by the Industrial Telecommunications Association, Inc. (ITA), a FCC-certified frequency coordinator, that Shatzki's interfering contour (19dBu) overlaps PG&E's service contour (37 dBu).

6. Upon inquiry from the Branch, PCIA reviewed its records concerning the Station WPMU363 frequency recommendation.<sup>19</sup> PCIA conducted a 153-kilometer database search of the subject frequency (153.5225 MHz) and the channels adjacent thereto.<sup>20</sup> In addition, it inspected its records for consent letters and contour studies of the Station WPMU363 proposal. Having done that, PCIA determined that there might be licensees that were not accounted for and proposed, as a solution, that the Shatzki license for Station WPMU363 be modified by reducing the ERP on 153.5225 MHz from 185 watts to 23 watts.<sup>21</sup>

7. In response, Shatzki argues that the Commission is without authority to take any action in the instant case because (1) no objection was made to the initial license application, and (2) the time period for reconsideration of the license grant has expired.<sup>22</sup> In Shatzki's view, the Request to Revoke can only be considered a petition for reconsideration.<sup>23</sup> He further submits that as the thirty-day time period for filing reconsideration petitions has elapsed - - and the Commission has consistently held that it is without authority to extend or waive that time period - - no action can be taken on PG&E's request.<sup>24</sup>

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<sup>13</sup> See License for Station WPMV363.

<sup>14</sup> Request to Revoke at 1.

<sup>15</sup> PG&E also is authorized to operate mobile units throughout California on 153.515 MHz. See License for Station KA7177.

<sup>16</sup> Request to Revoke at 1.

<sup>17</sup> 47 C.F.R. § 90.187.

<sup>18</sup> Request to Revoke at 1.

<sup>19</sup> See Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to the Personal Communications Industry Association (Feb. 9, 2001).

<sup>20</sup> Request to Reduce ERP at 1.

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

<sup>22</sup> Letter from Christopher D. Imlay, Esq., Booth, Freret, Imlay & Tepper, P.C., to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Federal Communications Commission (Apr. 18, 2001).

<sup>23</sup> *Id.*

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

#### IV. DISCUSSION

8. We believe 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>25</sup> The request clearly and concisely sets forth the facts relied upon, the regulatory provision (Section 90.187) governing the licensing of trunked systems operating on frequencies between 150 MHz and 512 MHz, the interest of the person or entity submitting the request, and the relief sought.<sup>26</sup> Contrary to Shatzki's assertion, PG&E's request need not be considered a petition for reconsideration (whether or not it was timely filed) for remedial action to be taken. PCIA's request for license modification of Shatzki's station also may be considered an informal request under Section 1.41. Finally, we have the authority under our own auspices to initiate a proceeding that would modify Shatzki's license if warranted by the public interest.<sup>27</sup> Having concluded that we have the necessary authority to consider PG&E's allegations, we now proceed to resolve the matter.

9. Based upon our analysis and the information currently before us, we conclude that the Shatzki application should not have been coordinated because the proposed operations did not provide the requisite interference protection to Stations KME687 and WPPX407 licensed to PG&E. However, we find that initiation of revocation proceedings regarding Shatzki's license for Station WPMU363 is unnecessary in the instant case because PCIA has proposed changes to the license designed to eliminate harmful interference to the earlier-licensed PG&E stations. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.<sup>28</sup> Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.<sup>29</sup> 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 Shatzki's operations.

10. As discussed above, the coordination of Shatzki's application was defective because written consent was neither sought nor received from PG&E, an affected adjacent channel licensee, as required by Section 90.187 of the Commission's Rules. Thus, we believe that a modification of the Shatzki license to reduce the ERP on its operating frequency, as proposed by PCIA, is an appropriate mechanism to prevent harmful interference to PG&E's stations. In accordance with Section 1.87(a) of the Commission's Rules,<sup>30</sup> we will not issue a modification order until Shatzki has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the modification, Shatzki 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.<sup>31</sup> If no protest is filed, Shatzki will have waived

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<sup>25</sup> 47 C.F.R. § 1.41.

<sup>26</sup> See, e.g., Industrial Telecommunications Association, Inc., and Comserv Consulting Services, *Memorandum Opinion and Order*, 16 FCC Rcd 15424, 15426 ¶ 7 (WTB PSPWD 2001).

<sup>27</sup> See, e.g., Association of Public Safety Communications Officials International, Inc., Forestry Conservation Communications Association and Chandler Fire Department, *Memorandum Opinion and Order*, 16 FCC Rcd 14926, 14926 ¶ 1, 14929-30 ¶ 9 (WTB PSPWD 2001).

<sup>28</sup> 47 U.S.C. § 316(a)(1).

<sup>29</sup> *Id.*

<sup>30</sup> 47 C.F.R. § 1.87(a).

<sup>31</sup> This address is proper only for protests submitted by U.S. mail. For hand-delivered or messenger-delivered paper filings, the proper address is 236 Massachusetts Ave., N.E., Suite 110, Washington, D.C. 20002. For documents sent by overnight delivery service other than United States Postal Service Express Mail and Priority Mail, the proper

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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 coordination of Shatzki's application was defective. As a result, we believe that the license grant to Shatzki was defective. Accordingly, we propose to modify Shatzki's license for Station WPMU363 to reduce the ERP for operation on frequency 153.5225 MHz from 185 to 23 watts in order to protect adjacent channel licensees from harmful interference.

#### V. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED that, 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 Revoke the License for WPMU363, filed by Pacific Gas and Electric Company on September 19, 2000, **IS DENIED**.

13. IT IS FURTHER ORDERED that, 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 Request to Modify License by Reducing ERP, filed by the Personal Communications Industry Association on April 2, 2001, **IS GRANTED**.

14. 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 WPMU363, licensed to Alon Shatzki, Inc., BE MODIFIED by reducing the authorized ERP from 185 watts to 23 watts on frequency 153.5225 MHz.

15. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to Alon Shatzki, Inc., 900 Industrial Rd Ste. D, San Carlos, California 94070, and to counsel for Alon Shatzki, Inc., Christopher D. Imlay, Esq., Booth, Freret, Imlay & Tepper, P.C., 5101 Wisconsin Avenue, N.W., Suite 307, Washington, D.C. 20016-4120.

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 COMMUNICATIONS COMMISSION

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

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address is 9300 East Hampton Dr., Capitol Heights, MD 20743. For further information, contact the Office of the Secretary at (202) 418-0300 or msalas@fcc.gov.