

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

In the Matter of)
INDUSTRIAL TELECOMMUNICATIONS)
ASSOCIATION, INC.,)
GERALD R. WALKER)
Licensee of Industrial/Business Private Land)
Mobile Radio Station WPSV754, Chicago, Illinois)
Petitions for Modification of the License of)
RF Data, Inc. for Industrial/Business Private Land)
Mobile Radio Station WPTJ220, Chicago, Illinois)
AND)
RF DATA INC.)
Licensee of Industrial/Business Private Land)
Mobile Radio Station WPTJ220, Chicago, Illinois)

MEMORANDUM OPINION AND ORDER

Adopted: February 3, 2003

Released: February 7, 2003

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

I. INTRODUCTION

1. The Industrial Telecommunications Association, Inc. (ITA), and Gerald R. Walker (Walker) request that the Commission modify the above-captioned authorization granted to RF Data Inc. (RF Data).¹ For the reasons set forth below, we grant the ITA and Walker Requests to the extent that we initiate a proceeding to modify RF Data's license for Industrial/Business Pool Station WPTJ220, Chicago, Illinois, to delete frequency pair 471/474.3875 MHz.

II. BACKGROUND

2. On May 30, 2001, the Commission received an application from Gerald R. Walker to operate an Industrial/Business Pool Conventional (IG) station with ninety mobiles on the frequency pair 471/474.3875 at 233 South Wacker Drive in Chicago, Illinois (Walker Application).² The following day,

1 Letter from Richard F. Feser, Director, Spectrum Operations Analysis, ITA, to D'wana R. Terry, Chief, Public Safety and Private Wireless Division, FCC, dated August 22, 2002 (ITA Request); Letter from Gerald R. Walker, Business Radio Licensing, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, PSPWD, filed Nov. 8, 2001 (Walker Request).

2 FCC File No. 0000476869.

May 31, 2001, the Commission received an application from RF Data to operate an Industrial/Business trunked (YG) station on the same frequency pair and transmitter site requested by the Walker Application, *i.e.*, 471/474.3875 MHz at 233 South Wacker Drive, Chicago, Illinois (RF Data Application).³ ITA, an FCC Commission-certified frequency coordinator for the Private Land Mobile Radio (PLMR) services, certified the RF Data Application.⁴ Thereafter, on August 3, 2001, the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division (Division) granted the Walker Application under call sign WPSV754. On October 11, 2001, the Branch granted the RF Data Application under call sign WPTJ220.

3. The Commission's Rules provide that PLMR frequencies between 470-512 MHz may be assigned on a shared basis to multiple users in the same area until a channel pair is loaded to capacity.⁵ For Industrial/Business Pool systems, channel capacity is reached at 90 mobile units.⁶ Once a frequency pair is fully loaded, the Commission's Rules provide that it may only be reassigned at a distance of at least 64 kilometers (40 miles).⁷ In this connection, Walker requests the deletion of frequency pair 471/474.3875 MHz from RF Data's license⁸ because his earlier-granted license authorizes ninety mobile units on 471/474.3875 MHz.⁹

4. On August 7, 2002, the Division directed ITA to prepare and submit a revised analysis of the best frequency configuration for RF Data's trunked stations WPTJ220.¹⁰ In response, ITA requests the cancellation of the license for Station WPTJ220.¹¹ In support of its request, ITA agrees that the Commission's records reflect that the Walker Application was filed prior to the RF Data Application.¹² RF Data also responded to the Division Letter by stating that Walker's Station WPSV754 is not constructed and that the Walker Request is "defective and must not be considered" because it was not

³ File No. 0000478017.

⁴ Frequency Coordination Number 20011010064758.

⁵ 47 C.F.R. § 90.313(c).

⁶ 47 C.F. R. § 90.313(b)(2).

⁷ 47 C.F.R § 90.313(c).

⁸ Walker Request at 1.

⁹ *Id.*

¹⁰ Letter from D'wana R. Terry, Public Safety and Private Wireless Division, FCC, to Jeremy Denton, Industrial Telecommunications Association, Inc. dated August 7, 2002 (Division Letter). In this connection, the Division noted that it appeared appropriate to modify RF Data's license by deleting the frequency pair 471/474.3875 MHz.

¹¹ ITA explains that its records did not reflect the pending Walker Application at the time it certified the RF Data Application. ITA Request at 1. In this connection, ITA requests that "the Commission cancel the R. F. Data license WPJT220 and we will refund the coordination fees paid by that firm." *Id.*

¹² *See* ITA Request at 1.

served on RF Data nor filed with the Office of the Secretary as required for a petition for reconsideration.¹³

III. DISCUSSION

5. We believe that the ITA Request and Walker Request (collectively “the Requests”) are most properly characterized as informal requests for Commission action under Section 1.41 of the Commission’s Rules.¹⁴ RF Data’s assertion notwithstanding, the Walker Request need not be considered a petition for reconsideration for us to consider the merits thereof.¹⁵ We also find that RF Data’s reference to Walker’s pending request for extension of time to construct Station WPSV754 irrelevant to whether the grant of the frequency pair 471/474.3875 MHz to Station WPTJ220 was based on a defective frequency coordination and contrary to Section 90.313 of the Commission’s Rules.¹⁶ Therefore, having concluded that the allegations in the requests are properly before us, we now proceed to resolve the matter.

6. Based on the information before us, we conclude that the RF Data Application should not have been granted given that the Walker Application was earlier filed and had been granted to authorize ninety mobile units on frequency pair 471.474.3875 MHz. As discussed above, ITA’s certification of the RF Data Application was defective because, under Section 90.313 of the Commission’s Rules, the subject frequency pair should not have been frequency coordinated within 64 kilometers (40 miles) of Walker’s Station WPSV754. However, we find that ITA’s suggestion to cancel RF Data’s authorization is unnecessary in the instant case because we have an alternative to ITA’s proposed action. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.¹⁷ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.¹⁸ In this connection, we note that a proposed modification would serve the public interest by not unduly disrupting RF Data’s operations on the second frequency pair authorized to Station WPTJ220. Thus, we believe that a modification of the RF Data license to delete the subject frequency pair without authorizing a replacement frequency pair is appropriate.

7. Consequently, we propose to modify RF Data’s license WPTJ220 to remove the frequency pair 471/474.3875 MHz. Trunked operation requires at least two frequency pairs and removal of this frequency pair from RF Data’s license would leave one frequency pair on the license for Station WPTJ220—namely 452/457/000 MHz. Consequently, we further propose to modify the radio service of RF Data’s license from Industrial/Business Pool, Trunked (YG), to Industrial/Business Pool, Conventional (IG). In accordance with Section 1.87(a) of the Commission’s Rules,¹⁹ we will not issue a

¹³ Letter from Thomas K. Kurain, President, RF Data, Inc. to Magalie Roman Salas, Secretary, FCC dated August 14, 2002 (RF Data Letter).

¹⁴ 47 C.F.R. § 1.41.

¹⁵ See *infra* notes 17-18 and accompanying text.

¹⁶ RF Data Letter at 1 citing FCC File No. 0000994078, Gerald R. Walker, (Request for Extension of Time).

¹⁷ 47 U.S.C. § 316(a)(1).

¹⁸ *Id.*

¹⁹ 47 C.F.R. § 1.87(a).

modification order until RF Data has received notice of our proposed action and has had an opportunity to file a protest. To protest the modification, RF Data 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, DC 20554.²⁰ If no protest is filed, RF Data will have waived its right to protest the modification and will be deemed to have consented to the modification.

IV. CONCLUSION

8. For the reasons stated above, we conclude that the coordination of RF Data's application resulting in the grant of a license for Station WPTJ220, Chicago, Illinois was defective. Accordingly, we propose to modify RF Data's license for Station WPTJ220 to (1) delete all authority for 471.3875 MHz and 474.3875 MHz, and (2) revise the radio service class from YG to IG.

V. ORDERING CLAUSES

9. 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, that the informal petitions to modify the authorization of Station WPTJ220, submitted by Gerald R. Walker and the Industrial Telecommunications Association, Inc., on November 8, 2001 and August 22, 2002, respectively, ARE GRANTED to the extent indicated above and ARE OTHERWISE DENIED.

10. IT IS PROPOSED, 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, that the license for Private Land Mobile Radio Service Station WPTJ220, Chicago, Illinois, held by RF Data Inc., BE MODIFIED by deleting frequency pair 471/474.3875 MHz and revising the radio service class from YG to IG.

11. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to RF Data Inc., 4069 S Industrial Rd., Las Vegas, NV 89103 ATTN Samuel Moses.

12. 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

²⁰ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau