

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

In the Matter of )
INDUSTRIAL TELECOMMUNICATIONS ) RM-10564
ASSOCIATION, INC. )
Amendment of Part 95 of the Commission's Rules )
To Establish a Very Short Distance Two-way )
Voice Radio Service )

ORDER

Adopted: April 19, 2004

Released: April 21, 2004

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

1. Introduction. On August 22, 2002, Industrial Telecommuniatons Association, Inc. (ITA) filed a petition for rulemaking requesting that the Commission amend Section 95.401(b) of the Commission's Rules. Specifically, ITA requests that Commission amend its Part 95 rules to prohibit daily business communications on the Family Radio Service (FRS) frequencies. Because we believe that ITA has not presented sufficient evidence to warrant altering the current FRS rules, we deny the ITA Petition.

2. Background. In 1996, the Commission established the FRS as a very short range, two-way voice personal radio service. The FRS Report and Order established the FRS primarily on the basis that it would fill a market niche in short distance, personal communications needs. The FRS shares two small frequency bands with the General Mobile Radio Service (GMRS). It was envisioned that the FRS would provide an affordable and convenient means of direct, short-range two-way voice communications among small groups of persons, including families, with minimal regulation.

3. On August 21, 2000, ITA filed a Petition for Clarification requesting that the Commission clarify that its rules for the FRS prohibit use of FRS spectrum for daily business-oriented operations. On April 3, 2001, the former Public Safety and Private Wireless Division, Wireless

1 47 C.F.R. § 95.401(b).

2 ITA Petition for Rulemaking (filed Aug. 22, 2002) at 1 (ITA Petition).

3 See Amendment of Part 95 of the Commission's Rules to Establish a Very Short Distance Two-way Radio Service, Report and Order, WT Docket No. 95-102, 11 FCC Rcd 12977, 12983 ¶ 17 (1996) (FRS Report and Order).

4 Id. at 12977 ¶ 2, 12979 ¶ 5.

5 Specifically, FRS channels 1-7 are also GMRS frequencies and FRS channels 8-14 are offset from GMRS frequencies. Compare 47 C.F.R. § 95.621 (GMRS frequencies) with 47 C.F.R. § 95.627 (FRS frequencies).

6 FRS Report and Order, 11 FCC Rcd at 12977 ¶ 2, 12983 ¶ 17.

7 ITA Petition for Clarification (filed Aug. 21, 2000).

8 The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical (continued...)

Telecommunications Bureau (Division) denied the petition, stating that in the *FRS Report and Order* the Commission had stated that the FRS is an affordable and convenient means of direct, short range two-way voice communications among small groups of persons, with minimal regulation.<sup>9</sup> It was further noted that there is nothing in the rules that states that small groups of persons who work together, as compared to other small groups of persons, are prohibited from using FRS.<sup>10</sup> In addition, the Division explained that such a distinction would appear to be inconsistent with the “minimal regulation” that the Commission envisioned for the service.<sup>11</sup>

4. *Discussion.* On August 22, 2002, ITA filed a petition for rulemaking which seeks to amend Section 95.401(b) of the Commission’s Rules<sup>12</sup> to prohibit daily business communications on FRS frequencies.<sup>13</sup> ITA states that it is concerned about the unlicensed mix of business and personal users. In this regard, ITA asserts that traditional businesses are using FRS units for daily business needs and thereby limiting the ability of others to engage in the personal communications that the Commission envisioned for FRS.<sup>14</sup> ITA contends that business users need communications five to seven days a week on a year-round basis, whereas the typical user of FRS equipment uses it on an informal basis, maybe a few times a day, sporadically throughout the year.<sup>15</sup> ITA believes that the overutilization of this spectrum by businesses will lead to underutilization of the FRS spectrum by the intended users.<sup>16</sup> According to ITA, because FRS can also be used to send emergency messages and assist travelers, the absence of business users would make the FRS spectrum more readily available for the intended users (families)--leading to a potentially safer environment for each type of user, personal and business, and satisfying the public interest overall.

5. ITA also expresses concern that businesses that use the FRS could be using their system for safety of life communications, general safety applications in a manufacturing plant, or for maintenance purposes on an assembly line. It contends that such uses require more reliable and accurate communications with minimal interference and with a longer range of service than FRS offers.<sup>17</sup> Therefore, according to ITA, business users should be barred from FRS and required to be licensed on spectrum designated for traditional business communications.<sup>18</sup> ITA further asserts that the public interest in restricting business communications far outweighs the Commission’s objective of minimal regulation of FRS.<sup>19</sup>

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Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

<sup>9</sup> See Letter dated Apr. 3, 2001 from D’wana R. Terry, Chief, Public Safety Private Wireless Division, Wireless Telecommunications Bureau, to Laura Smith, Esq., President, Industrial Telecommunications Association, Inc. (*Division Letter*).

<sup>10</sup> See 47 C.F.R. § 95.193(a).

<sup>11</sup> See *Division Letter* at 1.

<sup>12</sup> See 47 C.F.R. § 94.401(b).

<sup>13</sup> ITA Petition at 1.

<sup>14</sup> *Id.* at 4.

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

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> *Id.* at 4-5.

6. On September 17, 2002, the Commission sought comment on the ITA Petition.<sup>20</sup> Several commenters agree with ITA that (a) FRS frequencies are further degraded when businesses use FRS equipment interchangeably with traditional business radios; (b) business users should meet their communications needs with an authorization in the Private Land Mobile Radio (PLMR) Service, which would be more reliable, effective and efficient; and (c) FRS radios put employees at risk in some work environments, *i.e.*, in a combustible atmosphere such as auto manufacturing plants, and oil and gas refineries.<sup>21</sup> Upon reviewing the record in this proceeding, we are not persuaded that these arguments warrant amendment of the Part 95 rules to provide for a broad prohibition of business use of FRS frequencies.

7. With respect to the argument that business use of FRS is crowding the Commission's intended users off the channels, we first reiterate that the Commission intended for the FRS to be available to all groups, with no express exclusion of business use.<sup>22</sup> Indeed, as the Personal Radio Steering Group (PRSG) points out,<sup>23</sup> the Commission specifically indicated in the Regulatory Flexibility Analysis for the *FRS Report and Order* that small businesses may use the FRS in their business activities.<sup>24</sup> Moreover, we are not persuaded, based on the record in this proceeding, that business use of FRS channels is adversely affecting non-business users. PRSG states that, while FRS congestion does exist in some areas (primarily in and near sports and recreational facilities, theme parks and shopping malls), little of the congestion is attributable to recurrent business or commercial use.<sup>25</sup> Another commenter asserts that FRS frequencies are uncongested even in dense metropolitan areas, and that if such congestion existed it would drive the business use off the band.<sup>26</sup> He contends that business use of FRS frequencies tends to be single-site communications within a single store, plant or adjacent parking lot, and that the small footprint of such operation makes it unlikely that any business use of FRS could cause the sort of channel congestion described by ITA.<sup>27</sup>

8. We also note that GMRS licensees, who, as noted above, share channels with FRS users, are permitted to conduct business communications.<sup>28</sup> No commenter has suggested that business use of GMRS channels has adversely restricted availability for non-business users, or that there is any reason to allow GMRS licensees to use shared FRS/GMRS channels for business communications while prohibiting a FRS user from doing the same.

9. With respect to the appropriateness of FRS frequencies for business use, we concur with ITA that FRS spectrum may not be suitable for all business communications needs. For example, entities

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<sup>20</sup> See *Public Notice*, Report No. 2576 (rel. Sept. 17, 2002). Comments were filed by American Mobile Telecommunications Association, Inc.; Atlantic Wireless Group, Inc. (AWG); Communications Source Sales, Inc. (CSS); F.E. Brody (Brody); Thomas P. Currie (Currie); Joint Comments of Forest Industries Telecommunications and MRFAC, Inc. (FIT/MRFAC); David E. Hoffnagle (Hoffnagle); Kenwood Communications Corporation (Kenwood); Personal Radio Steering Group, Inc., (PRSG); Small Business in Telecommunications (SBT); The Boeing Company (Boeing); and TuWay Wireless (TuWay).

<sup>21</sup> See AWG Comments at 1-2; CSS Comments at 1-2, TuWay Comments at 2. Comments supporting ITA's petition were also filed by Boeing, FIT/MRFAC, Hoffnagle, MRFAC, Kenwood, and SBT.

<sup>22</sup> See *FRS Report and Order*, 11 FCC Rcd at 12978 ¶ 2.

<sup>23</sup> PRSG Comments at 2.

<sup>24</sup> *FRS Report and Order*, 11 FCC Rcd at 12985.

<sup>25</sup> See PRSG Comments at 3.

<sup>26</sup> Currie Comments at 1.

<sup>27</sup> *Id.* at 1.

<sup>28</sup> See 47 C.F.R. § 95.181(a).

requiring high reliability and instant communications may find that utilizing a licensed PLMR station more effectively meets their communications needs. However, we note that many small businesses (or units of large businesses) may not need the range and reliability available with conventional PLMR bands. We agree with those commenters who argue that businesses that can tolerate the small footprint (short range), frequency sharing, and lack of privacy should be able to continue to use FRS as originally intended.<sup>29</sup> We nonetheless note that some may find that the Multi-Use Radio Service (MURS), a VHF service that, like FRS, is licensed by rule, better meets their needs.<sup>30</sup> Further, we believe that businesses with more complex communications needs will most likely utilize a radio service other than the FRS. In this connection, business users may find MURS frequencies more suitable than FRS spectrum because the majority of MURS users are likely to be other businesses with similar and compatible communications needs.<sup>31</sup> In addition, we recognize that some businesses need intrinsically safe radios, because of their particular working environment.<sup>32</sup> Based on our review of the record in this proceeding, we conclude that the selection of the most appropriate radio service to meet the particular communications needs of a business is best left to the individual businesses.

10. *Conclusion.* We do not find sufficient reason in the ITA Petition, or in the comments filed in support thereof, to broadly prohibit any use of FRS spectrum for daily business-oriented operations. ITA has not provided factual data or evidence to support its claim of FRS spectrum congestion as a result of business-related communications. Instead, it offers hypothetical scenarios which do not constitute actual data derived from monitoring FRS traffic. Nor does the record reflect any comments or claims by FRS users that business use is detrimental to the utility of the FRS. The FRS has proven to be an affordable and convenient means of direct, short range two-way voice communications among small groups of persons (including businesses) with minimal regulation. We recognize that there are many business uses for which FRS is not appropriate. Entities requiring greater reliability or robustness than the FRS provides should examine other options. We believe that we should afford businesses the flexibility to decide whether FRS is an appropriate means of satisfying any of their daily business communications needs, based on their particular circumstances and requirements. Accordingly, we deny the ITA Petition.

11. IT IS ORDERED that, pursuant to Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), and Section 1.401(e) of the Commission's Rules, 47 C.F.R. § 1.401(e), the petition for rulemaking filed by the Industrial Telecommunications Association, Inc., RM-10564, on August 22, 2002, IS HEREBY DENIED.

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  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunication Bureau

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<sup>29</sup> Brody Comments at 1; PRSG Comments at 2.

<sup>30</sup> See 47 C.F.R. §§ 95.1301-95.1309.

<sup>31</sup> See Spectrum Policy Task Force Report, ET Docket No. 02-135 at 22 (Nov. 2002) (concluding that the Commission should encourage grouping of similar types of systems or devices into spectrum "neighborhoods" with technically compatible characteristics).

<sup>32</sup> Intrinsically safe radios are specially designed to be incapable of releasing sufficient electrical or thermal energy to ignite an explosion in a volatile atmosphere (e.g., oil or gas fumes, grain or coal dust). See Ken Wasko, *The INSIDE on Intrinsically Safe Radios*, Private Wireless, Mar. 2003, at 14, 15. The author of this article estimates that ninety percent of work environments do not require the use of intrinsically safe radios. *Id.*