

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

In the Matter of)
)
JACK IN THE BOX, INC.)
)
Licensee of Industrial/Business Pool (IG) Stations)
WPTC451, WPVM527, WPVS418, Bakersfield,)
California; WPVM591, Alameda, California; and)
)
TACO BELL OF AMERICA, INC.)
)
Licensee of Industrial/Business Pool (IG) Station)
WPTX772, Bakersfield, California)

ORDER PROPOSING MODIFICATION

Adopted: July 6, 2007

Released: July 9, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On March 2, 2007, the Wireless Telecommunications Bureau’s Mobility Division (Division) directed the Personal Communications Industry Association (PCIA) to suggest alternative frequencies or an alternative technical solution for the above-captioned stations authorized to operate on frequencies 457.5875 MHz and 457.6125 MHz, which are licensed to Jack in the Box, Inc. (Jack in the Box) and Taco Bell of America, Inc. (Taco Bell).¹ On March 28, 2007, PCIA responded that the licenses should be modified to delete the frequencies.² For the reasons set forth below, we initiate a proceeding to modify the licenses of Jack in the Box for Stations WPTC451, WPVM527, and WPVS418, Bakersfield, California, and Station WPVM591, Alameda, California; and the license of Taco Bell for Station WPTX772, Bakersfield, California, by deleting frequencies 457.5875 MHz and 457.6125 MHz.

2. *Background.* In 2005, Fresno Mobile Radio, Inc. (FMR), a licensed operator of UHF land mobile stations operating throughout the greater Fresno, California area, submitted to the Commission a letter arguing that a number of 450-470 MHz band private land mobile radio stations licensed to Jack in the Box and Taco Bell in Fresno County, California had been improperly coordinated and licensed.³ FMR stated that it has been incurring harmful interference from these stations, and that the manner in which the stations are licensed impedes the resolution of interference disputes among licensees.

3. In 2006, the Division directed PCIA to review its coordination of drive-through restaurant operations for specific applicants, and indicate whether, in light of concerns raised by FMR,

¹ See Letter dated Mar. 2, 2007 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Don Andrew, Manager, PCIA Frequency Coordination Services, Personal Communications Industry Association (Division 2007 Letter).

² See Letter dated Mar. 28, 2007 from Don Andrew, Manager, PCIA Frequency Coordination Services, to Melvin Spann, Federal Communications Commission, WTB, Mobility Division (PCIA Response to Division 2007 Letter).

³ See Letter dated Apr. 29, 2005 from Robert Schwaninger, Jr., counsel for Fresno Mobile Radio, Inc., to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau; Ed Thomas, Chief, Office of Engineering and Technology; and David Solomon, Chief, Enforcement Bureau.

any of the licenses should be modified.⁴ On January 15, 2007, PCIA responded that “there are several fast food restaurants licensed on [frequencies 457.5875 MHz and 457.6125 MHz] that may require re-evaluation” because their 21 dBu contours overlap the 39 dBu contours of centralized trunked systems licensed to FMR.⁵ On March 2, 2007, the Division directed PCIA to provide a revised analysis of the best available frequency configuration for the applications submitted by Jack in the Box and Taco Bell.⁶ On March 28, 2007, PCIA responded that it had discussed deleting frequencies 457.5875 MHz and 457.6125 MHz from the above-captioned licenses with the licensees’ contact representatives, who concurred in the recommendation.⁷

5. *Discussion.* Based on the information before us, we believe that the above-captioned licenses should be modified to prevent interference to FMR’s centralized trunked operations. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.⁸ Section 316(a)(1) permits the Commission to modify a station license if the action will promote public interest, convenience, and necessity.⁹ Thus, based on the record before us, we conclude that it is in the public interest to modify Jack in the Box’s licenses for Stations WPTC451, WPVM527, WPVS418, and WPVM591, and Taco Bell’s license for Station WPXT772, by deleting frequencies 457.5875 MHz and 457.6125 MHz. We note that deleting these frequencies should not unduly disrupt the licensees’ operations, because the stations are authorized to operate on sufficient alternate frequencies.

6. In accordance with Section 1.87(a) of the Commission's Rules,¹⁰ we will not issue a modification order until Jack in the Box and Taco Bell have received notice of our proposed action and have had an opportunity to file a protest. To protest the modification, Jack in the Box and Taco Bell must, within thirty days of the release date of this *Order Proposing Modification*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be mailed to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC 20554, Attn: Mel Spann.¹¹ If no protest is filed, Jack in the Box and Taco Bell will have waived their right to protest the modification and will be deemed to have consented to the

⁴ See Letter dated Dec. 12, 2006 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Don Andrew, Frequency Coordination Department, Personal Communications Industry Association.

⁵ See Letter dated Jan. 15, 2007 from Don Andrew, Manager, PCIA Frequency Coordination Services, to Melvin Spann, Federal Communications Commission, WTB, Mobility Division. Section 90.187(b)(2)(v) of the Commission’s Rules states that “[a] new applicant whose interference contour overlaps the service contour of a trunked licensee will be assigned the same channel as the trunked licensee only if the trunked licensee consents in writing and a copy of the written consent is submitted to the certified frequency coordinator responsible for coordination of the application.” 47 C.F.R. § 90.187(b)(2)(v). For UHF stations, the 39 dBu contour is the service contour, while the 21 dBu contour is the interference contour. 47 C.F.R. § 90.187(b)(2)(iii).

⁶ Division 2007 Letter at 2.

⁷ PCIA Response to Division 2007 Letter at 2.

⁸ 47 U.S.C. § 316(a)(1).

⁹ *Id.*

¹⁰ 47 C.F.R. § 1.87(a).

¹¹ 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).

modification.

7. *Conclusion and Ordering Clauses.* For the reasons stated above, we propose to modify Jack in the Box's licenses for Stations WPTC451, WPVM527, WPVS418, and WPVM591, and Taco Bell's license for Station WPXT772, by deleting frequencies 457.5875 MHz and 457.6125 MHz.

8. 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 Commission's Rules, 47 C.F.R. § 1.41, the request for relief and advisory opinion submitted by Fresno Mobile Radio on April 29, 2005 IS GRANTED to the extent indicated above.

9. IT IS FURTHER ORDERED that IT IS PROPOSED, 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 Commission's Rules, 47 C.F.R. § 1.87, that the licenses for Industrial/Business Pool Stations WPTC451, WPVM527, WPVS418, and WPVM591 held by Jack in the Box, Inc., and the license for Industrial/Business Pool Station WPXT772 held by Taco Bell of America, Inc. BE MODIFIED by deleting frequencies 457.5875 MHz and 457.6125 MHz.

10. IT IS FURTHER ORDERED that this *Order Proposing Modification* SHALL BE SENT by certified mail, return receipt requested, to Jack in the Box, Inc., Attn: Sheryl Kirkpatrick, 2113 Taft Highway, Bakersfield, California 93313; Jack in the Box, Inc., Attn: Dustyi Richardson, 9330 Balboa, San Diego, California 92123; and Taco Bell of America, Inc., Attn: Tammy Huges, P.O. Box 35520, 2433 N. Chester, Bakersfield, California 93308.

11. 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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau