

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 )  
WPPZ408, Merced, California; WQBI851, Santa )  
Cruz, California; WQBI852, Modesto, California; )  
WQBI856, San Jose, California; WQBI865, San )  
Luis Obispo, California; and WQBI871, Lemoore, )  
California; and )  
 )  
TACO BELL TB1943 )  
 )  
Licensee of Industrial/Business Pool (IG) Station, )  
WNXJ551, Madera, California )

**ORDER OF MODIFICATION**

**Adopted: January 14, 2008**

**Released: January 14, 2008**

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

1. *Introduction.* In this *Order of Modification*, we modify the authorizations of Industrial/Business Pool Stations WPPZ408, Merced, California; WQBI851, Santa Cruz, California; WQBI852, Modesto, California; WQBI856, San Jose, California; WQBI865, San Luis Obispo, California; and WQBI871, Lemoore, California, licensed to Jack in the Box, Inc. (Jack in the Box); and Industrial/Business Pool Station WNXJ551, Madera, California, licensed to Taco Bell TB1943 (Taco Bell) by reducing the authorized areas of mobile operation to five kilometers. As explained below, we take this action pursuant to an earlier order proposing to modify the licenses.<sup>1</sup>

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.<sup>2</sup> 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 Wireless Telecommunications Bureau's Mobility Division (Division) directed the Personal Communications Industry Association (PCIA) to review its coordination of drive-through restaurant operations for specific applicants, and to indicate whether, in light of the concerns

<sup>1</sup> Jack in the Box, Inc., and Taco Bell TB1943, *Order Proposing Modification*, 22 FCC Rcd 12740 (WTB MD 2007) (*Order Proposing Modification*).

<sup>2</sup> 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.

raised by FMR, any of the licenses should be modified.<sup>3</sup> On January 15, 2007, PCIA responded that a service area radius of five kilometers was appropriate, unless the applicant demonstrated a need for a larger service area.<sup>4</sup> On March 2, 2007, the Division directed PCIA to submit sufficient justification or suggest an alternative technical solution for the above-captioned stations,<sup>5</sup> which have authorized areas of mobile operations of 121 kilometers.<sup>6</sup> On March 28, 2007, PCIA responded that it had discussed reducing the above-captioned stations' authorized service areas to five kilometers with the licensees' contact representatives, who concurred in the recommendation.<sup>7</sup> Consequently, we proposed to modify the licenses of Jack in the Box for Stations WPPZ408, Merced, California, WQBI851, Santa Cruz, California, WQBI852, Modesto, California, WQBI856, San Jose, California, WQBI865, San Luis Obispo, California, and WQBI871, Lemoore, California; and the license of Taco Bell for Station WNXJ551, Madera, California, by reducing the authorized areas of mobile operation to five kilometers.<sup>8</sup>

4. *Discussion.* The *Order Proposing Modification* was released on July 9, 2007. Jack in the Box and Taco Bell did not protest the proposed modification of their respective licenses within the requisite thirty-day time frame.<sup>9</sup> Accordingly, Jack in the Box and Taco Bell are deemed to have consented to the proposed modification.<sup>10</sup> Based on the record before us, we conclude that it is in the public interest to modify Jack in the Box's station licenses for WPPZ408, WQBI851, WQBI852, WQBI856, WQBI865, and WQBI871, and Taco Bell's station license for WNXJ551, by reducing the authorized areas of mobile operation to five kilometers.

5. *Ordering Clauses.* Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), and Section 1.87 of Commission's Rules, 47 C.F.R. § 1.87, the licenses for Industrial/Business Pool Stations WPPZ408, WQBI851, WQBI852, WQBI856, WQBI865, and WQBI871 held by Jack in the Box, Inc., and the license for Industrial/Business Pool Station WNXJ551 held by Taco Bell TB1943, BE MODIFIED by reducing the authorized mobile service area to five kilometers.

6. IT IS FURTHER ORDERED that this *Order of Modification* SHALL BE SENT by certified mail, return receipt requested, to Jack in the Box, Inc., Attn: Equipment Purchasing, 9330 Balboa, San Diego, California 92123; Jack in the Box, Attn: Kenneth Devoe, 1898 Bellevue Road,

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<sup>3</sup> 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.

<sup>4</sup> See Letter dated Jan. 15, 2007 from Don Andrew, Manager, PCIA Frequency Coordination Services, to Melvin Spann, Federal Communications Commission, WTB, Mobility Division; *see also* Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band, *Report and Order*, WT Docket No. 01-146, 18 FCC Rcd 3948, 3956 ¶ 17, 3965 ¶ 39 (2003) (noting that "coordinate data for fixed stations aid the frequency coordination process," but permitting licensing of fixed stations as mobile units on the condition that they not be licensed for wide-area operations).

<sup>5</sup> 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.

<sup>6</sup> Except Station WPPZ408, for which the authorized service radius is sixty-seven kilometers.

<sup>7</sup> See Letter dated Mar. 28, 2007 from Don Andrew, Manager, PCIA Frequency Coordination Services, to Melvin Spann, Federal Communications Commission, WTB, Mobility Division.

<sup>8</sup> See *Order Proposing Modification*, 22 FCC Rcd at 12741 ¶ 5. We noted that so reducing the service areas of mobile operations should not unduly disrupt the licensees' operations, given that the range of movement for restaurant employees wearing mobile headsets generally is limited to the restaurant's premises.

<sup>9</sup> See 47 C.F.R. § 1.87(g)(1).

<sup>10</sup> See 47 C.F.R. § 1.87(h).

Atwater, California, 95301; and Taco Bell TB1943, 14232 Newport Ave, Tustin, California 92780-5104.

7. 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

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau