

**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 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 WPTC451, WPVM527, WPVS418, Bakersfield, California, and WPVM591, Alameda, California, licensed to Jack in the Box, Inc. (Jack in the Box); and Industrial/Business Pool Station WPTX772, Bakersfield, California, licensed to Taco Bell of America, Inc. (Taco Bell) by deleting frequencies 457.5875 MHz and 457.6125 MHz. As explained below, we take this action pursuant to an earlier order proposing to modify the licenses.¹

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.² 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 indicate whether, in light of concerns raised by FMR, any of the licenses should be modified.³ 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

¹ Jack in the Box, Inc., and Taco Bell of America, Inc., *Order Proposing Modification*, 22 FCC Rcd 12737 (WTB MD 2007) (*Order Proposing Modification*).

² 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.

³ 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.

systems licensed to FMR.⁴ On March 2, 2007, the Division directed PCIA to provide a revised analysis of the best available frequency configuration for the application submitted by Jack in the Box and Taco Bell.⁵ 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.⁶ Consequently, we proposed to modify the licenses of Jack in the Box for Stations WPTC451, WPVM527, WPVS418, Bakersfield, California, and WPVM591, Alameda, California; and the license of Taco Bell for Station WPTX772, Bakersfield, California, by deleting frequencies 457.5875 MHz and 457.6125 MHz.⁷

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.⁸ Accordingly, Jack in the Box and Taco Bell are deemed to have consented to the proposed modifications.⁹ 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 WPTX772, by deleting frequencies 457.5875 MHz and 457.6125 MHz.

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 WPTC451, WPVM527, WPVS418, and WPVM591 held by Jack in the Box, Inc., and the license for Industrial/Business Pool Station WPTX772 held by Taco Bell of America, Inc., BE MODIFIED by deleting frequencies 457.5875 MHz and 457.6125 MHz.

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: 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.

⁴ 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).

⁵ 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.

⁶ See Letter dated Mar. 28, 2007 from Don Andrew, Manager, PCIA Frequency Coordination Services, to Melvin Spann, Federal Communications Commission, WTB, Mobility Division.

⁷ See *Order Proposing Modification*, 22 FCC Rcd at 12738 ¶ 5. We noted that deleting the frequencies should not unduly disrupt the licensees' operations, because the stations are authorized to operate on sufficient alternate frequencies.

⁸ See 47 C.F.R. § 1.87(g)(1).

⁹ See 47 C.F.R. § 1.87(h).

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 COMMUNICATION COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau