

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

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| In the Matter of |) | |
| |) | |
| SPECIALIZED MOBILE RADIO, INC. |) | File No. 0006483058 |
| |) | |
| Petition for Reconsideration of Grant of Authority to Operate New Industrial/Business Pool Trunked Station |) | |

ORDER

Adopted: September 24, 2015

Released: September 25, 2015

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

1. *Introduction.* We have before us a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) seeking reconsideration of an *Order* of the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau)¹ that partially granted the above-captioned application of Specialized Mobile Relay, Inc. (SMR) for new Part 90 Private Land Mobile Radio facilities in the 450 MHz frequency band in the New York/New Jersey metropolitan area.² For the reasons set forth below, we grant the petition, and will dismiss the application.

2. *Background.* Any certified Industrial/Business Pool frequency coordinator may coordinate frequencies previously allotted to the Railroad, Power, Petroleum, or Automobile Emergency Radio Services, but if the proposed interference contour overlaps any co-channel incumbent's service contour, the coordinator must obtain the written concurrence of the relevant industry-specific coordinator or of the affected licensee(s).³ Pursuant to Section 90.175(b)(2) of the Commission's Rules, if the industry-specific coordinator denies a request for concurrence, it must provide a written statement "contain[ing] sufficient detail to permit discernment of the technical basis for the denial of concurrence. Concurrence may be denied only when a grant of the underlying application would have a demonstrable, material effect on safety."⁴ Contour overlap alone is not a sufficient basis to refuse concurrence.⁵ If the relevant coordinators cannot resolve any issues cooperatively, the matter may be referred to the Bureau.⁶

¹ Specialized Mobile Radio, *Order*, 30 FCC Rcd 2298 (WTB MD 2015) (*Order*).

² Petition for Reconsideration (filed Apr. 15, 2015) (Petition). SMR filed an opposition. Opposition to Petition for Reconsideration (filed Apr. 29, 2015). Con Edison filed a reply. Reply to Opposition (filed May 11, 2015).

³ See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, *Fifth Memorandum Opinion and Order*, PR Docket No. 92-235, 16 FCC Rcd 416, 418-19 ¶ 7 (2000) (*Refarming Fifth MO&O*); 47 C.F.R. § 90.35(b). The Commission imposed this requirement in order to ensure the integrity of communications for critical public safety-related communications used for responding to emergencies. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14328-30 ¶¶ 41-42 (1997).

⁴ 47 C.F.R. § 90.175(b)(2).

⁵ *Refarming Fifth MO&O*, 16 FCC Rcd at 419 ¶ 8.

⁶ *Id.*

3. SMR sought authorization to operate on frequency pairs 451/456.0375 MHz, 451/456.0750 MHz, 451/456.1000 MHz and 451/456.1125 MHz at Brooklyn, Staten Island, and Jamaica, New York, and Edison, New Jersey. Because these are former Power Radio Service frequencies, SMR's frequency coordinator submitted the application to the Utilities Telecom Council (UTC), the Power coordinator, for concurrence. UTC denied concurrence, stating only that "UTC is unable to clear all of the frequency pairs on this application because they are too close to critical infrastructure and there are overlaps on each channel, attached are the contour studies for each of your sites."⁷

4. On October 1, 2014, SMR filed the application without UTC's concurrence, and asked the Bureau to resolve the matter.⁸ SMR argued that its proposed operations were compatible with incumbent users because monitoring indicated that the requested frequencies were used very little; and most of the licenses had technical parameters indicating that they were used for on-site communications in campus-type environments, which are particularly well-suited to channel-sharing because the mobile/portable units operate in very close proximity to the base station.⁹ UTC filed an informal objection.¹⁰ It argued that, even assuming that the channels were lightly used, "many mission critical utility operations may indeed operate at a low duty cycle – but must be available at an instant in order to perform their mission critical functions."¹¹ UTC also disputed SMR's assertion that the incumbent stations are resistant to interference from the proposed operations, noting circumstances in which SMR proposes to operate nearby with much higher power "such that the relative power of the proposed facility at that distance would likely overpower and capture the receivers of the licensed system."¹²

5. On March 16, 2015, the Division granted the objection in part. As an initial matter, it agreed with SMR that UTC's initial denial of concurrence was inadequate, for it did not contain sufficient detail to permit discernment of the technical basis for the denial of concurrence.¹³ After reviewing the technical parameters of the proposed and incumbent stations, the Division did, however, agree with UTC that there were circumstances in which incumbent receivers could be overpowered and captured by SMR's proposed operations.¹⁴ Consequently, the Division granted the application in part, and dismissed it in

6. part.¹⁵ On April 15, 2015, Con Edison, licensee of co-channel Stations WQCK958, KST846, and KST847, filed a petition for reconsideration regarding the granted frequencies and locations.

⁷ Email from Joann Salley-Howell, Frequency Coordination Manager, UTC to Bill Sterner, Enterprise Wireless Alliance. The contour studies indicated that the proposed interference contours overlap the service contours of co-channel incumbents.

⁸ See Attachment to FCC File No. 0006483058, Request for Concurrence or, in the Alternative, Referral to the Wireless Telecommunications Bureau.

⁹ *Id.* at 1-2.

¹⁰ Letter dated Oct. 17, 2014 from Brett Kilbourne, Vice President and Deputy General Counsel, UTC to Marlene H. Dortch, Secretary, Federal Communications Commission.

¹¹ *Id.* at 2.

¹² *Id.* at 3.

¹³ *Order*, 30 FCC Rcd at 2300 ¶ 7.

¹⁴ *Id.* at at 2300 ¶ 8.

¹⁵ *Id.* at at 2300 ¶ 9. Specifically, it granted the application for frequency pairs 451/456.075 MHz and 451/456.100 MHz at locations 3/4 and 5/6, and frequencies 456.075 MHz and 456.100 MHz at Location 7; and dismissed the application with respect to the Locations 1/2 and 7/8; and frequency pairs 451/456.0375 MHz and 451/456.1125 MHz at locations 3/4 and 5/6, and frequencies 456.0375 MHz and 456.1125 MHz at Location 7.

7. *Discussion.* First, Con Edison suggests that the application should not have been granted because it was based on unlawfully obtained evidence in that SMR's monitoring of the frequencies constituted the interception of radio communications for commercial gain in violation of Section 705 of the Communications Act of 1934, as amended (Act).¹⁶ We disagree. Monitoring a channel to determine the extent to which it is being used, as the basis for selecting a frequency, does not violate the Act.¹⁷

8. Next, Con Edison provides information regarding how SMR's facilities would affect its operations.¹⁸ Con Edison is an electric, gas, and steam utility in New York City and Westchester County, New York. It uses the frequencies granted to SMR in its man-down radio system, which consists of a master repeater at the Empire State Building and base stations and portable radios at distribution and transmission substations and generation stations. Most of Con Edison's switching on the bulk transmission and distribution systems is performed by a single substation operator at the station to which he or she is assigned or dispatched. If there is an incident that injures or incapacitates the operator, the radio will transmit an emergency distress call. Interference-free operation must be maintained on these frequencies at all times, because the system plays a major role in securing the safety of Con Edison's workforce. Con Edison also presents an engineering study showing that SMR's contemplated operations would impede the reception of these emergency distress calls.¹⁹ We agree that Con Edison has demonstrated, in its petition for reconsideration, that SMR's proposed operations would cause harmful co-channel interference to its licensed facilities in the New York metropolitan area that are used for emergency communications.

9. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition For Reconsideration filed on April 15, 2015 by Consolidated Edison Company of New York, Inc. IS GRANTED.

10. IT IS FURTHER ORDERED that application FCC File No. 0006483058 SHALL BE REINSTATED TO PENDING STATUS AND DISMISSED consistent with this *Order* and Commission Rules.

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

¹⁶ See Petition at 3 (citing 47 U.S.C. § 605).

¹⁷ See Frequency Coordination in the Private Land Mobile Radio Services, *Notice of Proposed Rule Making*, PR Docket No. 88-548, 4 FCC Rcd 6325, 6331 ¶¶ 52-53 (1989); Iowa Radio Service, Inc., *Memorandum Opinion and Order on Reconsideration Designating Application for Hearing*, CC Docket No. 86-365, 61 Rad. Reg. 2d 292, ¶¶ 11-12 (CCB 1986).

¹⁸ See Petition at 5-6.

¹⁹ See Petition at Appendix A.