

requesting a declaratory ruling that the transmission of GPS location information is permissible as radiolocation.⁸

3. The Division issued an order denying the Air-Tel IOU Petition. Noting that the Commission's rules define radiodetermination as "[t]he determination of position, or the obtaining of information relating to position, by means of the propagation of radio waves,"⁹ the Division rejected Air-Tel's suggestion that any use of radio to obtain information relating to an object's position, including the transmission of GPS coordinates, constitutes radiodetermination. The Division concluded that the transmission of GPS coordinates does not constitute radiolocation as that term is defined in the Commission's rules,¹⁰ and, as a result, that Air-Tel's radiolocation service license does not authorize such operations.¹¹

4. In denying Air-Tel's petition, the Division cited a 2017 Commission decision,¹² which found that systems using radio direction to determine the location of radio buoys operate under a radiolocation allocation, but that "[r]adio buoys using GPS technology do not fall under this definition because their position is not determined by means of the propagation properties of radio waves."¹³ In that Order, the Commission, concluding that it was in the public interest to give the U.S. commercial fishing fleet "a legitimate path to operate" GPS-equipped radio buoys, added a maritime mobile allocation to "address[] the limited situations where radio buoys cannot be authorized under the radiolocation service allocation because of newer technology that uses features like GPS rather than radiodetermination."¹⁴ The Commission acted "without prejudice to enforcement [action] regarding prior unauthorized radio buoy operations."¹⁵

5. On January 2, 2018, Air-Tel petitioned for reconsideration of the Division's decision or, in

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counsel to Air-Tel, LLC (July 19, 2017) (on file in EB-SED-17-00024053); Email from Jason Koslofsky, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to David Kaufman, Esq., Rini O'Neil, PC, counsel to IOU Acquisitions, Inc. and Air-Tel, LLC (Oct. 13, 2017 3:19 PM EST) (on file in EB-SED-17-00024050 and EB-SED-17-00024053).

⁸ It also requested a waiver to permit it to provide that service in the 3500-3550 MHz band using equipment that had not been approved for operation on those frequencies.

⁹ See *Order*, 32 FCC Rcd at 10158, para. 4 (citing 47 CFR § 90.7). Radiolocation is a subset of radiodetermination. Specifically, radionavigation is radiodetermination for the purposes of navigation, and radiolocation is radiodetermination for purposes other than radionavigation. See 47 CFR §§ 2.1(c), 90.7, 90.103.

¹⁰ 47 CFR §§ 2.1(c), 90.7, 90.101, 90.103.

¹¹ *Order*, 32 FCC Rcd at 10159, para. 7. Because it denied the request for declaratory ruling, the Division dismissed as moot the request for a waiver to allow Air-Tel to provide service in the 3500-3550 MHz band using equipment that had not been approved for operation on those frequencies. See *id.* at 10159, paras. 7-8.

¹² See *id.* at 10158, para. 4 (citing *Amendment of Parts 2, 15, 80, 90, 97, and 101 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2012)* (WRC-12), *Other Allocation Issues, and Related Rule Updates*, Report and Order, 32 FCC Rcd 2703, 2714, para. 30 (2017) (WRC-12 Report and Order); *Amendment of Parts 1, 2, 15, 25, 27, 74, 78, 80, 87, 90, 97, and 101 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2007)* (WRC-07), *Other Allocation Issues, and Related Rule Updates, et al.*, Report and Order, Order, and Notice of Proposed Rulemaking, 30 FCC Rcd 4183, 4226, n.345 (2015) (WRC-07 Report and Order)).

¹³ WRC-12 Report and Order, 32 FCC Rcd at 2714, n.72.

¹⁴ See *id.* at 2714-15, paras. 30-31.

¹⁵ WRC-07 Report and Order, 30 FCC Rcd at 4203, para. 43.

the alternative, a waiver to permit it to provide GPS tracking services on radiolocation frequencies.¹⁶ While its petition was pending, the Commission, on September 14, 2018, issued a Notice of Apparent Liability for Forfeiture proposing a \$210,000 penalty against Air-Tel for conducting unauthorized operations on radiolocation frequencies.¹⁷ In the *NAL*, the Commission stated that the Division had correctly concluded that Air-Tel's GPS tracking services did not constitute radiolocation,¹⁸ and it concluded that an upward adjustment of the base forfeiture was appropriate because Air-Tel conducted unauthorized operations over an extended period.¹⁹

6. *Discussion.* The Commission, in its recent *NAL*, concurred with the Division's decision denying Air-Tel's request for declaratory ruling by reaffirming that GPS tracking is not a radiolocation service.²⁰ The Commission's conclusion in the *NAL* renders Air-Tel's arguments that it should be able to provide GPS-assisted location on radiolocation frequencies moot, as the Wireless Telecommunications Bureau lacks delegated authority to contradict the Commission. We address Air-Tel's arguments briefly, however, for the sake of completeness and because, in the *NAL*, the Commission did not rebut the specific arguments Air-Tel made in its Petition. First, Air-Tel suggests that the 1993 Budget Act requires the Commission to allow Air-Tel to provide the same services as "other CMRS [commercial mobile radio service] competitors provide."²¹ This argument fails because radiolocation is a private mobile radio service rather than CMRS under our rules, so the 1993 Budget Act is not germane.²²

7. Second, Air-Tel disputes the Division's conclusion, in the Order denying its petition, that the Commission's 2017 allocation decision found that GPS-assisted operations do not fall within the definition of radiolocation service. Air-Tel contends that the 2017 allocation decision did not decide whether GPS tracking services should be deemed to be radiolocation because, in that proceeding, the Commission and the commenters were both operating under the assumption that GPS should be allowed via radio buoys. Air-Tel asserts that, because there was "no reason to quibble about the definition of radiolocation" in that rulemaking, the Commission did not have the opportunity to decide whether radiolocation includes GPS-assisted services.²³ Air-Tel misreads that decision. Specifically, in the 2017 *Report and Order* adopting the allocation decision, the Commission explained that it was adding a maritime mobile allocation because GPS tracking was not authorized under the existing radiolocation allocation.²⁴

8. Finally, Air-Tel claims that "to define radiolocation so narrowly is contrary to the public interest and the original intent when the rule was created. That original intent is to use radiolocation spectrum for the purpose of location service, using the latest and best technologies for achieving location of tangible things."²⁵ Air-Tel cites no authority to support its assertion about the Commission's original intent, however, and we find no support for it in the Commission's rules or decisions. The definitions of

¹⁶ See generally Petition.

¹⁷ See *IOU Acquisitions, Inc.; Air-Tel, LLC*, Notice of Apparent Liability for Forfeiture, File Nos. EB-SED-17-00024051 & EB-SED-17-00024053, FCC 18-128 (Sept. 14, 2018) (*NAL*).

¹⁸ See *id.* at 7-8, para. 14.

¹⁹ See *id.* at 13, para. 27.

²⁰ See *id.* at 7-8, para. 14.

²¹ Petition at 4 (citing Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392).

²² See 47 CFR § 20.3.

²³ Petition at 4-5.

²⁴ See *WRC-12 Report and Order*, 32 FCC Rcd at 2714, para. 30.

²⁵ Petition at 5.

radiodetermination and radiolocation have been part of the Commission's rules since 1960,²⁶ and the Commission has not revised them to include transmission of GPS data. The Commission's 2017 decision demonstrates that GPS tracking is permitted on radiolocation spectrum only when our rules make a specific provision for it, so interested parties must seek to amend the rules accordingly rather than request a declaratory ruling that the rules already accommodate it. We therefore deny the petition for reconsideration.

9. Similarly, we conclude that grant of Air-Tel's alternative request for a waiver of the Commission's part 90 rules to permit it to provide GPS tracking services under its radiolocation service license would conflict with the Commission's conclusion that a forfeiture is warranted for such operations. The Commission would not have proposed a forfeiture (indeed, an enhanced forfeiture) if it found, based on the same facts, that requiring Air-Tel to comply with the rules was inequitable, unduly burdensome, or contrary to the public interest, or that Air-Tel had no reasonable alternative.²⁷ We therefore deny the waiver request.

10. 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 CFR § 1.106, the Petition for Reconsideration filed by Air-Tel, LLC, on January 2, 2018, IS DENIED.

11. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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²⁶ See *Amendment of Parts 2 and 11 of the Commission's Rules to Provide for the Use of the Band 10000-10500 Mc by the Non-Government Radiolocation Service*, Report and Order, 39 F.C.C. 733 (1960).

²⁷ See *City Page & Cellular Services, Inc d/b/a City Beepers, et al.*, Order, 18 FCC Rcd 22043, 22043, para. 2 (EB 2003) (rescinding a forfeiture after determining that the subject had received a waiver of the violation); *Verillink Corporation v. Tellabs Industries, Inc.*, Memorandum Opinion and Order, 60 Rad. Reg. 2d (P&F) 1683, para. 13 (CCB 1986) (same), 1986 WL 290928. The Commission knew that Air-Tel had a pending waiver request. See *NAL*, para. 9.