

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

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

ORDER

Adopted: March 13, 2015

Released: March 16, 2015

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

1. *Introduction.* We have before us the above-captioned application¹ filed by Specialized Mobile Relay, Inc. (SMR) seeking authority for new Part 90 Private Land Mobile Radio facilities in the 450 MHz frequency band in the New York/New Jersey metropolitan area, and an informal objection submitted by the Utilities Telecom Council (UTC).² For the reasons set forth below we grant the informal objection in part. Consequently, we will grant the application in part and dismiss it in part.

2. *Background.* In 1997, the Commission consolidated the twenty private land mobile radio (PLMR) services below 512 MHz into two pools, the Public Safety Pool and the Industrial/Business (I/B) Pool.³ The Commission authorized the frequency coordinators of the services consolidated into the I/B Pool to coordinate use of any frequency within the pool, essentially ending exclusivity of frequency coordination for the I/B Pool frequencies.⁴ The Commission did, however, identify three types of I/B Pool users – railroad, power, and petroleum companies – that routinely use PLMR frequencies for critical public safety-related communications and for responding to emergencies that could impact hundreds or even thousands of people.⁵ To ensure that the integrity of these communications is not impaired, the Commission required anyone seeking to use the frequencies previously allotted to the Railroad, Power, or Petroleum Radio Services to go through the same frequency coordinators that were responsible for coordinating these frequencies prior to the consolidation.⁶

¹ FCC File No. 0006483058 (filed Oct. 1, 2014 and amended Oct. 16, 2014).

² See Letter dated Oct. 17, 2014 from Brett Kilbourne, Vice President and Deputy General Counsel, UTC to Marlene H. Dortch, Secretary, Federal Communications Commission (Petition). SMR filed a response. Letter dated Nov. 7, 2014 from Elizabeth R. Sachs, counsel for SMR to Marlene H. Dortch, Secretary, Federal Communications Commission. On March 9, 2015, SMR suggested that the Commission direct the parties conduct on-air testing to resolve the matter. Letter dated Mar. 9, 2015 from Elizabeth R. Sachs, counsel for SMR to Marlene H. Dortch, Secretary, Federal Communications Commission.

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, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14328 ¶ 40 (1997).

⁴ *Id.*

⁵ *Id.* at 14328-29 ¶ 41.

⁶ *Id.* at 14329-30 ¶ 42. The Commission later mandated such treatment for automobile emergency road service frequencies, as well. 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 Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 8642, 8650 ¶ 16 (1999).

3. Subsequently, the Commission modified the rules to provide that any certified I/B Pool coordinator could coordinate frequencies previously allotted to those 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).⁷ 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."⁸ Contour overlap alone is not a sufficient basis to refuse concurrence.⁹ If the relevant coordinators cannot resolve any issues cooperatively, the matter may be referred to the Wireless Telecommunications Bureau (WTB).¹⁰

4. The instant application seeks 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.¹¹ Because these are former Power Radio Service frequencies, SMR's frequency coordinator, the Enterprise Wireless Alliance (EWA), submitted the application to UTC, the Power coordinator, for concurrence. UTC denied concurrence. The denial stated, in its entirety, "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."¹²

5. SMR filed the application without UTC's concurrence, and requests that WTB resolve the matter.¹³ It argues that, *inter alia*, its proposed operations are compatible with incumbent users because monitoring indicated that the requested frequencies were used very little; and most of the licenses have technical parameters indicating that they are 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.¹⁴

6. In response, UTC filed its informal objection requesting that the application be dismissed or denied. It notes that the proposed interference contours overlap, and in many cases completely encompass, the service contours of incumbent co-channel stations licensed to power companies.¹⁵ It argues that, even assuming that the channels are lightly used (which it asserts had not been established

⁷ 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).

⁸ 47 C.F.R. § 90.175(b)(2).

⁹ *Refarming Fifth MO&O*, 16 FCC Rcd at 419 ¶ 8.

¹⁰ *Id.*

¹¹ SMR seeks authorization only for frequency pair 451/456.0750 MHz at the Brooklyn site (Location 1), and only frequency pair 451/456.0375 MHz at the Jamaica site (Location 8). All four frequency pairs are requested at the Staten Island (Location 3) and Edison (Location 5) sites.

¹² Email from Joann Salley-Howell, Frequency Coordination Manager, UTC to Bill Sterner, EWA. The contour studies indicated that the proposed interference contours overlap the service contours of co-channel incumbents.

¹³ See Attachment to FCC File No. 0006483058, Request for Concurrence or, in the Alternative, Referral to the Wireless Telecommunications Bureau.

¹⁴ *Id.* at 1-2.

¹⁵ See Petition at 1-2.

because SMR did not provide sufficient information regarding the scope of its monitoring), “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.”¹⁶ Second, it disputes 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.”¹⁷ It states, “The on-site radio systems are designed specifically for 100% plant coverage and with only the radiofrequency power needed to cover the area of the station. The proposed application in question would change significantly the radiofrequency environment and likely would result in harmful interference into the station’s radio system(s).”¹⁸

7. *Discussion.* As a threshold matter, we agree 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.”¹⁹ The fact that the proposed interference contours overlap, or even encompass co-channel incumbents’ service contours does not, alone, warrant denial of concurrence. The Commission specifically rejected denial of concurrence based solely on overlap, and we do not believe that this rejection can depend solely on the extent of the overlap. Just as there can be cases where a partial overlap has a “demonstrable, material, adverse effect on safety”²⁰ so can there be cases where a complete overlap does not. Denial of concurrence must be based not on overlap alone, but on the effect of the proposed operations within the overlapped area.

8. We conclude, however, that some of SMR’s proposed operations would appear to have an unacceptable effect on critical infrastructure industry operations. We have reviewed the technical parameters of the proposed and incumbent stations, and, based on the predicted desired-to-undesired signal ratio, agree with UTC that there are circumstances in which incumbent receivers could be overpowered and captured by SMR’s proposed operations: specifically, Station WQCK958’s current operation on 451/456.0750 MHz with 10 watts effective radiated power (ERP) within 2.5 miles of Location 1’s proposed operation with 150 watts; Station KA90241’s current operation on 451/456.0375 MHz with 28 watts ERP within 6 miles of Location 3’s proposed operation with 145 watts, and within 8.5 miles of Location 5’s proposed operation with 150 watts; Station KB69033’s current operation on 451/456.1125 MHz with .1 watt ERP within 8.5 miles of Location 3’s proposed operation with 145 watts, and within 16 miles of Location 5’s proposed operation with 150 watts; and Station KA90139’s current operation on 451/456.0375 MHz with 2 watts ERP within 6.5 miles of Location 8’s proposed operation with 142 watts. Regarding the remaining frequencies and locations, we conclude that UTC has not met its burden to justify a denial of concurrence, for our analysis indicates that the relative signal strengths and the separation distances will allow operation without causing harmful interference.

9. Consequently, we will grant the application in part and dismiss it in part. Specifically, we will grant 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. We will dismiss 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.

10. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 4.

¹⁹ 47 C.F.R. § 90.175(b)(2).

²⁰ *Id.*

Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Informal Objection filed on October 17, 2014 by the Utilities Telecom Council IS GRANTED IN PART AND DENIED IN PART and FCC File No. 0006483058 SHALL BE GRANTED IN PART AND DISMISSED IN PART as set forth above.

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