



LAND MOBILE COMMUNICATIONS COUNCIL

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MEMBER

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AAR

April 6, 2007

AASHTO

APCO

Mr. Fred Campbell
Chief, Wireless Telecommunications Bureau
Federal Communications Commission

API

ARINC

445 12th Street, S.W.

CSSA

Washington, D.C. 20554

EWA

FCCA

Re: FCC Rules Section 90.157
Discontinuance of Station Operations

FIT

IAFC

IAFWA

Dear Mr. Campbell:

IMSA

ITSA

MRFAC

NASF

PCIA

TIA

UTC

On behalf of the Land Mobile Communications Council (LMCC), please accept this as the LMCC's request to initiate a dialogue with the Wireless Telecommunications Bureau (the "Bureau") regarding the above-referenced rule section. This rule is intended to promote efficient spectrum utilization through the cancellation of licenses that have not been operational for one year or more.¹ Given the scarcity of available spectrum for both B/ILT and public safety entities, it is imperative that procedures be identified, perhaps in collaboration with the FCC's certified frequency advisory committees, which will make this specific rule section relevant in the future.

The LMCC has reviewed several recent FCC decisions that concern the applicability of Rule Section 90.157. These decisions in some instances state, and in others, imply that evidence of extensive monitoring, taken to its logical conclusion would require monitoring consistently for 24 hours a day over 365 consecutive days before the Commission will contact a licensee to request information, for example copies of site leases and evidence of site lease payments, that would support or refute the allegation of permanent discontinuance of operation. While the LMCC agrees that monitoring is one type of information that the FCC might consider when presented with such an allegation, other evidence should be, and in the past has been, informative as well. In particular,

¹ 47 C.F.R. § 90.157.

confirmation of non-operational status from the owner or manager of the site at which the licensee is authorized to operate would seem sufficient to trigger further FCC investigation. These recent decisions, however, suggest that the Bureau will not act without some unspecified level of monitoring documentation that may not be practically attainable and that would seem no more persuasive than, for example, the certification of a third party that the system in question has not operated at its authorized location during the relevant period.

Thus, in one recent Order, the Bureau noted “[A]lthough it is conceivable that Station KNGK 514 was non-operational for a period of time, Pennington bears the burden to demonstrate *prima facie* that the station was non-operational for at least a year or more”². In another, the FCC stated that, “[C]ommission precedent requires claims of a station’s non-operation or permanent discontinuance be substantiated by detailed radio frequency (RF) monitoring studies.”³ This particular decision also provided further insights into the Commission’s expectations in order to implement the provisions of Rule Section 90.157. The Bureau noted that “[I]nformation regarding monitoring stations should be submitted by the technicians or other employees involved in recording or monitoring the traffic.”⁴ This same letter also references a series of FCC decisions where further guidance regarding monitoring requirements is provided, specifically that: “evidence of sporadic monitoring by itself does not conclusively demonstrate that a station has discontinued operations as defined under Section 90.157”; and “sporadic monitoring of a channel does not make a *prima facie* case that a station has permanently discontinued operations.”⁵ In some of these matters, evidence had been supplied from site owners noting the absence of antenna leases and equipment located on premises.

The LMCC agrees that evidence of sporadic monitoring, by itself, may not be sufficient to trigger further FCC investigation of the operational status of a system. It does not follow, however, that an allegation of discontinuance of operation necessarily should fail in the absence of 24/7 monitoring over a full year if it includes other, extrinsic evidence that the station has ceased operating. Monitoring is one, but not the only basis for the FCC to conclude that sufficient evidence has been brought to its attention to warrant further Commission action.

In summary, Rule Section 90.157 was intended to promote the efficient use of the radio spectrum by canceling the authorizations of licensees that have permanently discontinued their operations. Since the FCC does not have internal resources to investigate the ongoing operational status of the hundreds of thousand of PLMR licensees, it traditionally has worked cooperatively with the industry to identify licenses

² See Order on Further Reconsideration in the Matter of Mayer Reprographics, Inc., FCC File No. 0000645662, DA 07-149, paragraph 9, adopted January 22, 2007.

³ See Letter from Scot Stone, Deputy Chief, Mobility Division, WTB to Elizabeth R. Sachs, Esq., Counsel for Atlantic Communications, dated January 27, 2007.

⁴ See *id.* Footnote 13.

⁵ See *id.* Footnote 11.

that have canceled automatically. Of course, the Commission has been properly cautious about not allowing its processes to be used for anti-competitive purposes. Nonetheless, when it has received credible information indicating that a station no longer is operational, including, but not limited to, monitoring information, it has taken on the responsibility of requesting documentation from the licensee such as that described above that can be used to determine whether license cancellation is appropriate.

The members of the LMCC share the FCC's objective of purging the ULS database of invalid authorizations that needlessly encumber scarce spectrum resources. Doing so frees up channel capacity for others who have a desire to put the radio spectrum to productive use. Based on recent FCC decisions, however, the FCC appears to require a level of monitoring documentation that will be difficult or even impossible to achieve, and that should not be the sole basis for a Commission decision to investigate the operational status of a station. Consequently, the LMCC requests the FCC to engage in industry discussions that will result in the identification of specific processes and associated documentation that, when submitted to the FCC, will implement the policy intent of FCC Rule Section 90.157. Our intent is not to comment on or offer opinions on existing cases, but to develop an understanding of what the Commission will expect in the future. We also desire to have a single policy in this matter, regardless of whether the complaint is being handled by a licensing bureau or by the Enforcement Bureau.

We look forward to hearing from you regarding this matter and will be pleased to meet with Bureau officials at their earliest convenience.

Sincerely,



Ralph A. Haller
President

RH:dv

cc: Roger Noel
Scot Stone
Cathleen Massey