Memorandum Opinion and Order - Pfeiffer License Modification

Adopted: April 26, 2004
Released: April 28, 2004

INTRODUCTION

By this Memorandum Opinion and Order, we initiate a proceeding to modify the license of Terry L. Pfeiffer for Industrial/Business Private Land Mobile Radio Station WPWH301, Malone, NY.

BACKGROUND

On November 15, 2002, Pfeiffer was granted a license for Station WPWH301 in Malone, New York to operate 'FB8' trunked operations.

Among the assigned base station frequencies was frequency 152.870 MHz. The maximum authorized effective radiated power (ERP) is five watts.

On September 10, 2003, a representative of Industry Canada contacted the Licensing and Technical Analysis Branch (Branch) of the former Public Safety and Private Wireless Division, Wireless Telecommunications Bureau stating that several stations in Ontario licensed to Union Gas were receiving interference to their communications on frequency 152.870 MHz.

Industry Canada indicated that it had pinpointed the source of the interference to a U.S. station located near Malone, New York transmitting on frequency 152.870 MHz.

Industry Canada later updated its interference report to indicate that the interference was of a continuous nature and so harmful that it hampered Union Gas's ability to respond to emergency situations such as a natural gas leak.

Based on the information supplied by Industry Canada, agents from the Commission's Enforcement Bureau performed an inspection of Station WPWH301 on December 22, 2003. During the inspection, the Commission field agents verified that Pfeiffer's Station WPWH301 was the source of the interference to Union Gas's operations.

DISCUSSION

Based on the information before us, we conclude that Pfeiffer's operation on frequency 152.870 MHz should cease in order to prevent interference to the Union Gas stations operating on frequency 152.870 MHz and ensure the guidance from the U. S. Government.

The Union Gas stations are entitled to protection from harmful interference created by Pfeiffer's station because Union Gas's stations were coordinated with the United States in accordance with the current U. S.-Canada Agreement.

By contrast, Pfeiffer's application to operate with five watts ERP on frequency 152.870 MHz was granted without Canadian coordination.

Act Relevant Section

According to Section 90.173 of the Commission's Rules, all applicants and licensees shall cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of authorized facilities.

In addition, Section 90.173 indicates that the Commission may deny the use of any frequency at a given location if its use in that location is not in the public interest.

Reasons the Proposed Modification is in the Public Interest

In this instance, based on the circumstances presented, we find that Pfeiffer's current operation on frequency 152.870 MHz in Malone, New York, is contrary to the public interest. Pfeiffer's operation on this frequency is causing harmful interference to Union Gas, which is a consequence at odds with the U. S.-Canada Agreement. Moreover, we note that, although Pfeiffer has modified his operations on frequency 152.870 MHz, on more than one occasion since December 22, 2003, he has been unable to effectively reduce or eliminate the interference. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended (the Act), permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity. Therefore, we conclude that it would be in the public interest to delete frequency 152.870 MHz as an authorized frequency for operation of Station WPWH301.

In this connection, we note that the proposed modification would serve the public interest by eliminating harmful interference to Union Gas. Further, we believe that such action would not unduly disrupt Pfeiffer's operations because other frequencies also are assigned to Station WPWH301. We further note that we are unaware of the availability of alternate frequency that could be assigned to Pfeiffer in replacement of frequency 152.870 MHz. Thus, we believe that a modification of Pfeiffer's license to delete the subject frequency without authorizing a replacement frequency is appropriate under the circumstances presented.

Consequently, we propose to modify Pfeiffer's license for Station WPWH301 to remove frequency 152870 MHz. In accordance with Section 1.87(a) of the Commission's Rules, we will not issue a modification order until Pfeiffer has received notice of our proposed action and has had an opportunity to file a protest. To protest the modification, Pfeiffer must, within thirty days of the release date of this Memorandum Opinion and Order,

submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S. W., Room TW-A325, Washington, DC 20554. If no protest is filed, Pfeiffer will have waived his right to protest the modification and will be deemed to have consented to the modification.

CONCLUSION

It is proposed that Pfeiffer's license for Station WPWH301 to remove frequency 152.870 MHz be modified. This modification will serve the public interest by eliminating harmful interference to Union Gas. The modification will not unduly disrupt Pfeiffer’s operations because other frequencies are also assigned to Station WPWH301. We are unaware of the availability of alternate frequency that could be assigned to Pfeiffer in replacement of frequency 152.870 MHz.

The modification will be brought forward as soon as possible. Pfeiffer will be provided with an opportunity to submit a written statement and be able to respond to any issues that may arise. We will propose a period of notice for public comment.

Execution Path and Note

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.