

## **Modification of WPWH301 License**

By this Memorandum Opinion and Order, we initiate a proceeding to modify the license of Terry L. Pfeiffer for Industrial/Business Pool Station WPWH301, Malone, NY. The proposing party is the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

### **INTRODUCTION**

The Commission is directed to initiate a proceeding to modify the license of Terry L. Pfeiffer for Industrial/Business Pool Station WPWH301 to delete frequency 152.870 MHz. As discussed in further detail below, we take this action in furtherance of ensuring compliance with international obligations and to promote the public interest.

### **BACKGROUND**

On November 15, 2002, 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 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. In coordination with the Branch, Pfeiffer modified his operations in an effort to eliminate the interference. However, on March 3, 2004, Industry Canada reported that Union Gas continues to suffer harmful interference from Station WPWH301.

### **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. 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.

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.

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), provides the appropriate vehicle for resolving this matter. Section 316(a) 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.

#### V. ORDERING CLAUSES

ACCORDINGLY, IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Private Land Mobile Radio Service Station WPWH301, Malone, New York held by Terry L. Pfeiffer, BE MODIFIED by deleting frequency 152870 MHz.

IT IS FURTHER ORDERED that this Memorandum Opinion and Order shall be sent by certified mail, return receipt requested, to Terry L. Pfeiffer, 6350 Bills Rd, Naples, NY 14512-9738.