

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

In the Matter of Application of )
RF DATA, INC. ) FCC File No. 0000485348
For Industrial/Business Pool Trunked Station )
WPTB421, Houston, Texas )

ORDER ON RECONSIDERATION

Adopted: May 28, 2002

Released: May 30, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. Introduction. On August 23, 2001, Reliant Energy, Inc. (Reliant) filed a petition for reconsideration regarding the above-captioned application. Reliant seeks reconsideration of the August 22, 2001 action of the Licensing and Technical Analysis Branch (L&TAB), Public Safety and Private Wireless Division granting the application of RF Data, Inc. (RF Data) for Industrial/Business Pool Private Land Mobile Radio Station WPTB421, Houston, Texas. For the reasons set forth below, we deny Reliant's Petition.

2. Background. Reliant is the licensee of Industrial/Business Pool Conventional Stations KJQ324, Bellaire, Texas (which operates on 451.1500 MHz) and KJO393, Houston, Texas (which operates on 451.2500 MHz). Both stations have an authorized bandwidth of 20 kHz. On June 8, 2001, the above-captioned application was filed, which proposed operation on, inter alia, frequencies 451.1625 MHz and 451.2625 MHz. The United Telecom Council (UTC), an FCC-certified frequency coordinator for the Private Land Mobile Radio Services, coordinated RF Data's application. RF Data's proposed base station was located 4.42 miles from the base station for Station KJQ324 and 6.0 miles from the base station for Station KJO393. L&TAB granted RF Data's application on August 22, 2001. Reliant filed the instant Petition on August 23, 2001.

1 Petition for Reconsideration of Reliant Energy, Inc. (filed Aug. 23, 2001) (Petition).

2 FCC File No. 0000485348.

3 Id.

4 FAC No. 2001042714410601510.

5 RF Data's base station is at coordinates 29-45-33N, 95-23-31W. The base station for Station KJQ324 is at coordinates 29-43-23.8N, 95-27-10.8W. The base station for Station KJO393 is located at coordinates 29-50-25.8N, 95-21-21.8W.

6 See Petition. RF Data filed an opposition on September 4, 2001. See Letter from Thomas K. Kurian, President, RF Data, Inc. to Secretary, Federal Communications Commission (filed Sep. 4, 2001) (RF Data Opposition). (continued....)

3. On September 21, 2001, L&TAB sent UTC a letter asking UTC to demonstrate that its coordination was in compliance with the Commission's Rules.<sup>7</sup> On October 15, 2001, UTC responded<sup>8</sup> and stated that "while UTC recognizes Reliant's concern, we conclude that the coordination was proper" under Sections 90.175<sup>9</sup> and 90.187<sup>10</sup> of the Commission's Rules. Specifically, UTC explained that its coordination was in compliance with Section 90.187 because there were no co-channel stations within 85 miles of RF Data's proposed station and no adjacent channel stations within the spectrum 7.5 kHz above and below the requested frequencies.<sup>11</sup> UTC states that it had noted the presence of Reliant's stations and suggested that RF Data consider a different frequency, but "RF Data requested strongly that UTC complete the coordination as submitted."<sup>12</sup>

4. *Discussion.* Reliant argues that the frequency coordination of RF Data's application violated the requirement in Section 90.175 of the Commission's Rules that frequency coordinators select the most appropriate frequencies.<sup>13</sup> Reliant claims that it will receive harmful interference from RF Data's operations because RF Data's operations on 451.1625 MHz and 451.2625 MHz will overlap the pass bands of Reliant's operations by 3 kHz.<sup>14</sup> Reliant argues that such interference would not be in the public interest, particularly give the stations' role in transmitting utility data such as service orders and instructions to repair crews.<sup>15</sup> In opposition, RF Data argues that UTC was not required to consider Reliant's stations in coordinating RF Data's applications.<sup>16</sup> RF Data also argues that Reliant's engineering study is based upon erroneous assumptions and attaches an engineering study to demonstrate that its station will cause less than one percent degradation of Reliant's signal.<sup>17</sup>

5. Based on our review of the record in this proceeding, we agree with RF Data and UTC that the coordination of RF Data's application was permissible under Section 90.187 of the Commission's Rules. The Commission's Rules required RF Data and UTC to consider adjacent channel stations with an operating frequency 7.5 kHz above or below RF Data's proposed operation because RF Data proposed a channel bandwidth of 12.5 kHz.<sup>18</sup> Since Reliant's stations and RF Data's station are separated by 12.5

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Reliant filed a reply on September 17, 2001. *See* Reply to Opposition to Petition for Reconsideration filed by Reliant Energy, Inc. (filed Sep. 17, 2001) (Reliant Reply).

<sup>7</sup> Letter dated September 21, 2001 from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division to United Telecom Council.

<sup>8</sup> *See* Letter dated October 15, 2001 from Renee M. McIlwain, Director of Spectrum Services, UTC, to Tracy Simmons, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division.

<sup>9</sup> 47 C.F.R. § 90.175.

<sup>10</sup> 47 C.F.R. § 90.187.

<sup>11</sup> *Id* at 1.

<sup>12</sup> *Id* at 2.

<sup>13</sup> Petition at 1-2, 5-6.

<sup>14</sup> *Id* at 5, Exhibits 1-6.

<sup>15</sup> *Id* at 7-9.

<sup>16</sup> RF Data Opposition at 1-2.

<sup>17</sup> *Id* at 1-2, Attachments A-C.

<sup>18</sup> 47 C.F.R. § 90.187(b)(2)(iii)(B).

kHz, Reliant is not an “affected licensee” entitled to protection under Section 90.187 of the Commission's Rules. In this connection, we note our previous rejection of the argument that the Commission’s Rules require applicants proposing to operate trunking systems on the 12.5 kHz "offset" channels with a 12.5 kHz channel bandwidth to obtain the consent of any 25 kHz incumbent system operating on the adjacent “main” channel.<sup>19</sup>

6. Reliant argues that the UTC frequency coordination did not recommend the most appropriate frequency as required under Section 90.175 of the Commission’s Rules. Frequency coordination under the Commission’s Part 90 Rules is the process by which a private organization certified by the Commission recommends to the Commission the most appropriate frequency or frequencies for applicants. Unless separation criteria are specified in the rules or the Commission has approved a coordinator consensus methodology, the frequency selection methodology for determining the most appropriate frequency to recommend is left to the discretion of individual coordinators.

7. In this particular case, Reliant is licensed for conventional use of two 450-470 MHz band frequency pairs. First, we note that the frequency pairs are available on a shared basis only and, thus, licensees should expect other co-channel and adjacent channel users.<sup>20</sup> Second, there is no Commission-approved coordinator consensus methodology here that governs when other co-channel and adjacent channel assignments can be made. Further, the only Commission assignment criteria that could be applicable in this case are specified in Section 90.187.<sup>21</sup> As previously discussed, we have determined that Section 90.187 is inapplicable here. Consequently, the frequency selection methodology for determining, when other co-channel and adjacent channel assignments should be made is within the coordinators discretion. Frequency coordinators play a pivotal role in helping the Commission manage the spectrum and we rely heavily on their recommendations in making our frequency assignment decisions, especially when operation is in a shared environment. The burden of proof that a coordinator should have recommended a different frequency or frequencies is on the entity making the claim. In this case, we do not believe Reliant has provided a sufficient showing to cause us to license RF Data on a frequency other than the one recommended by UTC.

8. Accordingly, IT IS ORDERED that, pursuant to Section 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 C.F.R. § 1.106, the Petition for Reconsideration filed by Reliant Energy, Inc. on August 23, 2001 IS DENIED.

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<sup>19</sup> See Letter from D'wana R. Terry, Chief, Public Safety and Private Wireless Division to Michele C. Fahrquar, Esquire, President, Land Mobile Communications Council (dated Apr. 6, 2001).

<sup>20</sup> 47 C.F.R. § 90.173.

<sup>21</sup> While it is true that when the Commission adopted policies and procedures concerning Section 90.187 that it urged coordinators to avoid coordinations that would place interfering signals within the passband of 25 kHz receivers, it did not prohibit such coordinations. See In the Matter of 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 Assignment Policies of the Private Land Mobile Services, PR Docket No. 92-235, *Fifth Memorandum Opinion and Order*, 16 FCC Rcd 416, 422-423 ¶¶ 15-17 (2000).

9. 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 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau