

Federal Communications Commission
Washington, D.C. 20554

December 4, 2003

DA 03-3546

Joe Friend, National Office Manager
Forestry Conservation Communications Association Hall of the States
444 N. Capitol Street, N.W.
Suite 540
Washington, D.C. 20001

Dear Mr. Friend:

This is in response to your inquiry on behalf of the Forestry Conservation Communications Association (FCCA) concerning Sections 90.2(c) and 90.20(f)(5) of the Commission's Rules, 47 C.F.R. §§ 90.20(f)(5).¹ FCCA contends that there is some confusion in the public safety community when reading Section 90.20(f)(5) in conjunction with the limitations on specific frequencies listed in Section 90.20(c). In general, it argues that there is no "direction" as to which rule section takes precedence. FCCA offers two suggestions to COITect the perceived ambiguity in the rules.

Of particular interest to FCCA is how Section 90.20(f)(5) should be applied to frequencies in Section 90.20(c) that carry limitation 49. These frequencies are Federal Government frequencies and are authorized under Footnote US8 of the Table of Frequency Allocations, 47 C.F.R. § 2.106, for use by non-Federal Government entities specifically for the prevention, detection and suppression of forest fires. FCCA contends that the limitations on frequencies listed in Section 90.20(c) such as limitation 49 are critical to proper spectrum management and should be considered when coordinating requests for operation under Section .90.20(f)(5). In this particular instance, FCCA argues that frequencies with limitation 49 are precluded from being used for police surveillance activities under Section 90.20(f)(5).

Section 90.20(c) lists the specific frequencies available to public safety eligibles along with assignment limitations on the frequencies and coordinator requirements. Section 90.20(f)(5) allows a police licensee to use, without specific authorization from the Commission, mobile frequencies listed in Section 90.20(c) on a secondary basis for surveillance, stakeouts, raids and other such activities. Use of frequencies for this purpose not designated by a "PP" in the coordinator column of the table in Section 90.20(c) is conditioned on the approval of the frequency coordinator with corresponding responsibility for each frequency. For example, for frequencies with a "PO" designation in the coordinator column such as those with limitation 40, police licensees must submit

¹ Letter from Joe Friend, National Office Manager, Forestry, Conservation Communications Association to D'wana R. Terry, Chief, Public Safety Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated June 13, 2002.

a coordination request to FCCA and have it approved before using the frequencies for surveillance activities, even if the police want to use the frequency on a secondary basis.

The limitations on frequencies listed in Section 90.20(c) are part of the Commission's Rules and are there for spectrum management purposes. They must be considered in the coordination process unless specifically precluded by another Commission rule. That is not the case here. Therefore, we agree with FCCA that coordinators should take into account the assignment limitations specified in Section 90.20(c) when evaluating coordination requests to operate under Section 90.20(f)(5). We disagree, however, that the rules lack direction. As noted above, Section 90.20(f)(5) specifically states that in order for police licensees to use frequencies without a "PP" designation in the coordinator column for surveillance approval from the coordinator associated with the frequency is needed. The purpose of this requirement is to ensure that, among other things, the assignment limitations are considered in evaluating coordination requests. Under the current rules, as a coordinator, FCCA can object to use of "PO" frequencies for police surveillance if it determines an interference problem would exist or it does not believe the proposed operation is in compliance with the Commission's Rules. Police licensees whose coordination requests are not approved, however, can request that the matter be brought to the Commission for a final determination if the licensee believes the coordinator's decision was erroneous and/or inconsistent with the Commission's rules.

Therefore, we decline to propose a rule change at this time. If FCCA continues to believe a problem exists and is not squarely addressed by this action, we believe that it should consider filing a rulemaking petition regarding the matter or raising it the next time the Commission does a general review of Part 90 of the Rules.

In addition to the general question discussed above, FCCA also put forth a specific question concerning using frequencies specified in Section 90.290(c) that carry limitation 49 for police surveillance operations. As noted above, these frequencies are Federal Government frequencies and only available to non-Federal Government entities for the prevention, detection and suppression of forest fires. Therefore, we believe that the frequencies listed in Section 90.20(c) that carry limitation 49 are not available routinely for police surveillance operations under Section 90.(f)(5). Any such request would have to be coordinated with the National Telecommunications and Information Administration (NfIA).

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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

Mr. Joe Friend, National Office Manager
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