

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

In the Matter of)
)
TERRY L. PFEIFFER)
)
Licensee of Industrial/Business Private Land)
Mobile Radio Station WPWH301, Malone, NY)

MEMORANDUM OPINION AND ORDER

Adopted: April 26, 2004

Released: April 28, 2004

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

I. INTRODUCTION

1. By this *Memorandum Opinion and Order*, we initiate a proceeding to modify the license of Terry L. Pfeiffer (“Pfeiffer”) for Industrial/Business Pool Station WPWH301, Malone, New York, 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.

II. BACKGROUND

2. On November 15, 2002, Pfeiffer was granted a license for Station WPWH301 in Malone, New York to operate “FB8”¹ trunked operations.² Among the assigned base station frequencies was frequency 152.870 MHz. The maximum authorized effective radiated power (ERP) is five watts.³

3. 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 Bureau⁴ stating that several stations in Ontario licensed to Union Gas were receiving

¹ An “FB8” station class code indicates a centrally trunked operation. Centralized trunking uses multiple channel pairs controlled by a computer that automatically assigns a user the first available channel or places the user in a queue to be served in turn. Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Third Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 10922, 10924 ¶ 2 (1999).

² FCC File No. A061567.

³ For one base station frequency (150.950 MHz), the maximum authorized ERP was fifty watts; for the other base station frequencies (152.870 MHz, 153.305 MHz, 153.365 MHz, and 153.635 MHz), the maximum authorized ERP was five watts.

⁴ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

interference to their communications on frequency 152.870 MHz.⁵ 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.⁶ 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.⁷

4. 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 WPWH301.⁸

III. DISCUSSION

5. 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./Canadian agreement.⁹ By contrast, Pfeiffer's application to operate with five watts ERP on frequency 152.870 MHz was granted without Canadian coordination.¹⁰

6. 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

⁵ See E-mail dated Sept. 10, 2003 from Pierre Gaudreau, Industry Canada, to Tracy Simmons. The harmful interference was being experienced by mobile units associated with the following Union Gas stations: Station VAJ579, Morrisburg, Ontario; Station VEK839, Bunker Hill, Ontario; Station VEK855, Cornwall, Ontario; Station XNG529, Cornwall, Ontario; and Station XNG530, South Mountain, Ontario. *Id.*

⁶ *Id.*

⁷ See E-mail dated Nov. 28, 2003 from Aldo Ongaro, Industry Canada, to Tracy Simmons.

⁸ Telephone call on Mar. 3, 2004 from Denis Papineau, Industry Canada, to Tracy Simmons.

⁹ See USA: *Treaties and Other International Acts Series* (TIAS) 5205; CAN: *Canada Treaty Series* (CTS) 1962 No. 15. *Agreement Between the United States of America and Canada Revising the Technical Annex to the Agreement of October 24, 1962* (TIAS 5205/CTS 1962 No. 15), Effected by Exchange of Notes at Ottawa, Canada, June 16 and 24, 1965. Entered into force June 24, 1965. USA: TIAS 5833/CAN: CTS 1962 No. 15, as amended June 24, 1965 (U.S.-Canada Agreement). We note that most of the affected Union Gas stations were coordinated prior to the licensing of Station WPWH301: Station XNG530 was coordinated on September 4, 1969 (serial no. 69-571). Stations VEK855 and VEK839 were coordinated on February 20, 2001 (serial nos. 011814 and 011815). Station XNG592 was coordinated on March 17, 2001 (serial no. 81-489). Station VEK839 was coordinated on March 28, 2003 (serial no. 033302).

¹⁰ The U.S.-Canada Agreement allows stations in the border area to operate at a maximum of 5 watts ERP without coordination. See U.S.-Canada Agreement at § 4(a) (indicating that coordination with Canada is only necessary for applications involving an ERP in excess of 5 watts). We note that Canada rejected coordination of Station WPWH301 with higher power limits. See comments of Industry Canada on April 27, 2001 and October 10, 2002 rejecting the proposed coordination of Pfeiffer's station (Serial No. 2000116289).

effective use of authorized facilities.¹¹ 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.¹²

7. 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.¹³ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.¹⁴ 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.

8. Consequently, we propose to modify Pfeiffer's license for Station WPWH301 to remove frequency 152.870 MHz. In accordance with Section 1.87(a) of the Commission's Rules,¹⁵ 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 20554.¹⁶ 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.

¹¹ 47 C.F.R. § 90.173(b).

¹² *Id.*

¹³ 47 U.S.C. § 316(a)(1).

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 1.87(a).

¹⁶ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

V. ORDERING CLAUSES

9. 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.

10. 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.

11. 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.

FEDERAL COMMUNICATIONS COMMISSION

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