

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

In the Matter of )
ACR ELECTRONICS, INC. )
and )
McMURDO LIMITED )
Requests for waiver of the Commission's Rules )
to permit the type certification of a new )
406 MHz personal emergency position )
indicating radiobeacon (EPIRB) )

ORDER ON RECONSIDERATION

Adopted: May 22, 2003

Released: May 27, 2003

By the Commission:

1. Introduction. In the Report and Order in WT Docket No. 99-366, the Commission dismissed as moot requests for waivers filed by ACR Electronics, Inc. (ACR) and McMurdo Limited (McMurdo) associated with type certification of a new 406 MHz personal emergency position indicating radiobeacon (EPIRB).1 On November 19 and 28, 2002, respectively, ACR2 and McMurdo3 requested reconsideration of the dismissals. For the reasons set forth below, we dismiss their reconsideration requests.

2. Background. EPIRBs are used to send distress signals that alert search and rescue responders.4 On January 20, 2001, ACR filed a request for waiver of Section 80.1061 of the Commission's Rules5 to permit type certification of a personal EPIRB meant to be carried on one's person, rather than stowed on board a ship.6 Additionally, on August 23, 2002, McMurdo filed a similar

1 See Amendment of Part 95 of the Commission's Rules to authorize the use of 406.025 MHz for Personal Locator Beacons (PLB), Report and Order, WT Docket No. 99-366, 17 FCC Rcd 19871 (2002) (R&O).

2 Letter dated Nov. 19, 2002 from Paul M. Frank, President, ACR Electronics, Inc., to Office of the Secretary, Federal Communications Commission (ACR Letter).

3 Letter dated Nov. 28, 2002 from C.P. Hoffman, Technical Director, McMurdo Limited, to Mr. J. Shaffer, Wireless Telecommunications Bureau (McMurdo Letter).

4 See generally 47 C.F.R. Part 80 Subpart V.

5 47 C.F.R. § 80.1061.

6 Letter dated January 10, 2001 from John Flood, Vice President/Engineering, ACR Electronics, Inc., to James Shaffer, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

request for waiver of Section 80.1061 of the Commission's Rules.<sup>7</sup> As a consequence of being smaller and lighter than standard EPIRBs, ACR's and McMurdo's personal EPIRBs did not conform to all of the technical requirements for a 406 MHz EPIRB.<sup>8</sup> On October 8, 2002, the Commission released a *Report and Order* that established a new Subpart K – Personal Locator Beacons (PLB) under Part 95 of the Commission's Rules, to permit the use of PLBs meant to be carried on one's person operating in the 406 MHz frequency range.<sup>9</sup> Because it appeared that ACR's and McMurdo's personal EPIRBs conformed to the technical requirements adopted in the *Report and Order* for 406 MHz PLBs, the Commission dismissed their waiver requests as moot.<sup>10</sup> On November 19, and 28, 2002, respectively, ACR and McMurdo requested reconsideration of the dismissals of their requests for waiver of the Commission's Rules in letters to the Wireless Telecommunications Bureau.

3. *Discussion.* Section 405 of the Communications Act, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's request for reconsideration.<sup>11</sup> Section 405, as implemented by Section 1.106(f) of the Commission's Rules, requires a petition for reconsideration to be filed within thirty days of public notice of the Commission's action.<sup>12</sup> In addition, Section 1.106(i) of the Commission's Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.<sup>13</sup>

4. We conclude that ACR and McMurdo did not satisfy the filing requirement in accordance with Section 1.106 of the Commission's Rules. In this case, the date of public notice is October 8, 2002, the date the Commission released the *Report and Order*, because the dismissals were adjudicatory decisions made in a rulemaking document.<sup>14</sup> Because the thirty-day window for filing a petition for reconsideration closed on November 7, 2002, the petitions were untimely. The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.<sup>15</sup>

5. In addition, we note that the McMurdo petition was filed at the wrong location, and no request for waiver of the requisite filing location was submitted. The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's Rules.<sup>16</sup> Applications and other filings not submitted in accordance with the correct addresses or locations will be

---

<sup>7</sup> Request for Waiver of 47 CFR 80.1061, submitted Aug. 23, 2002, from Richard Read, Senior Engineer, McMurdo Limited.

<sup>8</sup> See 47 C.F.R. § 80.1061.

<sup>9</sup> See *R&O*, 17 FCC Rcd at 19887-89.

<sup>10</sup> *Id.* at ¶ 24.

<sup>11</sup> 47 U.S.C. § 405.

<sup>12</sup> 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

<sup>13</sup> 47 C.F.R. § 1.106(i).

<sup>14</sup> See 47 C.F.R. § 1.4(b)(1).

<sup>15</sup> See, e.g., Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909 (1975); *Elkins*, 14 FCC Rcd at 5081 ¶ 3.

<sup>16</sup> 47 C.F.R. § 0.401.

returned to the filer without processing.<sup>17</sup> A document is filed with the Commission upon its receipt at the location designated by the Commission.<sup>18</sup> As noted above, petitions for reconsideration must be filed with the Office of the Secretary. Accordingly, based on the plain language of the Commission's Rules, a petition for reconsideration submitted to the FCC's Wireless Telecommunications Bureau is not properly filed in this instance.<sup>19</sup> Thus, we conclude that the ACR and McMurdo reconsideration requests should be dismissed as untimely and improperly filed.<sup>20</sup>

6. Accordingly, IT IS ORDERED pursuant to Sections 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, that the petitions for reconsideration submitted by ACR Electronics, Inc. and McMurdo Limited, on November 19 and 28, 2002, respectively, ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>17</sup> *Id.*

<sup>18</sup> 47 C.F.R. § 1.7; First Auction of Interactive Video and Data Service (IVDS) Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 (1996); Complaints Regarding Cable Programming Services Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14 (CSB 1995).

<sup>19</sup> *See, e.g.*, Memorandum of Agreement between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080 (WTB 1999) (*Elkins*) (determining that a facsimile copy to a division office neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782 (WTB PSPWD 1999) (finding that a petition for reconsideration sent to the Commission's lock box at Mellon Bank neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office), *aff'd*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000); *see also* Petition for Reconsideration Filing Requirements, *Public Notice*, 15 FCC Rcd 19473 (WTB 2000).

<sup>20</sup> We note that ACR and McMurdo argue that their waiver requests were not rendered moot by the Commission's adoption of rules authorizing 406 MHz PLBs because they requested that their units be classified as EPIRBs, which are for marine use, while PLBs are for land use. ACR Letter at 1-2; McMurdo Letter at 1. We disagree, because our rules do not prohibit marine use of PLBs. Indeed, we note that Radio Technical Commission for Maritime (RTCM) Standards for PLBs, which our rules require PLBs to meet, *see* 47 C.F.R. § 95.1205(a), envision PLBs "to be used in two general environments, areas with water (e.g. rivers, lakes, oceans, flooding) and areas without significant water (e.g. deserts, mountains)." "RTCM Recommended Standards for 406 MHz Satellite Personal Locator Beacons (PLBs)," Version 1.1, RTCM Paper 76-2002/SC110-STD, Section 1.2, dated June 19, 2002. Accordingly, should ACR or McMurdo wish to pursue its request for authorization of a personal *EPIRB*, it should consider filing a petition for rulemaking proposing revisions to our EPIRB rules.