

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications for Public Safety Pool (Conventional))	File Nos. 0004331029
Licenses in the 433-445 MHz Band for Mobile Use)	et al.
of ReconRobotics Video and Audio Surveillance)	
Systems and Associated Waiver Requests)	

To: The Commission

PETITION TO DENY APPLICATIONS

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL), by counsel and pursuant to Section 1.939 of the Commission’s rules (47 C.F.R. §1.939), hereby respectfully petitions to deny all of the pending applications referenced herein in *Exhibit A*, attached. As good cause for this Petition to Deny, ARRL states as follows:

1. Each and all of the applications referred to in *Exhibit A* were filed recently¹ by public safety eligibles for frequencies in the Conventional Public Safety Pool (PW). Each was coordinated by APCO International, Inc. Licensing Services. The applications specify mobile operation in the frequency band 433.0 to 445.0 MHz. Each specifies the single emission designator 100KC3F, at output and effective radiated power levels up to 0.323 watts. Each application is accompanied by a waiver request. The waiver request exhibit in each application, however, is limited to the upload attachment (without further justification or explanation) of the *Order*, DA 10-291, 25 FCC Rcd. 1782, released February 23, 2010 under the delegated authority of the Deputy Chief, Wireless Telecommunications Bureau, and the Deputy Chief, Public Safety and Homeland Security

¹ This Petition to Deny is being filed electronically in the ULS within thirty (30) days of the date of public notice of the subject applications, and is therefore timely.

Bureau in WP Docket No. 08-63 (the *Order*). That *Order* granted a *Request for Waiver* filed originally on or about January 11, 2008 by ReconRobotics, Inc., a manufacturer. ReconRobotics developed, for use *outside* the United States a portable, analog, robotic surveillance and data transmission system permitting video and audio surveillance in hazardous areas, called the “Recon Scout.” The device allegedly provides audio and video and other sensing circuitry, and would ostensibly be used for law enforcement and firefighting efforts. The device is presently configured by the manufacturer to operate in the 430-450 MHz band. The applications subject to this Petition to Deny seek a license to permit the applicants to operate this device in the United States in the 433-445 MHz band.²

2. ReconRobotics sought and, in WP Docket 08-63 was granted a waiver to market, sell and for eligibles to license and operate the Recon Scout device in the United States. That waiver, however, is subject to a pending Petition for Reconsideration filed March 24, 2010 by ARRL. There are at least two other Petitions for Reconsideration pending with respect to the ReconRobotics device waiver as well.³ ARRL’s Petition for Reconsideration requested, among other things that, *pendente lite*, the Wireless Bureau and the Public Safety and Homeland Security Bureau stay the effectiveness of the waiver granted to ReconRobotics. This request has not yet been adjudicated. Accordingly, action on the subject applications is premature.

3. In its Petition for Reconsideration of the ReconRobotics waiver, ARRL showed that the Wireless Bureau and the Public Safety and Homeland Security Bureau granted

² As discussed below, this frequency range is inconsistent with the ReconRobotics waiver grant for this device.

³ See, the Petitions for Reconsideration of W. Lee McVey and Kristopher Kirby, file March 6, 2010 and March 10, 2010 respectively.

the waiver precipitously and without due consideration of the interference potential and interference susceptibility of the subject devices relative to the Amateur Service. The *Order* failed to address a number of determinative arguments raised timely in comments in Docket 08-63, and as such the *Order* is arbitrary and capricious. In addition, there were noted several practical errors in the *Order* which under any circumstances necessitated immediate correction, prior to any marketing of the equipment. Finally, there was demonstrated substantial evidence of illegal marketing of the ReconRobotics devices, which should cause a re-evaluation of this waiver, which was improvidently granted. Nevertheless, during the pendency of the Petitions for Reconsideration of the waiver *Order*, ReconRobotics was on April 22, 2010 granted equipment authorization by American TCB, a Technical Certification Body (though that grant of equipment authorization is defective)⁴ and ReconRobotics has proceeded, apparently, to sell the Recon Scout devices to at least the 65 applicants for licenses subject to this Petition to Deny.⁵

4. Grant of the subject applications prior to final action on the ARRL Petition for Reconsideration will result in the proliferation and widespread, uncoordinated operation of the ReconRobotics device in the United States. The interference potential and the

⁴ The Grant of Equipment Authorization was made April 22, 2010, on the basis of an application filed April 20, 2010. The Grant of Equipment Authorization is incorrect in one major respect, and should be rescinded: the device utilizes a 6 megahertz bandwidth for video transmission in one of three alternative channels: 430-436 MHz, 436-442 MHz, and 442-448 MHz. See, the *Order, supra*, at Paragraph 3. However, the TCB certification grant specifies an emission designator of 100KC3F, indicating a 100 kilohertz bandwidth. One of two things is therefore true: either the device granted certification by American TCB is not the same device that ReconRobotics was granted a waiver to market and sell, in which case the subject applications cannot be granted because there is no authorization to license the device in the United States in this frequency range; or else the certification grant is incorrect, specifying an incorrect emission designator, and the certification grant must be vacated. In that case, the applications cannot be granted because they propose to utilize a device that has no valid equipment authorization, as required by Section 90.203(a), and because they specify an incorrect emission designator.

⁵ It is unclear when each of the applicants acquired the ReconRobotics devices. ReconRobotics apparently sold a number of these devices illegally prior to action on the waiver and prior to any grant of equipment authorization.

interference susceptibility of the device relative to licensed radio services, including the Amateur Service, will become a reality. The Amateur Service makes intensive, continuous use of the 420-450 MHz band. As argued in ARRL's Petition for Reconsideration of the ReconRobotics waiver *Order*, there is no justification for the choice of frequency bands used for this device, because there are alternative frequency bands that would be perfectly suitable for this device and its applications, and which would not suffer the same incompatibilities that use of the 433-445 MHz band entails. The waiver was sought by ReconRobotics for the convenience of the manufacturer and the manufacturer's unwillingness to reconfigure the device to operate in a more appropriate frequency band which does not have the interference potential that exists in the 420-450 MHz band. Grant of the Petition for Reconsideration would invalidate the subject license applications.

5. The *Order* established labeling requirements that are insufficient to convey to the user the operating conditions that the Commission placed on the devices in the waiver *Order*, and the ARRL Petition for Reconsideration pending in Docket 08-63 raising that argument has not been adjudicated.⁶ Therefore, grant of the subject applications would

⁶ Among the conditions attached to the waiver *Order* is a requirement that Recon Scout transmitters be labeled, and bear the following statement in a conspicuous location on the device: "This device may not interfere with Federal stations (sic) operating in the 420-450 MHz band and must accept any interference received." The non-interference requirement language is inconsistent with, and under- inclusive of the obligations imposed on the waiver in the text of the *Order*. Those conditions include a specific statement that the device is on a secondary basis to all Federal users *and licensed non-Federal users*. The label language is incomplete. The label must be modified to state that the device "may not interfere with Federal and non-federal stations operating in the 420-450 MHz band and must accept any interference received." In addition, the *Order* requires that the following statement be placed in the instruction manual: "Although this transmitter has been approved by the Federal Communications Commission, there is no guarantee that it will not receive interference." The manual language is insufficient. There is nothing in that language that explains to the user who experiences interference what that user's expectations should be. Instead, the notice in the manual should read: "Although this transmitter has been approved by the Federal Communications Commission, it must accept any interference received from Federal or non-federal stations, including interference that may cause undesired operation." These conditions must be clarified and the label corrected prior to any action on applications to license these devices.

result in the proliferation of devices with inadequate and incomplete labeling and interference avoidance obligations of the licensees. The applications are therefore premature for that reason as well. The Commission, if it does nothing else in Docket 08-63, must correct the obvious flaws in the waiver *Order* relative to the labeling and conditions of use, and it must vacate the TCB grant of equipment authorization (which incorporates the flawed notice provisions) prior to authorizing any of these devices to operate in the 433-445 MHz band.

6. There is **no** domestic allocation for Public Safety land mobile services anywhere in the 420-450 MHz band.⁷ Because the three channels on which the ReconRobotics device operates in this band⁸ are all within that segment, the ReconRobotics waiver, which was limited to Part 90 service rules, is insufficient by itself to support the grant of an application by Part 90 mobile eligibles to operate the device in a band that is not allocated or available to those eligibles. Each applicant would have to request and justify for itself a waiver of Section 2.106 of the Commission's Rules, the Table of Allocations. No such waiver request appears within any of the subject applications. Now, for good and sufficient reason, the only allocations in the 420-450 MHz band are for Government Radiolocation (limited to military radars) on a primary basis, and on a secondary basis, the Amateur Service. Per Section 90.273 of the

⁷ There is, at Section 90.103(c) an allocation for non-government Part 90 *radiolocation*, but that is limited to NON emissions only, and there is no mobile allocation in the band at all.

⁸ The three channels incorporated in the device, according to the waiver *Order*, are 430-436 MHz, 436-442 MHz, and 442-448 MHz. It is a mystery, therefore, why each of the subject applications specifies the band 433-445 MHz, except that that is the frequency range specified in the TCB grant of equipment authorization uses that range. The applications, because they each contain a defective emission designator, do not specify the frequency ranges of the channels of operation of the device, but only a 12 megahertz range. If the plan is to utilize only two channels instead of three, then these applications, and the TCB equipment authorization grant, are at variance with the waiver *Order*. While it is helpful to avoid the segments 432-433 MHz and 445-448 MHz in any operation of this device, the channelization plan in the applications is not specified and the applications are defective for that reason. See also paragraph 8, *infra*.

Commission's rules, frequencies above 429.99375 MHz and below 450 MHz are unavailable to stations in the land mobile service anywhere in the United States. ARRL noted in its Petition for Reconsideration that the Commission should not make spectrum allocations by waiver. That process short-circuits the well-established and fully functional procedures for international and domestic frequency allocations and spectrum management, which involve compatibility showings, and detailed consideration of the impact of a new service on incumbent licensees.

7. As discussed in footnote 8 above, the frequency range specified in the applications is inconsistent with the waiver *Order*. The waiver *Order*, at paragraphs 9 and 11, conditions the waiver, *inter alia*, as follows: "The first unit sold to a responding organization will operate on 436-442 MHz, with the 442-448 MHz version being sold only to entities that already own the 436-442 MHz version, and the 430-436 MHz version being sold only to entities that already own the other two versions." Each of the subject applications specifies one unit. Therefore, the frequency range specified in each application should be 436-442 MHz. Each application, however, specifies 433-445 MHz, which is inconsistent with the waiver *Order* and the applications are defective for that reason as well.

8. Overall, the waiver was improvidently granted to ReconRobotics, and the Commission was timely requested to rescind it. The effect of rescission of the waiver would be to necessitate the denial of the subject applications because the sole basis for the waiver grant in each application is the Docket 08-63 waiver *Order*. Accordingly, for this reason and for the other specific reasons stated hereinabove, each of the subject applications should be dismissed.

Therefore, for all of the above reasons, ARRL, the National Association for Amateur Radio, respectfully requests that the Commission reconsider, rescind and stay the ReconRobotics waiver and the effectiveness of the *Order* in accordance with the foregoing.

Respectfully submitted,

**ARRL, THE NATIONAL ASSOCIATION FOR
AMATEUR RADIO**

225 Main Street
Newington, CT 06111-1494

By: Christopher D. Imlay
Christopher D. Imlay
Its General Counsel

BOOTH, FRERET, IMLAY & TEPPER, P.C.
14356 Cape May Road
Silver Spring, MD 20904-6011
(301) 384-5525

August 4, 2010

EXHIBIT A

(Applications Subject to Petition to Deny)

EXHIBIT A

ADDITIONAL APPLICATIONS SUBJECT TO PETITION TO DENY; ARRL, THE NATIONAL ASSOCIATION FOR AMATEUR RADIO, PETITIONER.

	File Number	Call Sign/L ease ID	Applicant Name	FRN	Purpose	Radio Service	Receipt Date	Status
1	0004351768		IDAHO, STATE OF	0001631795	New	PW	08/12/2010	Pending
2	0004349765		LARIMER COUNTY SHERIFF'S OFFICE	0001620160	New	PW	08/10/2010	Pending
3	0004349756		ST. MARY'S COUNTY SHERIFF'S OFFICE	0005555008	New	PW	08/10/2010	Pending
4	0004348657		SAN BERNARDINO, COUNTY OF	0007153448	New	PW	08/09/2010	Pending
5	0004348020		SPRINGFIELD POLICE DEPARTMENT	0002487395	New	PW	08/09/2010	Pending
6	0004346697		HAWAII, COUNTY OF	0001513597	New	PW	08/06/2010	Pending
7	0004346678		GILROY POLICE DEPARTMENT	0007328628	New	PW	08/06/2010	Pending
8	0004346626		BENTON COUNTY SHERIFF'S OFFICE	0004292942	New	PW	08/06/2010	Pending
9	0004346605		RENO POLICE DEPARTMENT	0020094561	New	PW	08/06/2010	Pending
10	0004346580		CHARLES COUNTY SHERIFF'S OFFICE	0002134864	New	PW	08/06/2010	Pending
11	0004345171		MEMPHIS POLICE DEPARTMENT	0001761808	New	PW	08/05/2010	Pending
12	0004345139		GRAND RAPIDS POLICE DEPARTMENT	0002731453	New	PW	08/05/2010	Pending
13	0004345125		ATLANTIC CITY POLICE DEPARTMENT	0004452439	New	PW	08/05/2010	Pending
14	0004345093		MIAMI DADE POLICE DEPARTMENT	0020073953	New	PW	08/05/2010	Pending
15	0004344564		CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION	0020046264	New	PW	08/04/2010	Pending
16	0004344532		CITY OF WILSON POLICE DEPARTMENT	0015950934	New	PW	08/04/2010	Pending