



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

March 20, 2009

**DA 09-646**

Mr. Alan M. Lurya, Esq.  
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Dear Mr. Lurya:

This letter is in response to two requests you submitted for interpretation of the Commission's rules. Because both requests involve private land mobile stations operating in the 470-512 MHz band, we shall address them together.

The first request, dated December 14, 2007,<sup>1</sup> seeks an interpretation regarding application of the loading rules in the Los Angeles area. You note that the Commission's Rules provide that a 470-512 MHz channel that is loaded to capacity cannot be reassigned for use by another facility within forty miles.<sup>2</sup> You state that licensees in most areas use their repeater location as the center of their mobile operating area, but that repeaters in the Los Angeles area generally are located on mountains to the north or south of the licensee's operating area.<sup>3</sup> Consequently, you propose that, for purposes of the forty-mile limit in the Los Angeles area, licensees be deemed to be operating at a point "centered midway between the possible north and south repeater sites," rather than at the actual repeater location.<sup>4</sup>

We conclude that the requested interpretation is inconsistent with the language of the rule, and therefore incorrect. Section 90.313(c) of the Commission's Rules provides that a 470-512 MHz band frequency band pair "may be reassigned at distances of 64 km (40 miles) . . . or more from the location of *base stations* authorized on that pair without reference to loading at the point of original installation."<sup>5</sup> Thus, the forty-mile separation is a function of the incumbent's repeater site, rather than the center of its mobile operating area. If you believe that the rules should be modified to apply differently in the Los Angeles area, the appropriate vehicle is a petition for rulemaking.

In the second request, dated March 28, 2008,<sup>6</sup> you seek clarification of what you perceive to be a conflict between two then-recent decisions regarding mobile-only and temporary-fixed 470-512 MHz band stations. On March 14, 2008, the Mobility Division (Division) concluded that a 470-512 MHz band channel could be reassigned within forty miles of the center coordinates of a mobile-only station, because

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<sup>1</sup> Letter dated Dec. 14, 2007 from Alan M. Lurya to Terry Fishel, Associate Chief, Mobility Division (December 14 Letter); *see also* Letter dated Dec. 21, 2007 from Alan M. Lurya to Terry Fishel, Associate Chief, Mobility Division (requesting expedited response to December 14 Letter).

<sup>2</sup> *See* 47 C.F.R. § 90.313.

<sup>3</sup> *See* December 14 Letter at 1.

<sup>4</sup> *See id.* at 2.

<sup>5</sup> *See* 47 C.F.R. § 90.313(c) (emphasis added).

<sup>6</sup> Letter dated Mar. 28, 2008 from Alan M. Lurya to Fred Campbell, Chief, Wireless Telecommunications Bureau and Derek Poarch, Chief, Public Safety and Homeland Security Bureau (March 28 Letter).

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Section 90.313 prohibits co-channel assignments only within forty miles of base stations.<sup>7</sup> On March 19, 2008, the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau (Bureaus) concluded that whether an incumbent mobile-only station is “affected” by a proposed centralized trunked station in the bands between 150 MHz and 512 MHz for purposes of Section 90.187 of the Commission’s Rules,<sup>8</sup> and thus must consent to the proposed operations, should be determined based on the predicted service contour of a mobile unit at the closest edge of the licensee’s authorized service area.<sup>9</sup> Your question how decisions denying protection to a mobile-only station and affording protection to mobile-only stations can both be correct.<sup>10</sup>

We conclude that there is no conflict between these decisions, because they address different issues. The Division concluded that mobile-only stations are not entitled to exclusivity based on loading, because, as discussed previously, the forty-mile limit in Section 90.313 is determined with respect to base station locations.<sup>11</sup> The Bureaus, in contrast, were interpreting Section 90.187, which governs whether a proposed trunked station should be subject to monitoring requirements. There is no inconsistency or illogic in denying mobile-only or temporary-fixed stations exclusivity based on loading, while requiring that they be taken into account with respect to proposed centralized trunked operations.

We trust that this letter is responsive to your requests.

Sincerely,

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>7</sup> See *Mobile Relay Associates, Order*, 23 FCC Rcd 4099, 4100-01 ¶ 7 (WTB MD 2008); see also, e.g., *Mobile Relay Associates, Memorandum Opinion and Order*, 23 FCC Rcd 3202, 3204-05 ¶ 8 (2008) (affirming that the forty-mile limit applies only with respect to permanent base stations).

<sup>8</sup> 47 C.F.R. § 90.187.

<sup>9</sup> See *Ralph Haller, Letter*, 23 FCC Rcd 4714, 4716 (WTB/PSHSB 2008).

<sup>10</sup> See March 28 Letter at 1.

<sup>11</sup> Thus, your assertion that “channel exclusivity in 470-512 [M]Hz is derived from having a sufficient number of mobile units operating around a set of center coordinates,” *id.* at 2, is incorrect.