

## NEAR TERM FCC REACTION

TO

### MAY 9, 1985 UNLICENSED ISM BAND DECISION IN DOCKET 81-413

The following 3 pages document the FCC's immediate reaction to the ISM band decision that we now know is the foundation of Wi-Fi, Bluetooth, and myriad other products.

While unlicensed provisions had existed previously, they were very narrowly focused allowing cordless phones in this band and garage door openers in that band. Any new application or band took years of rulemaking during which the proponents had to discuss publicly their business plans. This type of spectrum management was called "command and control" by the FCC's later Spectrum Policy Task Force.

A week or 2 prior to the May 9<sup>th</sup> Commission meeting I was told by my boss, the Chief of the Office of Science and Technology, that the office was about to be officially renamed the Office of Engineering and Technology and that would be an excuse for a "reduction in force" that would eliminate only 3 positions: his, his deputy's, and mine. This was to be the FCC's first RIF in more than 7 years. The 30+ people who worked for me in the Technical Analysis Division were to be split between the FCC Lab, where a few were located physically, and another downtown division that was headed by a known alcoholic who could not function after lunch. (He was forced into retirement a year later.) To further show the FCC's appreciation of my efforts, a few months later I received the lowest Senior Executive Service performance appraisal in the 7 year history of SES at FCC. This was probably intended to facilitate the actions in the following documents since for SES personnel retention in RIFs is based on recent performance appraisals.

(Indeed, another OST division chief received initially the same low rating I did but it was mysteriously upgraded before it was approved by the Commission. He was puzzled, but I realized that this showed I was the prime immediate target and his low rating might have allowed me to "bump" him in a RIF. He was demoted a year later.)

Page 2-3 of this document is a letter I received on December 29, 1986, the first work day after the holiday. It confirms that the reorganization eliminating my job was approved on December 19, 1985. It goes on to say "despite our efforts" they had not been able to place me in another position and that they would demote me to GS-15 unless OPM placed me in another agency – an unlikely occurrence.

Page 4 is an accompanying letter from the FCC Chairman to OPM notifying him of this action.

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

DEC 29 1986

Dr. Michael J. Marcus  
Office of the Bureau Chief  
Field Operations Bureau  
Federal Communications Commission  
Room 734, 1919 M Street, N.W.  
Washington, D.C. 20554

Dear Dr. Marcus:

Your position as Chief, Technical Analysis Division, Office of Engineering and Technology, was abolished during a major reorganization of that office. This reorganization was approved by the full Commission on December 19, 1985, and by Congress on February 3, 1986.

Since that time, despite our efforts, we have been unable to place you in an established SES vacancy within the Commission for which you are technically qualified. In addition, as you know, we also attempted to facilitate a transfer to the Defense Communications Agency. Unfortunately, this effort was also unsuccessful. Consequently, it has become necessary to conduct a reduction in force within the Senior Executive Service (SES).

In accordance with 5 U.S.C. 3595 and our SES reduction in force regulation (copy enclosed), an SES retention register has been prepared. The following information from this register pertains to you:

Competitive Area: Commission-wide  
Retention Group: Highly Successful  
Retention Score: 19

It has been determined that there are no SES positions for which you are technically qualified which are occupied by an SES member with lower retention standing. Therefore, you have no displacement rights within the SES and may be subject to removal from the SES.

However, before you can be removed, your name must be referred to the Office of Personnel Management (OPM) for priority placement consideration. We are making such a referral and will send you a copy of the referral letter shortly. OPM has 45 days from the date they receive the referral to consider you for priority placement in vacant SES positions in other Federal agencies. They will determine which vacant SES positions you will be referred against after they have reviewed your background and experience.

You should contact Mr. Bill Fenton, Office of Executive Personnel, Office of Personnel Management, on 632-7728, upon receipt of the copy of the referral letter. He will explain the OPM priority placement program and inform you of the necessary documentation which you must submit in order to receive priority placement consideration. You will be required to submit a current SF-171, so you should begin updating one now.

If OPM is unable to place you after 45 days, you will be informed. You will then be offered a vacant GS-15 position within the Commission for which you are technically qualified.

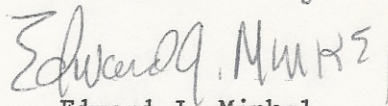
If you are removed from the SES, you may appeal whether this action complied with competitive procedures as required in 5 U.S.C. 3595(a) to the Merit Systems Protection Board. The filing period for appeal begins one day after your removal from SES and continues until 20 days after the effective date of the action. A copy of the appeals form is enclosed.

Any appeal you make should be addressed to:

Merit Systems Protection Board  
Washington, DC Regional Office  
5203 Leesburg Pike, Suite 1109  
Falls Church, VA 22041

If you have any questions, or require additional information, you may contact Michelle Oppenheimer on 632-7120. The retention register is available for your review in her office. She is available to meet with you at your convenience.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward J. Minkel". The signature is written in a cursive style with some capital letters. There is a small "0" written above the "M" in "Minkel".

Edward J. Minkel  
Managing Director

Enclosures



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

DEC 18 1986

Honorable Constance Horner  
Director, Office of Personnel Management  
1900 E Street, N.W.  
Washington, D.C. 20415

Dear ~~Mrs. Horner~~ *Cornie*:

As a result of a reorganization within the Federal Communications Commission, it has become necessary to conduct a reduction in force within the Senior Executive Service (SES). The position of Chief, Technical Analysis Division, Office of Engineering and Technology has been abolished and the incumbent, Michael J. Marcus, must be released from that position.

The Commission has one established SES vacancy and Dr. Marcus has been considered for it. However, he does not possess the specialized technical requirements for that position. Enclosed for your information is a brief description of that position and its technical qualifications. Also enclosed is a copy of our regulation governing SES reduction in force.

As I am unable to place Dr. Marcus, this letter constitutes my certification that there are no vacant SES positions in the Commission for which Dr. Marcus is technically qualified and my referral to your office for priority placement consideration. Dr. Marcus has been advised of this referral. Your assistance in placing him would be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark S. Fowler".

Mark S. Fowler  
Chairman

Enclosures