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OFFICE OF SECRETARY

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July 20, 1994

William F. Caton, Acting Secretary
Federal Communications Commission
Room 222 -- Mail Stop 1170
1919 M Street N.W.
Washington DC 20554

**Re: PR Docket No. 93-61, Automatic Vehicle Monitoring
(Ex Parte Communication)**

Dear Mr. Caton:

On behalf of Symbol Technologies, Inc. ("Symbol"), a manufacturer of Part 15 spread spectrum data communications equipment, I am filing the original and one copy of this written ex parte communication pursuant to Section 1.1206(a)(1) of the Commission's Rules.

Four entities that are operating or developing wideband location monitoring systems (collectively, the "Wideband LMS Parties") have filed a joint "compromise proposal" in this docket.^{1/} Their proposal contemplates negotiation and, if necessary, arbitration to resolve interference disputes between wideband LMS providers and Part 15 users. Symbol here offers a counterproposal intended to foster more equitable treatment between LMS providers and Part 15 users in an interference dispute.

Wideband LMS Proposal

The Wideband LMS Parties stated that "substantial interference can be tolerated by their [wideband LMS] systems and that harmful interference can be resolved reasonably and equitably in the limited situations that it occurs."^{2/} Also, "[t]he

^{1/} Letter from AirTouch Teletrac, Pinpoint Communications, Inc., MobileVision, L.P., and Uniplex to Ralph Haller, Chief, Private Radio Bureau (filed June 23, 1994) ("LMS Letter").

^{2/} "LMS Consensus Position on Part 15 Interference" at 1 (attachment to LMS Letter) ("LMS Consensus").

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combined experience of the authors makes it clear that fears of widespread interference to LMS systems from Part 15 equipment are unfounded."^{3/}

The LMS Letter offered a "compromise proposal in an effort to alleviate Part 15 concerns about the potential for interference from Part 15 devices to receivers used by wideband LMS systems in the 902-928 MHz band."^{4/} Specifically, it proposed instituting "interference negotiation obligations" on the 902-928 MHz band:

[T]he Commission would impose an obligation on both groups of providers to negotiate in good faith to eliminate harmful interference caused by Part 15 equipment to wideband LMS service providers. If such negotiations are unsuccessful, then the parties can either mutually agree to submit to binding arbitration or they have the option of seeking relief from the FCC.

Whenever the FCC is asked to adjudicate LMS/Part 15 interference disputes, the Commission . . . would examine the equities of the case and the potential engineering solutions available and resolve the matter. . . .^{5/}

Symbol fully supports a resolution of this proceeding that addresses interference problems through negotiation and, if negotiation fails, through arbitration or FCC intervention that relies on "the equities of the case and the potential engineering solutions available." However, the proposal in the LMS Letter does not accomplish that result.

^{3/} LMS Consensus at 2. The 27-page LMS Consensus supports these assertions. The Wideband LMS Parties also propose "a threshold interference level below which wideband AVM systems cannot complain about 'harmful interference' from Part 15 devices." LMS Letter at 2 (emphasis in original). Symbol supports the notion of such an interference floor in principle, and will respond to the specifics of the Wideband LMS Parties' technical proposal in a later filing.

^{4/} LMS Letter at 1.

^{5/} LMS Letter at 1, 2.

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The proposal would not yield any significant departure from current practice, other than to underscore an obligation to negotiate. To the contrary, the proposal is missing an important element needed to implement its basic premise: negotiations between equals. In the absence of any indication to the contrary, Section 15.5 of the Commission's Rules would permit licensed LMS stations to claim a priority over Part 15 operations in the event that arbitration or Commission intervention were required.⁴⁷

Symbol's Counterproposal

Symbol takes the Wideband LMS Parties at their word that their systems can tolerate "substantial interference" and that any harmful interference that does occur can be resolved "reasonably and equitably."⁷⁷ On that predicate, Symbol offers the counterproposal below. Its intent is simply to put Part 15 and wideband LMS on an equal footing in any negotiation and decision-making necessitated by interference between the two services.

⁴⁷ Section 15.5 provides, in pertinent part:

(b) Operation of an intentional, unintentional, or incidental radiator is subject to the conditions that no harmful interference is caused and that interference must be accepted that may be caused by the operation of an authorized radio station

.....

(c) The operator of a radio frequency device shall be required to cease operating the device upon notification by a Commission representative that the device is causing harmful interference. Operation shall not resume until the condition causing the harmful interference has been corrected.

47 C.F.R. § 15.5. A licensed LMS facility would be an "authorized radio station" under subsection (b). Part 15 devices are "intentional radiators" under subsection (b) and "radio frequency devices" under subsection (c).

⁷⁷ LMS Consensus at 1.

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In hopes of narrowing the issues, Symbol presents its counterproposal in the form of an edited version of the Wideband LMS Parties' letter of June 23. Deleted material is ~~struck out~~; added material is shown by double underline.

Most of the Part 15 community have expressed concern over the licensing of wideband LMS systems in the 902-928 MHz band because of the perceived potential that LMS providers could force Part 15 equipment owners, who are unlicensed and must operate on a non-interfering basis under the band hierarchy, to cease operation in the LMS band. The compromise proposal set forth below responds to this concern by ~~overlaying~~ establishing interference negotiation obligations on the band ~~hierarchy~~. The proposed interference negotiation obligations would be imposed on the 902-928 MHz band because of the unique characteristics of the band, including the potential congestion of the band and the need to accommodate multiple users. The specifics of the proposal are as follows:

1) Since wideband LMS systems and Part 15 devices both provide valuable services to the public, the Commission would impose an obligation on both groups of providers to negotiate in good faith to eliminate harmful interference, ~~caused by Part 15 equipment to wideband LMS service providers~~. If such negotiations are unsuccessful, then the parties can either mutually agree to submit to binding arbitration or they have the option of seeking relief from the FCC.

2) Whenever the FCC is asked to adjudicate LMS/Part 15 interference disputes, the Commission, possibly using its Alternative Dispute Resolution procedures, would examine the equities of the case and the potential engineering solutions available and resolve the matter without regard to Section 15.5 of the Commission's Rules. We believe, however, that in the vast majority of instances, the parties will resolve the dispute prior to seeking FCC involvement since business necessity will require speedy resolution of interference problems.

3) The FCC would adopt a threshold interference level below which wideband AVM systems cannot complain about "harmful interference" from Part 15 devices. This

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threshold level can be based on ~~the attached technical report.~~
~~This report presents an overview of the experience of LMS~~
~~system operators with interference from Part 15 devices. It~~
~~includes a proposed threshold interference level based on~~ field
measurements of interference levels, estimates of potential
interference levels under various scenarios, and interference
levels that most LMS systems should be able to tolerate without
significant adverse degradation.

The proposed interference rules will require the LMS
industry and the Part 15 industry to work out acceptable
engineering solutions, thus preserving the ability of Part 15 users
to deploy systems in the 902-928 MHz band. ~~In addition, since~~
~~this solution does not require a revision of the band hierarchy,~~
~~but rather simply layers on top of the hierarchy interference~~
~~rules, Under this proposal,~~ no further round of notice and
comment is necessary.^{8/}

The edits are intended to eliminate asymmetries in the Wideband LMS Parties'
proposal and to ensure that the resolution of an interference dispute turns solely
on "the equities of the case and the potential engineering solutions available."

APA Considerations

Section 553 of the Administrative Procedure Act ("APA") generally requires an
agency contemplating a change in its rules to publish the proposed rule, give
interested persons a chance to comment, and consider those comments in
making its decision.^{9/} Although Symbol believes that its counterproposal does
not implicate the APA, Symbol wishes to avoid controversy on this issue; and
for the same reason, Symbol will not attempt to invoke exceptions to the APA
requirements.^{10/} Instead, Symbol suggests that a resolution to this proceeding

^{8/} LMS Letter, as edited by Symbol.

^{9/} 5 U.S.C. §§ 553(b), (c).

^{10/} For example, notice and comment is not required for "interpretive
rules," which have been judicially characterized as promulgations that "clarify
(continued...)"

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be implemented as a condition on the authorizations of wideband LMS licensees. Such a condition might be worded as follows:

In the event of harmful interference between the licensed facility and equipment operating under Part 15 of the Commission's Rules, the licensee must negotiate in good faith with the Part 15 operator to eliminate such interference, pursuant to the criteria in the Commission's Report and Order in PR Docket No. 93-61, FCC 94-____, released _____, 1994.^{11/}

As a procedural matter -- assuming that the Wideband LMS Parties agree to accept a license condition as part of an overall resolution -- Symbol suggests that they affirmatively request the Commission to impose the condition. To have the license condition originate with the applicant, rather than the Commission, may help to eliminate any vestigial doubts that the APA is inapplicable.

* * * *

For the moment, Symbol can speak only for itself. A large number of Part 15 interests have participated in this proceeding, and for Symbol to have consulted them all before filing this letter would have incurred substantial delays. Within the next several days, Symbol will circulate this letter to all of the identifiable Part 15 entities in the docket, and will report to the Commission any that authorize Symbol to convey either their support or opposition.

^{10/}(...continued)

the application of the law in a specific situation, . . . used more for discretionary fine-tuning than for general law making." Flagstaff Medical Center, Inc. v. Sullivan, 962 F.2d 879, 886 (9th Cir. 1992). See 5 U.S.C. § 553(b)(B). Nor is further notice and comment required where the promulgation in question is a "logical outgrowth" of a prior notice in the proceeding. Aeronautical Radio, Inc. v. FCC, 928 F.2d 428, 445-46 (D.C. Cir. 1991). Either of these exceptions might apply here.

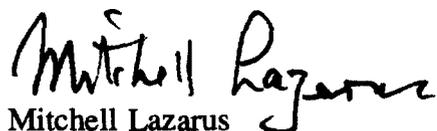
^{11/} No similar condition need be (or could be) imposed on Part 15 operators. The condition limits the rights of LMS licensees over Part 15 operators; but Part 15 operators have no rights over LMS licensees other than those specified in the condition. See 47 C.F.R. § 15.5.

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If there are any questions about this filing, please call me at the number above.

Respectfully submitted,



Mitchell Lazarus
Counsel for Symbol Technologies, Inc.

cc: Raymond A. Martino
Dr. Frederic P. Heiman
Leonard H. Goldner, Esq.
Symbol Technologies, Inc.

Attached service list
All Part 15 entities in docket

CERTIFICATE OF SERVICE

I, Mitchell Lazarus, do hereby certify that on this 20 day of July, 1994, I have caused copies of the foregoing Letter to William F. Caton, Acting Secretary, FCC, to be served by first-class mail, postage prepaid, upon the following, except that names marked with an asterisk were served by hand:

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