

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 90 of the) PR Docket No. 93-61
Commission's Rules to Adopt)
Regulations for Automatic Vehicle)
Monitoring Systems)

REQUEST FOR ISSUANCE OF DECLARATORY RULING

The American Radio Relay League, Incorporated, (the League) the national non-profit association of amateur radio operators, by counsel, and pursuant to Section 1.2 of the Commission's Rules (47 C.F.R. §1.2), hereby respectfully requests that the Commission issue a Declaratory Ruling clarifying Commission policy with regard to certain rules promulgated¹ in the captioned docket proceeding. Although the Commission has adopted a new regulatory threshold for claims of harmful interference to systems operating in the new Part 90 Location and Monitoring Service (LMS) in the band 902-928 MHz (47 C.F.R. §90.361), the Commission should clarify (1) that complaints by LMS licensees of harmful interference from amateur stations which operate above the new safe harbor limits will be adjudicated by the Commission according to standard definitions of harmful interference; and (2) that the burden of proof of the existence of harmful interference to the LMS system remains on the LMS licensee. As support for this request, the League states as follows:

1. In the original Report and Order issued in this proceeding, 10 FCC Rcd 4695 (1995), (*LMS Report and Order*), the Commission prefaced its introduction of the interference

¹ See, the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, FCC 97-305, Released September 16, 1997.

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safe harbor criteria applicable to Part 15 devices and Part 97 Amateur Radio Service licensees by quoting the longstanding definition of harmful interference: "[a]ny emission, radiation or induction that endangers the functioning of a radio navigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with this chapter." *LMS Report and Order* ¶36, citing 47 C.F.R. §§ 15.3(m), 2.1. It then introduced the antenna-height/output-power formula as a "'negative definition'" — *i.e.*, "to define what is not harmful interference from unlicensed Part 15 devices to multilateration LMS systems." *Id.*

2. The Commission then (the League contends erroneously) applied the same safe-harbor formula to Part 97 amateur operations and added:

Conversely, Part 15 and Amateur operations not meeting these parameters and seriously degrading, obstructing or repeatedly interrupting the operation of a multilateration system, will be deemed to be causing harmful interference and, thus, upon Commission notification, be required to cease operations until the condition causing the interference has been corrected. We emphasize, however, that Part 15 or Amateur use is not restricted from operating beyond these parameters. Part 15 and Amateur operations can continue to operate as long as interference is not caused and are limited only by the technical parameters contained in the rules applicable to their respective services.

Id.

3. Continuing, the Commission stated that, with regard to amateur or Part 15 operations exceeding the safe harbor threshold, complaints of interference to LMS systems must "identify the exact source of the interference." *Id.* ¶38. Furthermore, once harmful interference has been identified, an offending Part 15 user may choose to voluntarily bring its operations within the safe harbor threshold or may choose among various stated alternative courses of action: "(1) reducing power sufficiently to avoid causing harmful interference; (2) lowering

antenna height sufficiently to avoid causing harmful interference; (3) changing antenna directionalization to avoid causing harmful interference; (4) any combination of 1-3; (5) reaching an accord with the complaining LMS system; or (6) terminating operations." *Id.* ¶38. Although the text does not so state, amateur operators would apparently have the same options. Where harmful interference is actually established, and it is shown that the source is an Amateur station, it would appear that the sole burden of interference resolution would lie with the Amateur licensee. That is of course the nature of the obligation of the secondary service. The concerns of the League at the present time, however, are: (1) that the burden of establishing that harmful interference exists is unclear; and (2) it is unclear that the standard definition thereof remains the applicable standard; when the Amateur Station is operating at parameters above the "safe harbor". Because (as the Commission has acknowledged) the "safe harbor" has no real-world application in any amateur station configuration, the issue becomes one of significant concern for radio amateurs, and determines their ability to use the band at all in the future.

4. The Commission, relatively straightforwardly, noted that there are to be no restrictions on amateur operation at 902-928 MHz unless and until there is an interference complaint. Presumably, given the traditional cooperation of Amateur licensees in interference resolution, there will be few, if any, problems necessitating Commission intervention. However, so that the "ground rules" are understood, and so that radio amateurs can understand their obligations in using the band, it is necessary to resolve the confusion created largely by the February, 1995 Report and Order, and not resolved by the Commission in the various orders on reconsideration in this extended proceeding. At paragraph 38 of the Report and Order, the Commission stated:

In view of the technical diversity of the many LMS systems in existence and the multiplicity of Part 15 devices that will eventually be placed in operation, we conclude that the above standards will not provide solutions to all interference

problems, and this agency may not be able to resolve all interference problems that may arise between unlicensed Part 15 and LMS systems. As such, multilateration LMS systems that experience interference from an amateur or Part 15 transmission may face two different scenarios. Under the first scenario, where the interference is from an amateur or Part 15 system operating within the parameters set forth in paragraph 36, the interference is not considered to be harmful. The multilateration LMS system experiencing the interference has no recourse by way of complaint to the Commission. It may only attempt to resolve the interference by modifying its own system or by obtaining the voluntary cooperation of the amateur operator or Part 15 user. Under the second scenario, where the interference is from an amateur or Part 15 transmission that does not fall within the parameters set forth in Paragraph 36, the multilateration LMS system experiencing the interference may have recourse by way of complaint to the Commission if voluntary measures fail to resolve an interference problem.

A footnote to the foregoing states as follows:

Disputes over harmful interference [as described in Section 90.173(b) of our Rules] are typically resolved on a case-by-case basis. For these services, while absolute blocking of a licensee's transmissions throughout a large region would constitute the only clear-cut case of harmful interference (See Section 90.7 for definition of harmful interference under 47 C.F.R. Part 90), it is possible that lesser degrees of interference could diminish the accuracy or reliability of certain multilateration systems in a limited portion of a system's area of operation. The degree to which such lesser amounts of interference would be considered harmful cannot be determined in advance, and there can be no guarantee that licensees will be unconditionally protected from interference of this type. Because of these unique characteristics of multilateration systems, we decline to specify what will be considered to constitute harmful interference to such systems.

Id., at footnote 210

This lack of specificity in what constitutes harmful interference is neither necessary nor fair. The Commission has applied the standard definition of "harmful interference" as set forth in both the International Radio Regulations and its own rules without difficulty all along. The vague reference in Footnote 210 in the Report and Order fails to set forth either what standard for determining harmful interference will be used, or what the burden of proof will be on the part of the LMS licensee. It is therefore impossible for the amateur radio licensee to know the standard of compliance that will be used, and therefore to what extent he or she may use the

band at all.

5. In discussing the "safe harbor" in the Order on Reconsideration subsequently issued in this proceeding, 11 FCC Rcd 16905 (1996) (*LMS Order on Reconsideration*), the Commission reiterated that the *LMS Report and Order* had "noted that this 'safe harbor' approach would promote effective use of the 902-928 MHz band by the various services through establishing the parameters under which such devices may operate without risk of receiving complaints of interference from service providers with a higher allocation status." *LMS Order on Reconsideration* at ¶20.² The Commission then noted that the threshold rule was implemented as an express determination "to provid[e] multilateration LMS system operators a means of recourse by way of complaint to the Commission ... when a Part 15 device is not operating in the 'safe harbor'". *Id.* Finally, the Commission reiterated that, "[a]lthough the multilateration LMS system operators will not be able to file a complaint with the Commission where the Part 15 user has satisfied the 'safe harbor' provisions, the Commission encourages LMS operators to resolve the interference by modifying their systems or by obtaining the voluntary cooperation of the Part 15 user." *Id.*

6. In the third ruling issued in this proceeding, a Memorandum Opinion and Order and Further Notice of Proposed Rule Making, FCC 97-305 (released September 16, 1997) (the *LMS Memorandum Opinion and Order*), the Commission reiterated that the safe harbor threshold had been adopted "in order to alleviate ... concerns [about the secondary status of Part 15 and amateur operators] and to provide all operators in the band with a greater degree of certainty in

² As in its previous filings in this proceeding, the League again notes that Part 15 *unlicensed* devices, by definition, have no allocation status. The interference avoidance and resolution obligation of such devices are therefore qualitatively different from those applicable to the Amateur Service, which has an international allocation at 902-928 MHz.

configuring their systems, thereby promoting competitive use of the band". *Id.* ¶32.³ In fact, the Commission applied to the Amateur Service an interference standard that has no application to any actual amateur station, and then left completely vague the means by which real-world interference matters might be judged. No cooperative sharing of this frequency band can exist under these circumstances.

7. Although the various foregoing quotations evidence an intent by the Commission to foreclose the possibility of complaints by AVM/LMS licensees when amateurs (or Part 15 devices and systems) are operating within the formulaic parameters, and to encourage cooperative efforts to reduce or eliminate interference in all other instances, the Commission must now expressly clarify that there has been no change in the longstanding mechanism for determining whether or not harmful interference from secondary users actually exists; that the standard for interference resolution is that set forth in both the ITU Radio Regulations and 47 C.F.R. §90.7; and that the burden of proving that interference from an Amateur station seriously degrades, obstructs or repeatedly interrupts LMS systems operating in accordance with the Commission's Rules remains with the AVM/LMS licensee. Although the new rule establishes bright-line minimum operating standards, the Commission must clarify that it has not altered the application to LMS interference of longstanding rules defining "harmful interference" by secondary users or that the burden of proof in establishing that harmful interference actually exists is on the AVM/LMS licensee.

³ This is inapplicable in context. The League notes the Commission's consuming dedication to insuring "competition" in commercial radio services. This goal is restated in many contexts in rulemaking proceeding in the past several years. However, there can be no "competitive" use of the 902-928 MHz band between or among AVM/LMS licensees, Amateur licensees, and miscellaneous Part 15 devices, as the uses are dissimilar. The Amateur Service competes with no other user in any marketplace context. The only issue relevant in this proceeding was, and is, interference potential among dissimilar users, and other incumbents in this multiple-use band.

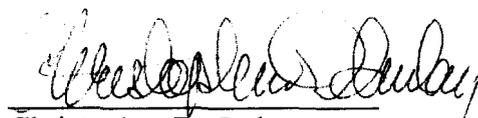
Accordingly, the American Radio Relay League, Incorporated, hereby requests that the Commission issue a declaratory ruling at the earliest possible time stating that the new safe harbor provisions of 47 C.F.R. §90.361 do not alter the standard ITU and Commission definitions of "harmful interference" applicable to LMS operation in the 902-928 MHz band, other than by exemption of those facilities operating within the stated Section 90.361 "safe harbor" parameters.

Respectfully submitted,

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