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March 13, 1998

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DIRECTOR'S OFFICE

HAND DELIVERED

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Third Letter Amendment to IVDS Petition for Rulemaking (RM-8951)

Dear Ms. Salas:

On behalf of Faycomm, Inc., ("Faycomm"), we submit this request to amend the September 4, 1996 Petition for Rulemaking (RM-8951), as amended, related to the IVDS (Part 95) rules.^{1/} Faycomm has reviewed the proposals for the IVDS industry set forth in a February 26, 1998 letter to the Commission on behalf of Cyberforce, L.L.C. ("Cyberforce") (copy attached) and adopts those proposals on behalf of Faycomm.

In addition, Faycomm understands that the FCC grace period rules will change on March 16, 1998. Faycomm requests that the Commission incorporate into the IVDS rulemaking proceeding its request that the Commission issue a limited waiver of the late fee and automatic default rule, Section 1.2110(f), for IVDS licensees if the FCC does not issue an initial order in the IVDS rulemaking by September 30, 1998. Faycomm requests that any such waiver, if necessary, would remain in effect until the initial order in the IVDS rulemaking is issued. Such a result would be equitable, given the fact that the IVDS licensees have waited more than a year for the FCC to act on the 1996 rulemaking request. Therefore, Faycomm requests that the Commission recognize that Faycomm and Cyberforce, LLC jointly sponsor the requests contained in the February 26, 1998 letter as a third amendment to September 4, 1996 Petition for Rulemaking and consider Faycomm's additional request for limited waiver of Section 1.2110(f) set forth herein.

^{1/} Faycomm, Inc. is the successor entity to Euphemia Banas, who initially held her IVDS licenses as an individual. Ms. Banas, as an individual, was a party to the original Petition for Rulemaking filed on September 4, 1996, as amended January 28, 1997 and February 26, 1997.

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PATTON BOGGS, L.L.P.

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Should any questions arise, please contact the undersigned counsel.

Sincerely,

A handwritten signature in cursive script that reads "J. Jeffrey Craven". The signature is written in black ink and is positioned above the printed name.

J. Jeffrey Craven

cc: Mr. Jerome Fowlkes
Howard Griboff, Esquire

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WRITER'S DIRECT DIAL

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February 26, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED

FEB 26 1998

Re: Amendment to Request for IVDS Rulemaking

Dear Madame Secretary:

On behalf of Cyberforce L.L.C. ("Cyberforce"), a Virginia limited liability company, we submit this request to amend the Request for Notice of Rulemaking ("Request for Rulemaking" or "Request") which was submitted by the undersigned on behalf of multiple clients, including Cyberforce, on September 4, 1996 and supplemented on January 28, 1997.¹

Cyberforce is aware that the FCC's Wireless Bureau is considering issuing a notice of proposed rulemaking ("NPRM") in response to the Request for Rulemaking and other requests to revise or amend certain sections of the FCC's IVDS rules. Accordingly, Cyberforce has prepared this Amendment in order to further clarify one element of the Request and to supplement the record and expand the scope of another element of the Request.

Background.

Cyberforce has invested considerable resources over the last months to further the development of a practical, useful, business concept that can be carried-out over the IVDS spectrum. This business concept can reach the critical mass needed for national interactivity by carrying out the service over unlicensed spectrum in those areas in which no IVDS licensee is available or willing to provide this service. More than three years and millions of dollars of research and development have been invested with engineers, including researchers and engineering professors from Virginia Polytechnic Institute and State University (Virginia Tech) resulting in the development of a multipurpose device. The same device that will deliver Internet access and future interactivity is equipped with detectors and algorithms that will recognize the alarms emitted by audible alarm devices, such as sirens and horns, which are currently in service. Cyberforce believes that this public safety oriented device, which can be readily mass

¹ Cyberforce is the successor to the Hago Company, Inc.

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manufactured, deployed and networked using IVDS spectrum, can become a "killer application" for the IVDS industry. Cyberforce is confident that, with these clarifications and adjustments, the IVDS industry will be in a position to take advantage of this dynamic business opportunity.

Under Cyberforce's plan, IVDS licensees would be in a position to offer fire alarm monitoring services at affordable prices to 80 million households already equipped with smoke detectors. (Insurance companies generally reduce home insurance premiums by as much as 30% when the house is monitored). By penetrating the market initially with an alarm detector device, Cyberforce expects to achieve a critical mass of CTS and RTU infrastructure which could be utilized eventually to provide other wireless data services, including a real-time consumer response networks over the television.

Amendment to Request.

Cyberforce respectfully requests that the FCC consider the following as an amendment to the Request.

1. Cyberforce requests that the FCC clarify that one-way transmission from two (2) or more RTUs to a CTS would satisfy the FCC's construction benchmark and service requirements, as defined in Section 95.833. The nature of Cyberforce's initial business application is a one-way emergency transmission from a residential or commercial point of presence to a central collection node, and, as such, has no need for a two-way transmission. If the FCC requires two-way transmissions, Cyberforce would need to make a substantial investment in redesigning its system, that will increase cost to the ultimate consumer (with no measurable increase in value or utility). Cyberforce requests that the FCC clarify this issue and thereby reduce the cost and complexity of the development of the RTUs and CTSs. Accordingly, Cyberforce respectfully requests that the FCC clarify that either one-way or two-way transmissions are acceptable to meet the FCC's requirements under Section 95.833.
2. Cyberforce also requests that Section 95.855 be modified to delete the reference to "automatic" power control. Automatic power control would require a two-way transmission between CTSs and RTUs which, as noted above, is not included in this business model. Thus Cyberforce requests that Section 95.855 be modified to allow fixed one-watt ERP for its one-way system. Further, under Cyberforce's design, RTUs would transmit one way to the CTS. Since the CTS would be a receiver only, potential harmful interference between CTSs and Channel 13 television reception will be eliminated. Cyberforce therefore seeks Commission clarification that the notification requirements of

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Section 95.861 do not apply to licensees providing one-way emergency transmission to receive-only CTSs.

3. Cyberforce believes that, in order to realize the potential value of the business application which it has developed, it will be necessary for the FCC to consider a more creative response to the issue of auction bid payment than has been previously proffered or even contemplated. Cyberforce further believes that, in order to avoid massive defaults and bankruptcies (which would complicate FCC reauctions), a clear, unambiguous path to license retention and renewal is critically important. After consultation with representatives of over a dozen IVDS licensees, Cyberforce has concluded that adoption of the proposal set forth below the FCC would: (i) preserve the current licensees in a non-default status; (ii) avoid forcing hundreds of IVDS licensees to invest thousand of additional dollars into a technology while the FCC's rules are in a state of flux; and (iii) enhance the chances that IVDS licensees will ultimately succeed in constructing IVDS systems and bringing services to the public.

Specifically, Cyberforce requests that the FCC:

- A. Forego acting on currently pending Grace Period Requests, and not apply the new Part One rules on grace periods to IVDS licensees until after the FCC issues an Order that is responsive to the Request.^{2/} Any other result would be inequitable and counter-productive. The Commission itself has said that "[r]equiring IVDS licensees to comply with rules which are under Commission review would not further the public interest in this instance, since the subject rules directly impacts IVDS system planning and implementation . . . [O]ur approach here is consistent with prior Commission action suspending a deadline while a relevant policy is subject to pending rule making proceedings."^{3/}
- B. Confirm that it will avail itself of the "work-out" provisions of the current Rule Section 1.2110(e)(iii) of the Rules that were requested in previously filed Grace Period Requests. In that context, the FCC should consider offering the IVDS licensees a choice of: (i) continuing with the current payment schedule, including

^{2/} Cyberforce, and other IVDS licensees, have requested reconsideration of the recent change to the Commission's grace period rules. See Petition for Reconsideration, Loli, Inc., Cyberforce, L.L.C., et. al., filed February 17, 1998.

^{3/} Requests by Interactive Video and Data Service Auction Winners to Waive the January 18, 1998 and February 28, 1998 Construction Deadlines, Order, DA 98-59, released January 14, 1998.

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any changes thereto associated with any reamortization or other similar adjustment resulting from any changes adopted through the anticipated NPRM and subsequent Order; (ii) amnesty; or (iii) as an alternative to auction payments, adopting a new "royalty-based" payment schedule through which the licensee begins by paying \$250.00 per license, per month and then, once a system is built, the payment would be higher of: (A) \$1.00 per month for each subscriber/unit in place or operating on the IVDS system; or (B) 10% of the monthly subscription paid by RTU subscribers to the system operators.^{4/} Cyberforce is confident that, in the end, if the FCC adopts these changes and IVDS licensees are in fact able to develop their systems, the royalty payment will result in a windfall to the FCC. However, without such a structure, which ties the licensee's FCC "carrying costs" to the system's actual business development, Cyberforce believes that IVDS licensees will be unable to develop the IVDS systems into a true business operation that is capable of paying the FCC for its IVDS licenses.

Cyberforce recognizes that the FCC is obligated to treat similarly situated applicants (and licensees) in a like manner. Cyberforce's proposal remains true to that tenant of the Administrative Procedures Act. Indeed, Cyberforce urges that the FCC offer this alternative, royalty-based payment structure to all auctioned licensees. This way, all licensees will have an opportunity to align their auction payments with the development of the business associated with the auctioned license.

Should the FCC permit this new payment option, Cyberforce is prepared to commit to taking over any defaulted or unlicensed MSAs or RSAs which the FCC might make available without auction and to pay the FCC pursuant to the "royalty-based" alternative and to initiate such guaranteed payments within six (6) months of the grant of additional licenses.

Cyberforce also believes that an additional and compelling reason to adopt these proposed clarifications and changes can be found in the fact that the IVDS industry is unique as compared to all other Commission licensees, including those with installment payments (i.e., PCS, SMR), because all other services have operational equipment as well as viable and stable technical rules. The IVDS industry has been working with the Commission to restructure the IVDS rules in a workable manner. Fairness dictates that these efforts be concluded before the Commission compels IVDS licensees to invest more funds in their licensed spectrum. In

^{4/} This proposal is similar to the proposed fees in the broadcast service. See, Fee Alternatives for Ancillary or Supplementary Services Offered by Digital Television Broadcasters, Notice of Proposed Rulemaking, MM Docket No. 97-247 (released December 18, 1997).

PATTON BOGGS, L.L.P.

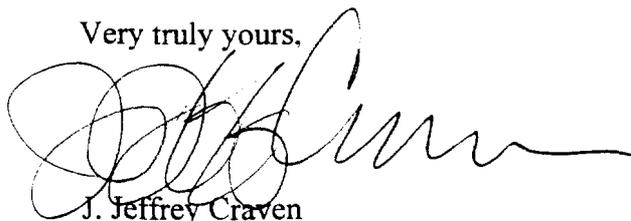
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addition, extension of a "royalty" payment option to the many minority and women-owned IVDS licensees in the IVDS industry would foster the statutory goal of Section 309(j) of the Communications Act of 1934, as amended, which requires the Commission to promote widespread dissemination of licenses and create opportunities for minority and women-owned businesses. Cyberforce's constructive proposals, based on a real, practical experience and a realistic wireless service, would clearly advance this goal and would also advance the goal of reaching a productive resolution of the much-troubled IVDS licensing process.

Should you have any questions, please contact the undersigned counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Jeffrey Craven". The signature is fluid and cursive, with a long horizontal stroke at the end.

J. Jeffrey Craven

cc: Daniel Phythyon, Esquire
Howard Griboff, Esquire
Mr. George Gonzalez