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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
)
Implementation of Sections 309(j) and)
337 of the Communications Act of 1934)
as Amended)
)
Promotion of Spectrum Efficient)
Technologies on Certain Part 90)
Frequencies)
)
Establishment of Public Service Radio)
Pool in the Private Mobile)
Frequencies Below 800 MHz)
)
Petition for Rule Making of The American)
Mobile Telecommunications Association)
)
_____)

WT Docket No. 99-87

RM-9332

RM-9405

RM-9705

To: The Commission

REQUEST FOR CLARIFICATION

The Central Station Alarm Association ("CSAA"), by its attorneys, hereby submits its request for clarification of the Report and Order released by the Federal Communications Commission ("Commission") November 20, 2000. CSAA congratulates the Commission on deciding against auctioning private shared spectrum at this juncture, and for providing guidance on what sort of spectrum usage would engender an exemption from future spectrum auctions. Out of an abundance of caution, CSAA respectfully requests clarification of the Commission's definition of "private internal radio system" and of the term "public at large." CSAA realizes that the Commission will have to engage in the process of interpreting its auction exemption standard as it moves forward with the implementation of auctions for future private radio

By: OT4
BCDE

spectrum allocations, and may want to defer action on this petition until it is faced with such situation. This petition is being filed at this time in order to preserve CSAA's rights under Section 1.106 of the Commission's Rules.

I. PRELIMINARY STATEMENT.

CSAA was created in 1950 and represents entities providing central station alarm security protection services approved by Underwriters Laboratories, Factory Mutual and similar agencies, in the manner contemplated by Section 90.35(e) of the Commission's Rules. CSAA member companies and associations are dedicated solely to "promoting the safety of life and property through the use of wire and radio communication."¹ Central station alarm services often act as the "front line" in dispatching municipal police and fire units. Silent sentinels located on a customer's premises sense fire, intruders, medical emergencies or other threats, and instantly transmit this data to a central station, which, in turn, alerts the dispatch office of municipal authorities. The municipal operation then transmits over Public Safety Radio Service frequencies to dispatch the appropriate assistance, whether it is fire, police or ambulance. Often, due to direct interconnection with police departments, assistance is dispatched automatically as part of a seamless public safety dispatch operation. A central station alarm office also may dispatch mobile units of a private security force, where available, further preserving state and local public safety resources. Thus, mobile voice and fixed signaling transmissions work in tandem in "promoting the safety of life and property."

¹ Section 1 of the Telecommunications Act of 1996. 47 U.S.C. § 151.

II. CSAA REQUESTS CLARIFICATION OF THE DEFINITION OF “PRIVATE INTERNAL RADIO SERVICE”

In 1997, Congress amended Section 309(j)(2)(A) of the Telecommunications Act of 1996 (“Telecom Act”) to require the Commission to use auctions to dispose of mutually exclusive applications unless a spectrum auction would not serve the public interest, or the licenses were for one of the list of exempt services delineated by Congress: Public safety radio services, public broadcasting services or digital television service licenses given to broadcasters in exchange for analog licenses.² In 1999, in the *Notice of Proposed Rule Making* issued pursuant to Congress’s directive, the Commission proposed to expand the definition of public safety radio users to include quasi-public safety uses and requested comment regarding a standard to determine which would be entitled to an exemption from spectrum auctions.

In its Notice, the FCC recognized that the Balanced Budget Act’s exemption for public safety radio services includes “private internal radio services used by State and local governments and non-government entities”.³ The Commission noted that Section 90.7 of its rules define an “internal system” as a system in which “all messages are transmitted between the fixed operating positions located on the premises controlled by the licensee and the associated mobile stations or paging receivers of the licensee.”⁴ The Commission stated that, “for the purpose of implementing the public safety radio services exemption, our definition of ‘private internal radio services’ will need to cover private fixed as well as private mobile radio services.”

² See 47 U.S.C. §309(j)(2) (as amended by Balanced Budget Act, §3002).

³ See, Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800MHz, WT Docket No. 99-87, RM-09332, RM-9405, *Notice of Proposed Rule Making*, 14 FCC Rcd 5296 (1999) (“Notice”), ¶32.

⁴ *Notice* at ¶31

The Commission then proposed to incorporate the definition of “private services” with the definition of internal systems, as defined by Part 90 of the rules, and proposed to expand the definition to include both fixed and mobile services. In its Report and Order, the Commission noted that commenters supported the position the Commission took in the Notice and adopted the definition as it had proposed.⁵

In its Comments to the *Notice*, CSAA had supported the Commission’s proposed definition, but requested clarification regarding whether the “associated mobile stations or paging receivers of the licensee” were required to be on premises controlled by the licensee.⁶ While central station alarm radios are installed, maintained and operated exclusively by alarm company personnel, they are installed on customer premises, which are not “controlled by the licensee.” CSAA’s concerns were not addressed by the Commission in its *Report*, and so CSAA is respectfully requesting that these concerns be addressed now.

CSAA suggests that the Commission slightly modify its definition of “private internal radio service” to read: “a service in which the licensee does not make a profit, and all the messages are transmitted between fixed operating positions located on premises controlled by the licensee and the associated fixed or mobile stations or other transmitting or receiving devices, or between mobile stations or other transmitting or receiving devices.” CSAA’s suggested definition removes confusion while maintaining the integrity of the Commission’s definition. While alarm companies do not control the premises on which their some of their equipment is

⁵ Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800MHz, WT Docket No. 99-87, RM-09332, RM-9405, *Report and Order*, (“*Report*”), ¶67.

⁶ Comments of CSAA, page 9, *citing* 47 C.F.R. §90.7.

installed, they maintain control over all other aspects of their devices. The radios are owned, installed, maintained and operated exclusively by alarm company personnel. All of the communications on alarm company channels is controlled exclusively by the alarm company and concerns the core security functions of the alarm company's business. Effectively, the alarm company exercises total control over its radios, regardless of where the equipment is housed.

In its Comments, CSAA also suggested an alternative to changing the definition: that the Commission view customer premises radios operating on central station alarm frequencies as "associated mobile stations" of the licensee.⁷ CSAA noted that such an interpretation was consistent with the Commission's policy of licensing alarm customer units as mobile units to prevent alarm company customer lists from being released to the public with the Commission's licensing records. The channels designated by the Commission for the exclusive use of central station alarm companies are used to provide "private internal radio services" despite the fact that alarm company owned remote transmitters may be located on a customer's premises. These customer premises radios can be remotely controlled from the alarm company owned central station. Regardless, the Commission should ensure that the definition of the term reflects the nature of central station alarm radio operations.

⁷ Comments of CSAA, page 10.

III. CSAA REQUESTS CLARIFICATION OF THE DEFINITION OF “PUBLIC AT LARGE”

Additionally, CSAA requests clarification of the definition of the term “public at large.”

In its *Report and Order*, the Commission concluded, based on its interpretation of the Conference Report for the Balanced Budget Act,⁸ that Congress intended the public safety exemption to include more than traditional public safety operations. The Conference Report stated that the exemption should include private internal radio services used by “utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments.”⁹ The Commission noted that the primary function of these entities was not to provide traditional public safety services, but recognized that the use of radios by these entities did serve the public good.¹⁰

In determining how to define which services are used to “protect the safety of life, health, or property”¹¹ within the meaning of the statute, the Commission devised the following litmus test:

[W]e conclude that a radio service not allocated for traditional public safety uses will be deemed to protect the safety of life, health or property within the meaning of Section 309(j)(2)(A)(i) if the dominant use of the service is by entities that (1) have an infrastructure that they use primarily for the purpose of providing essential public services to the *public at large*; and (2) need, as part of their regular mission, reliable and available communications in order to prevent or respond to a disaster or crisis affecting the *public at large*.

Report and Order ¶77.

The Commission did not introduce this standard in the Notice, so CSAA was precluded from commenting on it at that juncture.

⁸ H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997) (“Conference Report”).

⁹ Conference Report at 572.

¹⁰ *Report* at ¶76.

¹¹ 47 U.S.C. §309(J)(2)(a)(i).

CSAA seeks clarification as to what the Commission intends by the term “public at large.” In particular, CSAA seeks to clarify that, under the above-quoted criteria, the service provided must be *available for use* by the public at large, rather than in actual use. For example, alarm monitoring services are made available to any member of the public who wishes to subscribe, and millions of customers do in fact subscribe to this service. Alarm companies use their radios in furtherance of providing this protection. It is respectfully submitted that this offering of service to the public at large should satisfy the Commission’s definition. Other activities which the Commission has correctly recognized as qualifying for an auction exemption operate in a similar fashion. Automobile clubs offer service to the general public, and millions of motorists choose to become members. Railroads offer transportation to anyone who chooses to buy a ticket.

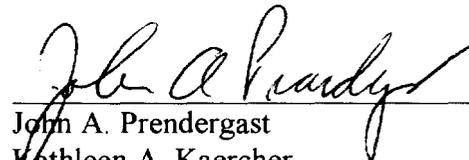
Similarly, CSAA wishes to clarify the criterion that reliable and available communications are needed to respond to a “disaster or crisis affecting the public at large.” Alarm companies use radios to signal the occurrence of events that by definition are life-threatening, namely, a fire, burglary or medical emergency. A fire clearly constitutes a disaster affecting the public at large, since any fire not quickly extinguished will spread. CSAA believes that any burglary also affects the public at large, since the threat of such crime terrorizes a community, and affects more than the individual victim. Likewise, the ability to respond to medical emergencies such as heart attacks or diabetic shock benefits the community as a whole, by focusing the resources of its paramedic service, and helping to safeguard the health of its citizens. CSAA wishes to ensure that these activities will qualify for an exemption under the language adopted in the *Report and Order*.

IV. CONCLUSION

WHEREFORE, for good cause shown, CSAA respectfully requests that the Commission clarify the meaning of “private internal radio services” and the “public at large.”

Respectfully Submitted,

By



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Dated: February 1, 2001

CERTIFICATE OF SERVICE

I, Kathleen A. Kaercher, do hereby certify that on this day, February 1, 2001, that I served a copy of Request for Clarification by first class United States mail, postage prepaid, to each of the parties listed below:

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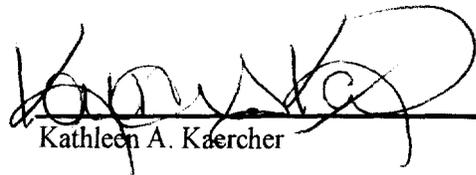
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