Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them	)	PR Docket No. 92-235
Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services	)	

DOCKET FILE COPY ORIGINAL

To: The Commission

FURTHER PETITION FOR CLARIFICATION

AND/OR RECONSIDERATION

The Alarm Industry Communications Committee of the Central Station Alarm Association ("AICC"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules (47 C.F.R. §1.429), hereby requests clarification of the *Fifth Memorandum Opinion and Order ("Fifth MO&O")* in PR Docket 92-235 (the "Refarming Docket")[1], to confirm that low power transmitters licensed as mobile units will be granted primary status as regards co-channel and adjacent channel licensees. AICC is grateful to the Commission for the clarification provided in the *Fifth MO&O*. However, AICC is concerned that the wording of the rule, as clarified, could be interpreted to have the same ultimate effect as that feared by AICC; in particular, a recent staff interpretation could be read to require licensees to provide the coordinates of all low power

[1] Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Fifth Memorandum Opinion and Order*, PR Docket No. 92-235, Released: December 29, 2000.

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transmitters in their systems as a condition precedent to obtaining primary status, and thus interference protection. In support hereof, the following is respectfully shown:

I. BACKGROUND.

AICC is an industry group representing the interests of the central station alarm industry. Its members are dedicated to "promoting the safety of life and property" through a network of alarm monitoring stations in virtually every population center in the country. The safety services provided fulfill a fundamental spectrum management goal articulated by the Communications Act of 1934, as amended (the "Act").[2] AICC members used fixed low-power radio transmitters to send burglary, fire and other emergency alarm warning signals from a customer's premises to centrally located alarm monitoring facilities. Radio-based systems are used where telephone lines are vulnerable to vandalism or sabotage, to preserve the historic character of a building, or where insurance underwriters require businesses to use two methods of sending an alarm signal for an added measure of security.

II. THE COMMISSION SHOULD CLARIFY THAT LOW POWER FIXED STATIONS ARE ENTITLED TO PRIMARY STATUS

On August 5, 1999, CSAA sought clarification of the Commission's modification of Rule Section 90.267(a)(3) published in its *Second Memorandum Opinion and Order* in the above-captioned proceeding.[3] That modification removed the phrase "and will be licensed as mobile,

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[2] Section 1 of the Communications Act, 47 U.S.C. §151 (1996).

[3] Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Examination of Exclusivity and Frequency Assignment

but may serve the functions of base, fixed, or mobile relay stations," and left Section 90.267(a)(3) reading simply, "Stations are limited to 2 watts output power." 47 C.F.R. §90.267(a)(3). Prior to this change, CSAA members had been able to avoid separate licensing of their low power radios at customer premises, by considering these radios to be "mobiles" under the repeater license. CSAA pointed out that the effect of the rule change would be to force alarm companies to file possibly hundreds of thousands of applications to first identify the locations of their previously licensed-as-mobile transmitters, and second, to file applications for modification when these transmitters were moved in the ordinary course of business.

AICC pointed out that this filing of hundreds of thousands of applications with the Commission, would create an undue burden on the alarm customers and the Commission. Moreover, it would require disclosure of the identity and address of protected alarm customers, despite the Commission's prior finding that this would be adverse to the public interest.[4] In some cases, it would be conceivable that these changes would be so frequent and so rapid that companies would be forced to file requests for Special Temporary Authority to reflect the movements of the transmitters on a daily basis. Such a scenario would provide neither the Commission nor the applicant with any benefit.

Fortunately, in its December 29, 2000 Memorandum Opinion and Order, the Commission provided the requested clarification. The Commission "disclaim[ed] any intention of requiring low power licensees to provide geographical coordinates for fixed transmitters in a system."

Policies of the Private Land Mobile Services, *Second Memorandum Opinion and Order*, PR Docket No. 92-235, Released: April 13, 1999.

[4] Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Memorandum Opinion and Order*, FCC 96-492, PR Docket No. 92-235, Released: December 30, 1996, at ¶69.

Fifth MO&O, at ¶13. The Commission stated that "the rules allow such fixed low power stations to be licensed on an area basis whereby a licensee need only specify the coordinates of the center of an operating area and a radius extending from that center that defines a circle corresponding to the licensee's service area." Id.

It appears from this clarification that low-power stations licensed in such a manner retain primary status with respect to co-channel and adjacent channel licensees. (i.e., that the *status quo ante* has been restored). AICC wishes to clarify that this is the case, due to some uncertainty raised by a prior staff interpretation. In a letter dated June 26, 2000, to Mitchell Lazarus, Esquire, the Commission indicated that low power fixed transmitters licensed for an area of operation, rather than individually, "now would be classified as fixed rather than mobile."[5] The Commission's *Fifth MO&O* did not speak to the issue of classification of station at all. If the transmitters, licensed for a radius from a defined set of geographic coordinates, are considered, and treated by the Commission as "fixed" stations, it could be argued that they now fall under the rubric of Section 90.261(a) of the Commission's Rules, which states: "Frequencies in the 450-470 MHz band as listed in §90.20(c)(3) and §90.35(b)(3) may be assigned to all eligibles for fixed use on a secondary basis to land mobile operations." 47 C.F.R. §90.261(a). Under such interpretation, these stations, which are vital to the protection of life and property would be demoted to secondary status, and thus not protected from interference. A choice between providing coordinates for all transmitters through application modification and being subject to a very real possibility of harmful interference from co-channel and adjacent channel operations is a

[5] *See*, Letter from D'wana R. Terry, Chief Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Mitchell Lazarus, Esquire, Fletcher, Heald & Hildreth, PLC, June 26, 2000.

Hobson's choice. AICC respectfully requests clarification that the protection of the original rule is restored, and protected premise radios will have co-primary status.

AICC believes that the stations with fixed transmitters licensed for a radius area around a defined set of coordinates should retain their licensing as "mobile" units, and retain primary status. The alternative, to require the licensing of such transmitters as fixed stations as a condition of receiving primary status, would, as described in AICC's August 5, 1999 Petition for Clarification and/or Reconsideration, unduly burden the licensees who would become perpetual applicants, and Commission's processes and staff, which would be faced with hundreds of thousands of applications and STA requests.

More importantly, primary status is necessary for low power radio operations to prevent harmful interference which could have a devastating impact on the effectiveness of the radio service. Low power radios are used for fire and emergency alarms. If these alarms were to receive harmful interference, extensive personal injury and property damage could ensue. A critical failure of one of these radios, due to harmful co-channel or adjacent channel interference, could adversely affect the safety of the persons at the protected premises and possibly the public at large. A fire left undetected becomes a fire out of control. Thus, it is imperative that licensees be afforded primary status.

III. CONCLUSION

AICC respectfully requests that the Commission clarify its clarification to indicate whether fixed stations licensed as mobile units are afforded primary status as regards co-channel and adjacent channel licensees.

Respectfully Submitted,

By

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Dated: March 7, 2001

ATTACHMENT A

Federal Communications Commission
Washington, D.C. 20554

June 26, 2000

Mitchell Lazarus, Esquire
Fletcher, Heald & Hildreth, P.L.C.
11th Floor, 1300 North 17th Street
Arlington, Virginia 22209-3801

Dear Mr. Lazarus:

This letter responds to your letter, on behalf of Hexagram, Inc. (Hexagram) and dated April 18, 2000, to Mr. Thomas Sugrue, Chief, Wireless Telecommunications Bureau concerning licensing automatic meter reading operations on the old "12.5 kHz offset frequencies (offsets). In your letter, you state that prior to the *Second Memorandum Opinion and Order* (*Second MO&O*) in PR Docket No. 92-235 (Refarming Proceeding), 14 FCC Rcd 8642 (1999), the Commission traditionally licensed low power transmitters operating on the offsets and used in automatic meter reading systems as mobile units even if they were actually fixed operations. Under this approach, you state the "area of operation" was defined by a set of coordinates and a radius.

In addition, you note that the *Second MO&O* deleted the requirement in Section 90.267 of the Commission's Rules that all low power stations operating on the offsets be designed as mobile. You contend that the intent of this change was to allow the Commission to license low power operations on these offsets as fixed, base or mobile rather than to prohibit mobile licensing. You further contend that interpreting the rule change differently would have severe consequences on the automatic meter reading industry. In this regard, you note that a different interpretation would require meter reading companies to file applications to cover tens of thousands of units. Moreover, you point out that a large meter reading operation adds and removes units every day that would in turn necessitate an endless stream of new and modification applications.

In the *Memorandum Opinion and Order (MO&O)* in the Refarming Proceeding, 11 FCC Rcd 17676 (1996), the Commission recognized that for certain types of low power operations (*i.e.*, where large numbers of fixed low power transmitters are involved and the transmitter locations continually change) it is neither feasible nor desirable for a licensee to furnish coordinates for all transmitters in the system. *MO&O*, 11 FCC Rcd at 17706. To accommodate these types of operations, the Commission stated that it would allow entities to license numerous low power fixed transmitters by specifying an area of operation rather than individual coordinates for each transmitter. The area of operation would be defined by coordinates of the center of an operating area and a radius when all stations are fixed, low power, *i.e.*, not to exceed 2 watts, stations. *See id.* Therefore, the type of licensing you desire is still permitted. However, such licensing now would be

classified as fixed rather than mobile. In licensing systems this way, we ask that you keep the area of operation (radius) to the minimum required.

I trust that this letter is responsive to your inquiry. Should you have additional questions regarding this matter, please contact Mr. Herbert Zeiler, Deputy Chief (Engineering) of the Division. Mr. Zeiler can be contacted by telephone at (202) 418-0680.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau