

FEDERAL MAIL ROOM

Before the
Federal Communications Commission
Washington, D.C. 20554

2002 MAY 31 P 4: 26

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)
)
and)
)
Examination of Exclusivity and Frequency)
Assignment Policies of the Private Land)
Mobile Services)

PR Docket No. 92-235 **FILED**

SIXTH MEMORANDUM OPINION AND ORDER

Adopted: May 22, 2001

Released: May 25, 2001

By the Commission

I. INTRODUCTION

1. This *Sixth Memorandum Opinion and Order* addresses two substantially identical Further Petitions for Clarification and/or Reconsideration filed by the Alarm Industry Communications Committee of the Central Station Alarm Association (AICC) and by the law firm of Blooston, Mordkofsky, Dickens, Duffy and Prendergrast. (Blooston).¹ The two parties will be referred to collectively herein as Petitioners. For the reasons stated below, we dismiss that portion of the petitions seeking reconsideration but address the concerns expressed by Petitioners by holding that Section 90.261 of the Commission's Rules is inapplicable to low power central station alarm facilities operating under Section 90.267 of the Commission's Rules.

II. BACKGROUND

2. In the Refarming *Second Memorandum Opinion and Order*,² the Commission deleted that portion of Section 90.267(a)(3) of its Rules which provided that: "[low power stations] will be licensed as mobile, but may serve the functions of base, fixed or mobile relay stations."³ In 1999, AICC and Blooston each filed a Petition for Clarification and/or Reconsideration of the Refarming *Second*

¹ AICC Petition for Further Clarification and/or Reconsideration, March 7, 2001 (AICC Further Petition); Blooston Further Petition for Clarification and/or Reconsideration, March 7, 2001 (Blooston Further Petition).

² Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, PR Docket 92-235, *Second Memorandum Opinion and Order*, 14 FCC Rcd 8642 (1999).

³ 47 C.F.R. § 90.267(a)(3) (1997).

Memorandum Opinion and Order.⁴ The sole concern expressed in these 1999 petitions was that the removal of the quoted language could be interpreted to require “alarm companies operating on exclusive alarm monitoring channels to furnish geographical coordinates of all low power customer transmitters on their system . . .”⁵ Subsequently, in the Refarming *Fifth Memorandum Opinion and Order*,⁶ the Commission responded to these 1999 petitions by disclaiming any intention to require the filing of such coordinates for low power facilities operating under Section 90.267 of the Commission’s Rules. Furthermore, the Commission pointed out that the Rules already exempted central alarm station applicants from supplying the geographical coordinates of all transmitters in a system. Instead, the Commission noted that such stations could “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 operating area.”⁷

3. In the 1999 petitions, Petitioners did not express, as they do in the instant petitions, a concern that, as a consequence of the deleted language *supra*, “these [alarm] stations would be demoted to secondary status, and thus not protected from interference.”⁸ The express basis of Petitioners’ new concern in that regard is a June 26, 2000, letter from the Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau concerning automatic meter reading systems.⁹ The Division said that the transmitters of meter reading systems could be licensed on an area basis and that “such licensing now would be classified as fixed rather than mobile.”¹⁰ Because of the letter’s reference to automatic meter reading stations as “fixed,” the Petitioners assert that “it could be argued that [fixed alarm] stations 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.’”¹¹

⁴ Blooston Petition for Clarification and/or Reconsideration, Aug. 5, 1999 (Blooston Petition); AICC Petition for Clarification and/or Reconsideration, Aug. 5, 1999 (AICC Petition). These petitions are referred to collectively herein as the 1999 petitions.

⁵ AICC Petition at 1; Blooston Petition at 1.

⁶ Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, PR Docket 92-235, *Fifth Memorandum Opinion and Order*, FCC 00-439, December 12, 2000, (Fifth MO&O).

⁷ *Id.* ¶ 13.

⁸ Blooston Further Petition at 4; AICC Further Petition at 4.

⁹ See Attachment A to the AICC Further Petition and Blooston Further Petition: Letter from D’wana Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Mitchell Lazarus, Esq., Fletcher Heald and Hildreth, P.L.C., June 26, 2000 (Hexagram Letter).

¹⁰ *Id.*

¹¹ AICC Further Petition at 4; Blooston Further Petition at 4. Emphasis supplied. There was no reference in the Hexagram Letter to Section 90.261 of the Commission’s rules or to secondary operation.

III. DISCUSSION

4. As an initial matter, we note that Petitioners' arguments regarding the supposed secondary status of central station alarm stations are untimely. The arguments clearly rest on the content of the June 26, 2000, Hexagram Letter¹² appended to their instant petitions and not on the Refarming *Fifth MO&O* which said nothing about the primary or secondary status of central station alarm facilities. Any petition for reconsideration of the June 26, 2000, Hexagram Letter was due no later than 30 days from the date of the letter, *i.e.* on July 26, 2000.¹³ Petitioners filed their instant petitions on March 7, 2001 – eight months later – and raised, for the first time, the issue of the primary or secondary status of fixed low power alarm stations. Accordingly, the Petitioner's instant petitions, considered as petitions for reconsideration, are dismissed herein.¹⁴

5. However, we will provide a clarification addressing the heart of Petitioners' concern that there has been a regulatory change resulting in the classification of central station alarm stations operating under Section 90.267 of the Commission's Rules. In so doing, we are treating Petitioners' papers as what they are in substance: requests to clarify the applicability *vel non* of Section 90.261 of the Rules to low power central station alarm stations.

6. Section 90.261 is a separate rule section, distinct from Section 90.267, which allows fixed operations in the 450-470 MHz band at power substantially greater than two watts under certain conditions. Entities operating in the fixed mode under Section 90.267 are not subject to the conditions specified under Section 90.261 and vice-versa. Moreover, central station alarm frequencies are inherently "primary" relative to other services because they are limited to alarm-related use¹⁵ by Sections 90.35(c)(63), 90.35(c)(64) and 90.35(c)(66) of the Commission's Rules. Section 90.35(c)(64) provides, in pertinent part, that fixed use of the central station alarm frequencies is secondary only to base/mobile operations of central station alarm stations. Hence, it is Section 90.35 – which makes specific reference to fixed use of central station alarm frequencies – and Section 90.267 which makes a similar reference¹⁶ – that determine the status of such central station alarm stations. Petitioners' concern that Section 90.261 of the Commission's Rules renders fixed central station alarm stations secondary relative to stations other than central alarm station base/mobile operations is therefore unwarranted.

¹² Thus, Petitioners state that their petitions are based on "a recent staff interpretation [that] could be read to require licensees to provide the coordinates of all low power transmitters in their systems as a condition precedent to obtaining primary operating status." Blooston Further Petition at 1; AICC Further Petition at 1. See Hexagram Letter.

¹³ See 47 C.F.R. §§1.5(b)(5) and 1.429.

¹⁴ Petitioners have offered no reason why they could not have filed a timely petition for reconsideration of the June 26, 2000, Hexagram Letter or sought clarification thereof. Moreover, although Petitioners' petitions were styled "Further Petition for Clarification and/or Reconsideration" in the Refarming proceeding, Petitioners did not move or otherwise request that the Refarming proceeding, which was terminated on December 29, 2000, be reopened. See *Fifth MO&O*, ¶ 28.

¹⁵ Certain central station alarm frequencies are restricted to alarm-related use only within the boundaries of urbanized areas of 200,000 or more population. see 47 C.F.R. §90.35(c)(63), whereas other such frequencies are restricted to alarm-related use nationwide, see 47 C.F.R. § 90.35(c)(66).

¹⁶ See 47 C.F.R. § 90.267(a)(7)(ii).

IV. CONCLUSION

7. As noted *supra*, the AICC Further Petition and the Blooston Further Petition – to the extent they sought reconsideration of the June 26, 2000, letter – were untimely and are appropriately dismissed. Treating the pleadings as requests for clarification, the precise relief sought by Blooston and AICC cannot logically be granted because Petitioners seek a “clarification that the protection of the original rule is restored.” As explained *supra*, such “protection” was never lost because deletion of the phrase “and will be licensed as mobile, but may serve the functions of base, fixed or mobile relay stations”¹⁷ never operated to render such stations secondary. However, we are here clarifying that Section 90.261 of the Commission’s Rules does not apply to central station alarm stations and trust that this clarification will relieve Petitioners’ apprehension that the Commission may have relegated such stations to secondary status.

V. PROCEDURAL MATTERS

A. ORDERING CLAUSES

8. In view of the foregoing and pursuant to the authority conferred by Sections 4(i), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 405, and pursuant to Section 1.429(i) of the Commission’s Rules, 47 C.F.R. § 1.429(i):

9. **IT IS ORDERED** that the Further Petition for Reconsideration and/or Clarification filed by Blooston, to the extent it constitutes a petition for reconsideration, **IS DISMISSED**.

10. **IT IS FURTHER ORDERED** that the Further Petition for Clarification and/or Reconsideration filed by AICC, to the extent it constitutes a petition for reconsideration, **IS DISMISSED**.

11. **IT IS FURTHER ORDERED** that the Further Petition for Reconsideration and/or Clarification filed by Blooston, to the extent it constitutes a request for clarification, **IS GRANTED IN PART AND DENIED IN ALL OTHER RESPECTS**.

12. **IT IS FURTHER ORDERED** that the Further Petition for Reconsideration and/or Clarification filed by AICC, to the extent it constitutes a request for clarification, **IS GRANTED IN PART AND DENIED IN ALL OTHER RESPECTS**.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

¹⁷ See ¶ 2 *supra*.