

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re Petition of	)	
	)	
Octatron, Inc. and Chang Industry, Inc.	)	ET Docket No. 05-356
	)	
For Waiver of Sections 15.245(b), 15.247(e), and	)	
15.249(a) of the rules and Regulations	)	
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**REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”)<sup>1</sup> submits this reply in response to the comments filed in the above-captioned proceeding. Octatron, Inc. and Chang Industry, Inc. (collectively, “Petitioners”) have requested waivers of Sections 15.245(b), 15.247(e), and 15.249(a) of the Commission’s rules<sup>2</sup> in order to deploy two wireless surveillance systems in the 902-928 MHz band. CTIA urges the Commission to deny this waiver petition because Petitioners have not submitted evidence that is sufficient for an effective evaluation of why the proposed devices are unable to conform with standard rules or how waivers of these rules would serve the public interest. Furthermore, from the minimal information available, these surveillance systems would appear to cause harmful interference both inside and outside the 902-928 MHz band.

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<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> 47 C.F.R. §§ 15.245(b), 15.247(e) & 15.249(a).

Waiver requests are controlled by Section 1.925 of the Commission's rules.<sup>3</sup> This rule section dictates that requests for waivers must contain complete explanations as to why a waiver is being requested.<sup>4</sup> Consistent with *WAIT Radio v. FCC*,<sup>5</sup> the rule further states that a party must either show that the underlying purpose of the rule would not be served by application to the instant case and that a grant of the waiver would be in the public interest, or a party must show that in view of unique or usual circumstances, application of the rules would be inequitable, unduly burdensome or contrary to the public interest.<sup>6</sup>

The comments submitted in this proceeding demonstrate that Petitioners have failed to show why the underlying rules should not apply to their proposed devices, and have not demonstrated how application of the rules is inequitable, unduly burdensome, or contrary to the public interest. First, Petitioners have utterly failed to provide any technical showing as to the extent, nature, or duration of interference to the multitude of systems that operate in and around the 902-928 MHz band. Indeed, while Petitioners provide very little information explaining the technical parameters of their systems, Petitioners do admit that interference can potentially occur.<sup>7</sup> The comments submitted in this proceeding reflect the frustration caused by Petitioners' waiver petition, because the extent of this interference is not ascertainable through the limited

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<sup>3</sup> 47 C.F.R. § 1.925.

<sup>4</sup> 47 C.F.R. § 1.925(b)(2).

<sup>5</sup> *WAIT Radio v. FCC*, 418 F.2d 1153,1158 (D.C. Cir. 1969), *cert. Denied*, 409 U.S. 1027 (1972).

<sup>6</sup> 47 C.F.R. § 1.925(b)(3).

<sup>7</sup> Petition of Octatron, Inc. and Chang Industry, Inc. for Waiver of Sections 15.245(b), 15.247(e), and 15.249(a) of the Rules and Regulations, ET Docket 05-356, ¶ 13 (November 28, 2005) ("*Waiver Petition*").

information presented by the Petitioners.<sup>8</sup> ARRL noted that it was not clear what, if any, compatibility tests were conducted by Octatron to analyze the interference that would be caused to current licensees within the 902-928 MHz band.<sup>9</sup> Sprint Nextel Corporation emphasized that Petitioners had not described “the bandwidth that its proposed devices would use, whether the devices will use a fixed-frequency or a frequency-hopping technology, and the emissions expected from these devices over the entire 902-928 MHz band.”<sup>10</sup> Furthermore, Sprint Nextel noted that Petitioners had failed to explain how its device, which is designed to be thrown about, will be able to remain on-channel and avoid causing interference in adjacent channels.<sup>11</sup>

The Petitioners’ public interest case is further harmed by the interference their devices might cause to established public safety systems. For example, Sprint Nextel Corporation operates a Direct Talk service in the 900 MHz band which provides off-network communication when other networks are not available. This service provides public safety officials a source of communication when other network communication becomes unavailable.<sup>12</sup> Because Petitioners have not provided detailed interference analyses, the extent of harmful interference that would be caused to these communications by Petitioners’ proposed devices is not clear. What is clear is that any significant interference would obviously have possible disastrous effects for public safety officials working in an emergency situation.

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<sup>8</sup> See Comments of Warren C. Havens and Telesaurus Holdings GB, LLC at 4; Comments of ARRL at 3; Comments of Sprint Nextel Corporation at 2.

<sup>9</sup> Comments of ARRL at 3.

<sup>10</sup> Comments of Sprint Nextel Corporation at 2.

<sup>11</sup> Comments of Sprint Nextel Corporation at 3.

<sup>12</sup> Comments of Sprint Nextel Corporation at 1-2.

Second, Petitioners fail to satisfy the requirement of Section 1.925 for “a complete explanation as to why the waiver is desired,” and leave the Commission with insufficient information to determine why the Petitioners cannot function under the existing rules. The Petitioners argue that waivers of the rules are required because using analog rather than digital modulation is necessary in order to maintain the small size of the proposed devices. They also argue that analog reduction in the signal or increases in interference results in a gradual degradation of the image, which gives the operator of the device ample warning that the signal is weakening.<sup>13</sup> Yet, naked assertions alone do not provide sufficient evidence to establish that application of the Part 15 rules would unfairly disadvantage the proposed devices or that their waiver petition presents unique or unusual circumstances. No real evidence exists that Petitioners could not have designed the proposed devices to meet the requirements of the Commission’s rules for the 902-928 MHz band or an alternative band.

For example, Petitioner does not explain why they did not employ available alternative technologies to overcome the problems that require waivers of the rules. For example, the National Association of Amateur Radio (“ARRL”) describes the use of very small, battery-operated COFDM transmitters to send broadcast quality video across substantial distances.<sup>14</sup> The American Petroleum Institute (“API”) further notes the existence of technology that allows video to be transmitted digitally within the required spectral density guidelines.<sup>15</sup> These devices reflect the existence of technology that would seemingly allow Petitioners to build devices that

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<sup>13</sup> Petitioners assert that with digital modulation, as the signal gets weaker or is exposed to increased interference, there is little effect on picture quality until there is suddenly complete failure of the picture or the imagery is greatly impaired. This leaves the operator with little or no warning that video loss may be imminent. *See Waiver Petition* at 2, ¶ 3.

<sup>14</sup> Comments of ARRL at 6.

<sup>15</sup> Comments of API at 4-5.

use digital technology and maintain the desired features of the proposed devices. API stresses that the enforcement of a requirement of digital modulation, as opposed to analog modulation, provides incentives for the development of more advanced equipment.<sup>16</sup> The limited information provided by Petitioners as rationale for the design and technology used is not sufficient to explain why Petitioners chose not to employ these alternative technologies, and consequently does not provide sufficient rationale to establish the need for waiver of the rules.

As a final matter, Petitioners' waiver requests are also deficient because they do not demonstrate how waiver of the rules would serve the public interest. The Petitioners base their public interest claim on the fact that the proposed device will assist law enforcement and counter-terrorism personnel.<sup>17</sup> However, while claiming that these devices will be used for public safety purposes, the waiver petition itself does not acknowledge or accept any such a limitations on use.<sup>18</sup> Petitioners have also failed to discuss the existence of other similar devices, which operate without waivers of the power limits in the 902-928 MHz band, or why such devices do not meet the needs they seek to serve.<sup>19</sup> For example, many commenters note the existence of the Remington Eyeball, a surveillance system operating in the 2400-2483.5 MHz that provides a similar service, but operates without causing harmful interference.<sup>20</sup>

The Petitioners have not provided evidence to demonstrate their proposed waivers are justified. They have not explained why alternative available technologies that do not require a

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16 *Id.*

17 *Waiver Petition* at ¶ 12, ¶14.

18 See Comments of API at 5.

19 Comments of Sprint Nextel Corporation at 5.

20 Comments of Sprint Nextel Corporation at 4-5; Comments of ARRL at 3-4, 7. *See In the Matter of Remington Arms Company, Inc. Request for a Waiver of Part 15 Regulations*, Order, ET Docket No. 05-183, FCC 05-194 (Nov. 18, 2005).

waiver of the rules were not used in construction of the proposed devices, nor why existing compliant technologies are not sufficient for public safety users. Because the granting of these waivers would cause significant interference to other users in and around the 902-928 MHz band, CTIA urges the Commission to deny the Petitioners' waiver petition.

Respectfully submitted,

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