

Before the  
**Federal Communications Commission**  
Washington DC 20554

In the Matter of	)	
	)	
Los Angeles Sheriff's Department,	)	
Request for Waiver of Section 15.231	)	ET Docket No. 07-27
of the Commission's Rules with Regard	)	RM-11359
to Certain Garage Door Opener	)	
Transmissions for Law Enforcement	)	
Purposes	)	

**REPLY TO OPPOSITIONS**

April 2, 2007

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**REPLY TO OPPOSITIONS**

The Los Angeles Sheriff's Department filed the above-captioned Request for Waiver further to its management of a U.S. Government project to develop a "garage door overmaster" device for entering buildings pursuant to a warrant or under exigent circumstances, such as a hostage situation.<sup>1</sup> The device operates by emulating the occupant's garage-door remote, *i.e.*, by transmitting the same numeric code on the same frequency as the remote, thus triggering the door's normal opening sequence. It will make entry safer for the officers involved and for any third parties, especially in cases where a suspect is barricaded indoors.

Section 15.231(a)(1) of the Commission's Rules requires a garage door opener to turn off automatically within five seconds after the user releases the button.<sup>2</sup> The Department requested a waiver of that provision. It bears emphasis that the Department requested a waiver *only* of that provision. The device will comply with every other aspect of the Rules, including frequency

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<sup>1</sup> Los Angeles Sheriff's Department, Request for Waiver of Section 15.231 of the Commission's Rules, ET Docket No. 07-27 & RM-11359 (filed Feb. 2, 2007). *See Office of Engineering and Technology Declares the Los Angeles Sheriff's Department Request for Waiver of Section 15.231 to Be a "Permit-But-Disclose" Proceeding for Ex Parte Purposes and Requests Comments*, DA 07-729 (released Feb. 16, 2007).

<sup>2</sup> 47 C.F.R. Sec. 15.231(a)(1).

usage, power limits, and bandwidth. In addition, the Department proposed stringent limitations on marketing and use to minimize any risk of harmful interference to other users.

An opposition was filed by the Safe and Secure Access Coalition (Coalition) on behalf of two manufacturers of garage door systems. Three other manufacturers and an association filed essentially identical one-page letters.

**A. No Opponent Requests Enforcement of the Rule Sought to Be Waived.**

None of the opponents objects to the specifics of the waiver -- namely, operation for longer than five seconds. The Department's actual request is unopposed.

Instead, all of the substantive objections turn on law-enforcement policy.<sup>3</sup> Opponents fear the overmaster device might fall into the wrong hands, or that its technology might be disclosed.<sup>4</sup> Either occurrence, they say, could make the device available to thieves, and hence threaten consumers' security; and the existence of a black market in the device could undermine consumers' confidence in their garage door systems and possibly reduce sales.<sup>5</sup> On these grounds, the opponents seek to have the waiver denied.

**B. The Department Will Maintain Strict Security over the Device.**

As a law enforcement agency, the Department is as concerned as the manufacturers about protecting consumers from improper use of the overmaster device. The Department routinely maintains other instrumentalities having potential for misuse, such as automatic firearms and

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<sup>3</sup> The Coalition also advances procedural objections. We address those in Part D, below.

<sup>4</sup> Coalition at 5-7; Allstar Corp., Wayne-Dalton Corp., Miller Edge, Inc., Door and Access Systems Manufacturers Association International.

<sup>5</sup> See preceding note.

explosives. It has an excellent record of keeping those secure, and expects to do as well with the overmaster device. The Department may also add specifications that require a physical key or PIN number to prevent unauthorized operation of a unit, even in the unlikely event that it were misappropriated. The Department is willing to work with industry representatives in hopes of reaching security arrangements that satisfy all parties.

**C. Opponents' Arguments Cannot Overcome the Public Interest in the Waiver.**

The opponents here do not challenge the waiver on grounds related to the rule sought to be waived. Indeed, their objections would be the same if the overmaster device complied with the Commission's Rules in all respects. With no reference to the device's radio-frequency characteristics, the opponents urge the Commission to adopt their own view, over that of the Los Angeles Sheriff's Department, on whether thieves will have access to the device, whether that would put consumer confidence at risk, and whether that justifies the risk to an officer who must enter premises defended by violent persons. Separately, opponents also question the Department's assurances that it will use the overmaster device only in cases where it is needed for officers' safety.<sup>6</sup>

These concerns rely on a cascade of speculations. They begin with the unwarranted premise that law enforcement agencies are incapable of keeping the overmaster units secure. They continue with the supposition that black-market versions will become so commonplace that homeowners *en masse* will abandon the technology as a means of securing garage doors. And they conclude by assuming the resulting loss of sales (if that occurs) would justify exposing law enforcement officers to unnecessary danger.

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<sup>6</sup> Coalition at 7-8.

The proper assessment of the public interest here seems straightforward. On the one hand, a respected law enforcement agency has credibly told the Commission that it needs the overmaster device to protect its people in the course of carrying out dangerous assignments. No one has seriously disputed this.<sup>7</sup> The opponents, on the other hand, have presented a chain of surmise that, even if it proved correct in all respects, still fails to raise a compelling challenge to the waiver. On balance, the waiver is in the public interest.<sup>8</sup>

**D. Information in the Request is More than Adequate to Support a Waiver.**

The Coalition challenges the adequacy of the waiver request. But none of the matters it raises is relevant to the Commission's consideration, much less grounds for denying the waiver.

The Coalition finds an alleged failure to explain how the overmaster device will keep from triggering other gates, doors, and alarms in the vicinity.<sup>9</sup> The Department strongly agrees with the Coalition on the need to avoid unwanted activations. Apart from the obvious security

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<sup>7</sup> Proponents do question whether the device can operate within the time intervals estimated by the Department. See below.

<sup>8</sup> The public interest question framed by opponents not only is unrelated to the specific rule waiver requested, but may not be in the right forum. The Commission's jurisdiction is limited to the scope set out in the Communications Act. *See American Library Ass'n v. FCC*, 406 F.3d 689, 691 (D.C. Cir. 2005) (holding FCC lacked statutory authority to adopt "broadcast flag" regulations). *See also FCC v. Midwest Video Corp.*, 440 U.S. 689 (1979) (holding FCC lacked statutory authority to adopt cable access rules). It is not clear that the Commission's jurisdiction includes the balance of interests in law enforcement policy on which opponents seek to have the waiver denied. Even the Commission's somewhat broader Title I ancillary jurisdiction may not reach this question. *See Id.*, 406 F.3d at 691-92 (ancillary jurisdiction requires both Title I grant covering regulated subject, and reasonable nexus to statutory responsibilities). The Commission can approve the waiver on grounds within its authority and expertise, yet still leave opponents free to challenge deployment of the device in a different forum on other grounds.

<sup>9</sup> Coalition at 2, 5.

threat, to have alarms sounding and garage doors opening up and down the street would eliminate much of the tactical benefit the device might otherwise offer. The original request addressed this question, noting that the Department will limit field strength to the minimum necessary to avoid affecting unintended garage doors, and if necessary will use a directional antenna to focus radio-frequency energy at the target door.<sup>10</sup> If early testing shows these measures to be inadequate, the Department will have to explore others.

The Coalition also objects that the request fails to detail how the overmaster device will interact with the range of door opener technologies on the market,<sup>11</sup> or how it can achieve its claimed typical median operating duration of 35 minutes.<sup>12</sup> But the internal operations of the device are irrelevant to the waiver. Ordinarily the Commission's regulations, and Part 15 in particular, concern only the externally measured properties of radio-frequency emissions, not the circuitry that generates them. The means by which the overmaster device selects and produces its signals is irrelevant to the waiver.

The Coalition claims a discrepancy between the Department's initial request and a subsequent statement by a Department official in a telephone conversation.<sup>13</sup> The official is

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<sup>10</sup> Request for Waiver at 3.

<sup>11</sup> Coalition at 2.

<sup>12</sup> Coalition at 4. The Coalition complains that the Department did not provide technical data to permit verification of its estimate on operating time. *Id.* Although the Coalition concedes it does not know how the device operates, it nonetheless proposes an alternative estimate of 309 years (for which it provides no technical support). *Id.* The Department stands by its original estimate, subject as we noted to possible revision as development proceeds. *See* Request for Waiver at 2 n.2. We also point out that the operating time is self-limiting. If it were to run much over the Department's estimate, the device would become impractical, and could not be used at all.

<sup>13</sup> Coalition at 3 & Affidavit of James Fitzgibbon.

reported as saying the Department may sometimes locate a receiver at a suspect's location to capture garage door opener transmissions for the purpose of predicting the next code in the sequence.<sup>14</sup> That, according to the Coalition, would justify dismissing the waiver request "for failure to articulate a specific pleading,"<sup>15</sup> apparently because the receiver was not mentioned in the original request. The receiver, however, does not affect the radio-frequency emissions of the device, except perhaps to shorten their duration. Again, the internal workings, including the processing of captured codes, are not a topic of regulation, and are irrelevant here.

Finally, the Coalition implies that the request fails to meet the standards for a waiver because it promises only an "absence of any *likely* increase" in harmful interference,<sup>16</sup> and not an absolute lack of interference. The objection is poorly founded in two respects. First, no designer of a radio transmitting device can credibly pledge it will never cause interference under any circumstances. Such a claim would be unrealistic. Second, the Commission's waiver standards do not require such a promise. The Coalition correctly cites *WAIT Radio v. FCC* as mandating that a rule waiver "not undermine the policy, served by the rule, that has been adjudged in the public interest."<sup>17</sup> But the Coalition then reads this passage as requiring an absolute guarantee against interference. The Commission has never construed the passage that way. If it did, Part 15 waivers would be rare indeed.

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<sup>14</sup> *Id.*

<sup>15</sup> Coalition at 3.

<sup>16</sup> Coalition at 8 (Coalition's emphasis).

<sup>17</sup> Coalition at 8, *citing WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

In practice, the Commission does demand that any increase in interference risk be countered by measures intended to minimize the impact on other services.<sup>18</sup> The risk factor depends not only on the magnitude (and duration) of the signal subject to the waiver, but also on the sensitivity of the victim receiver and the importance of the service it provides. Thus, for example, the Commission tends to be extremely conservative in evaluating potential interference to GPS and satellite downlinks.<sup>19</sup> Part 15 users, always on notice about incoming interference and operating at their own risk, are sometimes afforded less protection.<sup>20</sup> In any event, the Department's request, subject to the proposed conditions, easily meets the Commission's test.

### CONCLUSION

The Coalition and other opponents do not challenge the one specific element of the requested waiver, *i.e.*, operation for longer than five seconds. Their policy objections, unrelated to the rule to be waived, skirt the edge of the Commission's jurisdiction. They not only rely on conjecture about the existence and extent of a black market, but also underestimate the importance of the device in protecting officers who must enter defended buildings. Each of the Coalition's procedural objections is either irrelevant or insufficient.

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<sup>18</sup> *E.g., SafeView, Inc., Request for Waiver of Sections 15.31 and 15.35 of the Commission's Rules*, 21 FCC Rcd 8814 at para. 22 (Office of Engineering and Technology 2006) (granting waiver on finding of "very little potential of harmful interference" and adoption of conditions "[t]o ensure that harmful interference to authorized operations will not occur").

<sup>19</sup> *But see Curtis-Wright Controls Inc.*, 22 FCC Rcd 815 (Office of Engineering and Technology 2007) (granting waiver, under stringent marketing and use restrictions, for ultra-wideband device that exceeds applicable limits in bands used by GPS, aeronautical radars, and satellite downlinks, among others.)

<sup>20</sup> "[W]e note that all Part 15 devices . . . operate on a sufferance basis where the operator is required to accept any interference that is received . . ." *Remington Arms Company, Inc., Request for a Waiver of the Part 15 Regulations*, 20 FCC Rcd 18724 at para. 10 (2005) (granting waiver over objections of Part 15 user).

The requested waiver, under the conditions proposed, will promote the safety of law enforcement personnel without appreciably increasing the risk of interference to any user. On any reasonable balance, the waiver is in the public interest, and should be speedily granted.

Respectfully submitted,

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April 2, 2007

## **CERTIFICATE OF SERVICE**

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that true copies of the foregoing REPLY TO OPPOSITIONS have been served this 2nd day of April, 2007, by first class mail, postage prepaid, to the following listed on the attached Service List, except that persons having addresses listed at the Federal Communications Commission were served by hand and/or by email.

/s/

Deborah N. Lunt

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