PS 09-19

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FILED/ACCEPTED
JUL 16 2008
Federal Communications Commission
Office of the Secretary

July 16, 2008

BY HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re: **Petition for a Rulemaking to Revise and Update the Travelers Information Service Rules of Highway Information Systems, Inc.**

Dear Ms. Dortch:

Transmitted herewith on behalf of Highway Information Systems, Inc. are the original and fourteen copies of a Petition for a Rulemaking to Revise and Update the Travelers Information Service Rules. Also enclosed is an additional copy that we request be receipt-stamped and returned to the undersigned.

Should additional information be necessary in connection with this matter, kindly communicate directly with the undersigned.

Respectfully submitted,

James A. Stenger

Encls.

DC #462178 v1

PS 08-83

FILED/ACCEPTED
JUL 16 2008
Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Petition for a Rulemaking to Revise and Update the Travelers Information Service Rules of Highway Information Systems, Inc.	)	PS Docket No. _____
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	)	

To: The Commission

Petition for a Rulemaking to Revise and Update the Travelers Information Service Rules of Highway Information Systems, Inc.

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Its Counsel

Dated: July 16, 2008

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Attachment A - Requested Rule Amendments

Summary

Highway Information Systems, Inc. ("HIS" and "Petitioner") is a leading manufacturer of low power AM radio equipment that is owned and operated by federal, state and local government entities ("TIS Operators"). TIS Operators are licensed by the Commission to operate low power AM radio equipment under the Travelers Information Service ("TIS") rules.

TIS stations provide an excellent means for federal, State and local government entities to communicate directly with the public. AM radio broadcasts can be received by anyone with an AM radio and such broadcasts can continue uninterrupted during emergencies. Communications over wireless networks require that the recipient pay for a subscription for a mobile phone and wireless networks may become overburdened with calls during emergencies. Commercial broadcast stations have editorial discretion as to whether, when and how to carry public service announcements. TIS stations provide a direct means for federal, State and local government entities to communicate directly with the public within their jurisdictions.

Unfortunately, outdated and overly restrictive TIS rules impose undue and unnecessary editorial control over the content that federal, State and local government entities choose to broadcast over their TIS stations. The outdated rules are contrary to the Commission's initiatives to provide ubiquitous and redundant communications channels between federal, State and local government entities and the public within their jurisdictions. The TIS rules need to be revised to lodge editorial control over the content of TIS broadcasts with the licensees of the TIS stations. The rules should ensure that TIS stations are licensed to and operated by federal, State and local government entities and are used for the dissemination of information of a non-commercial nature as deemed appropriate by the licensees.

Before the
Federal Communications Commission
Washington, DC 20554

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To: The Commission

Petition for a Rulemaking to Revise and Update the Travelers Information Service Rules of Highway Information Systems, Inc.

Highway Information Systems, Inc. ("HIS") , through its undersigned counsel and pursuant to Section 1.401 of the Commission's Rules, hereby petitions for a rulemaking to revise and update the Travelers Information Service ("TIS") rules, including Section 90.242(a)(7), to enable State and local governments to use TIS stations to provide a direct means of communication with the public within their jurisdictions of such information of a non-commercial nature as State and local governments choose to broadcast, without editorial control over the content of their broadcasts by the Commission, and in support hereof respectfully shows as follows:

I. Description of Petitioner.

Petitioner HIS is a subsidiary of Quixote Corporation ("Quixote"). Quixote is a publicly traded, U.S.-based manufacturer of equipment used by federal, State and local governments for traffic management and road safety:

> Quixote is the world's leading manufacturer of energy-absorbing highway crash cushions, electronic wireless measuring and sensing devices, intelligent intersection control systems, weather forecasting stations, computerized highway advisory radio, flexible post delineators and other transportation safety products and services.[1]

Quixote Transportation Technologies, Inc., a division of Quixote, provides a family of products that includes TIS systems designed and manufactured by Quixote subsidiary HIS. Quixote products and services are designed to be interoperable and to provide federal, State and local government entities with effective means of monitoring traffic, road and weather conditions, controlling traffic signals and communicating with motorists.[2]

TIS stations are licensed only to federal, State and local government entities ("TIS Operators"). The TIS Operators perform important and essential functions on behalf of their citizens. The Commission has long recognized the important role of State and local governments in managing public rights of way. More recently, the Commission has stressed the important role of State and local government entities as first responders in emergency situations. Many important public policies and initiatives are implemented at the State and local level.

Significant investments in research and technology are made by Quixote to meet the needs of federal, State and local TIS licensees. As these governmental licensees have requested that Quixote increase the capability and interoperability of TIS and related systems, Quixote has responded with additional research, design, manufacture and delivery of products, including both hardware and software. Some State and local governments recently have advised Quixote that

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[1] *See* www.quixotecorp.com.
[2] *See* www.qttinc.com.

the Commission has directed them to discontinue the use of TIS stations for the dissemination of content that they wish to disseminate.

As a result, the investments made by Quixote in research, design and manufacture of additional capabilities for hardware and software and the investments made by State and local governments in purchasing this hardware and software are being stranded at the direction of the Commission. More importantly, State and local governments are not being allowed to use TIS stations as a direct means of communicating with their citizens all of the information that they wish to communicate. Accordingly, the Petitioner initiates this rulemaking petition to seek relief from the Commission.

II. Recent Commission Initiatives Support The Use Of A Local Government Radio Service As A Direct Means Of Communication Between Federal, State and Local Government Entities And The Citizens Within Their Jurisdictions.

The Commission is pursuing a number of initiatives designed to provide immediate, effective and redundant communications between federal, State and local government entities and the citizens within their jurisdictions. TIS stations are an important element of these initiatives and the TIS rules should be updated to facilitate the use of TIS stations for the direct communication of information between federal, State and local government entities and the public of information of a non-commercial nature as determined by the TIS licensees.

The mission of the Commission's Public Safety and Homeland Security Bureau ("PSHSB") is to facilitate federal, State and local government communications, including communications directly with the public:

> Our Mission: To collaborate with the public safety community, industry and other government entities to license, facilitate, restore and recover communications services used by the citizens of the United States, including first responders, before, during and

> after emergencies by disseminating critical information to the public and by implementing the Commission's policy initiatives.[3]

Recent initiatives of the Commission and the PSHSB include the adoption of new rules for a Commercial Mobile Alert System ("CMAS").[4] In adopting the new CMAS rules, the Commission recognized its obligation to promote communications between federal, State and local governments and the public through a variety of redundant and widely available communications channels:

> In adopting these rules today, we take a significant step towards implementing one of our highest priorities – to ensure that all Americans have the capability to receive timely and accurate alerts, warnings and critical information regarding disasters and other emergencies irrespective of what communications technologies they use… This CMAS First Report and Order is the latest step of our ongoing drive to enhance the reliability, resiliency, and security of emergency alerts to the public by requiring that alerts be distributed over diverse communications platforms.[5]

Thus, the Commission states its goal is to ensure that "all Americans" can receive government communications "irrespective of what communications technology they use." In addition, the Commission stresses the importance of distributing information "over diverse communications platforms."

Within the context of these Commission goals, TIS stations can play an important role. TIS stations provide a means of communicating with all Americans since only an AM radio is necessary to receive these communications. Americans who may be unable or unwilling to pay for subscription services can receive AM radio broadcasts free of charge and the equipment needed to receive these broadcasts is ubiquitous and inexpensive. TIS stations provide a communications channel that is diverse and redundant. Many TIS stations are solar-powered

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[3] *See* www.fcc.gov/pshs.

[4] *See* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281433A1.pdf for the Commission Press Release announcing the adoption of these new rules and http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-99A1.pdf for the CMAS First Report and Order, FCC 08-99 (Apr. 9, 2008).

[5] *Id.* at paras. 3 and 4.

and/or have battery backup systems and as a result they continue to operate during a power blackout.[6]

TIS stations can provide an important diverse and redundant communications path between federal, State and local governments and the citizens within their jurisdictions. Other alternatives each have significant limitations. For example, the recently adopted CMAS rules merely establish the technical parameters for commercial wireless network operators to transmit emergency messages. Participation in the CMAS program remains voluntary.[7] The CMAS program only applies to critical emergency information. Federal, State and local governments may have other important information to transmit on an on-going basis. CMAS alerts will only reach citizens who choose to subscribe to commercial wireless services. Some Americans may not have access to the CMAS system. Notwithstanding the tremendous investment and efforts of the wireless industry to improve the resiliency and redundancy of commercial wireless networks, these networks may become overloaded during emergencies.[8]

Broadcasting is a useful alternative platform as broadcast channels do not become overloaded with calls during emergencies. Broadcast stations are required to participate in the emergency alert system. However, government entities have other important information of a non-emergency nature that they wish to communicate on an on-going basis. Broadcast of public service announcements is voluntary and the ability of broadcasters to use valuable airtime for such announcements is limited, including limitations on the interruption of regular programming. As a result, TIS stations can provide an important alternative platform for federal, State and local government entities to convey information directly to the public.

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[6] The Quixote-manufactured solar-powered TIS station is marketed under the "Solar Max" brand and information concerning this product can be found at http://www.qttinc.com/pages/hisproducts.html.
[7] CMAS First Report and Order, FCC 08-99 (Apr. 9, 2008) at para. 6.
[8] The Commission recognizes this and authorizes communications systems dedicated to the use of public agencies as well as other critical infrastructure providers under Part 90 and other provisions of the Commission's rules.

The use of TIS stations for federal, State and local governments to convey emergency information to the public is consistent with the Commission's goal of providing a diverse and redundant means of communications that is readily accessible to all Americans. Federal, State and local government entities that choose to invest in TIS stations should be able to use TIS stations to transmit additional, non-emergency information that they deem necessary or desirable. Unnecessary editorial restrictions on the content of TIS transmissions unduly deprive federal, State and local government entities in achieving the value of their investment in TIS systems and hamper them from using TIS systems to implement government programs and policies that they deem necessary and appropriate.

Many federal, State and local programs and policies fall outside the subject matter expertise of the Commission. As a result, the Commission can best serve the interests of TIS licensees by minimizing the editorial restrictions on the content of TIS broadcasts and allowing federal, State and local TIS station licensees to exercise their own good faith judgment regarding the content of TIS station broadcasts.

III. The Rules Governing The Local Government Radio Service Should Be Updated To Reflect The Current Responsibilities Of State And Local Governments.

The TIS rules were adopted over thirty years ago and have not been significantly updated since 1977.[9] The rules were adopted in order to provide for local government radio services. The Commission found that because of the low power and highly localized nature of the local government radio service, the stations would enable government licensees to provide location specific information that would not effectively be provided by full power commercial stations:

[9] *Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public, Docket No. 20509, Report and Order*, 67 F.C.C.2d 917 (1977) ("*Local Government Radio Services Report and Order*").

> Consequently, because commercial broadcast stations serve not only travelers, but the public in general over a large geographical area, it is not realistically expected or even feasible that broadcast stations provide continuous local information of interest only to travelers at specific locations (e.g., a highway intersection, an airport entrance and parking facility, a county park, etc.) within their general area of coverage.[10]

Advances in technology since 1977 have improved the ability of TIS operators to control and program TIS stations with messages tailored to specific locations. In addition, the operation of the stations can be linked with systems for monitoring local conditions and controlling traffic signals and other government controlled systems.

At the time that the local government radio services rules were adopted, the focus of local governments was on providing information to the traveling public. The TIS permissible use rule restricts the local government radio service to the transmission of "noncommercial voice information" that pertains to local travel conditions:

> Travelers' Information Stations shall transmit only noncommercial voice information pertaining to traffic and road conditions, traffic hazard and travel advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest. It is not permissible to identify the commercial name of any business whose service may be available within or outside the coverage area of a Travelers' Information Station. However, to facilitate announcements concerning departures/arrivals and parking areas at air, train, and bus terminals, the trade name identification of carriers is permitted.[11]

The rule does not limit the use of TIS stations only to emergency or critical information. The rule allows TIS stations to provide a wide variety of information, including "descriptions of local points of interest."

Taken in context, the purpose of the TIS permissible use rule is to ensure that the local government radio service is used for a government purpose. The governmental purposes that could be well-served by TIS stations have expanded since 1977. Effective traffic management is now linked with national security and energy conservation policies, among other important

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[10] *Local Government Radio Services Report and Order* at paras. 5-11.
[11] 47 C.F.R. § 90.242(a)(7).

government initiatives. As a result, the illustrative examples in the TIS permissible use rule no longer encompass legitimate and important uses of TIS stations that State and local government entities believe to be necessary for them to accomplish their policies and programs. The limited language in the existing rule may prevent the use of a TIS station for broadcast of government-selected information, notwithstanding that a State or local government entity has determined that it would serve the public interest for the local government radio service to be used to convey such information.

State and local governments are finding that their current responsibilities and programs would be served by the use of TIS stations to transmit content that is not specifically itemized in the thirty year old TIS permitted use rule and in some cases have sought waivers or been issued notices of violation. [12] HIS has received numerous inquiries and comments from its governmental licensee customers about their need and desire to use their TIS stations for the transmission of content for various government objectives that are time and location sensitive and well-suited to the localized nature of their TIS stations. HIS is not unique in receiving this feedback from TIS operators. Other TIS equipment manufacturers have advised of similar issues being raised by their customers.[13]

State and local government TIS licensees have expressed concerns with regard to the limitations on the permissible use and siting of TIS stations that were authorized by the Commission as a "local government radio service." The limitations on content were adopted over thirty years ago when the principal focus of the local government radio service was

[12] *E.g., In the Matter of California Department of Transportation Request for Waiver of Section 90.242(a)(7) of the Commission's Rules*, DA 07-439 (Jan. 31, 2007)(California Department of Transportation denied a waiver to use their TIS network to promote energy conservation.); *In the Matter of City of Santa Monica Licensee of Radio Station WQGR42, Notice of Violation,* File No. EB-07-LA-216 (Jul. 12, 2007)(City issued a notice of violation for using TIS station to provide weather information).

[13] For example, TIS equipment provider Information Station Specialists, Inc. has posted a petition on the Web for government entities to indicate their support for TIS rule revisions and the petition has been signed by many TIS operators. *See* http://www.theradiosource.com/earnet-petition.asp.

information for travelers. Since that time State and local governments have assumed additional responsibilities both in times of emergency and with respect to on-going programs for which they are responsible on a daily basis. The Commission has recognized the need to provide State and local governments with redundant communications platforms to communicate with their citizens. Under these circumstances, a revision of the rules for a local government radio service would appear to be the most effective and efficient path to resolved these issues.

IV. HIS Proposes Amendments To The Government Radio Service Rules And Requests That The Commission Take Public Comment Thereon.

HIS respectfully urges the Commission to revise and update the TIS rules so that the local government radio service can be used by federal, State and local government entities for the direct communication with the citizens of such noncommercial information as they deem necessary or appropriate to transmit. To that end, HIS respectfully requests that the Commission initiate a rulemaking proceeding to consider the rule amendments set forth in Attachment A hereto.

HIS requests that the rules be re-titled, "Local Government Radio Service," in lieu of the current terminology of "travelers information service." The Commission originally styled the service as a local government radio service, but because local governments were focused upon information for travelers the rules were given a more limited title in 1977. Re-titling the rules as the "local government radio service" is both more reflective of the Commission's original intent and more consistent with the broader interests and responsibilities of the government licensees that have evolved since 1977. It should be noted that the term "local" refers to the localized coverage area of each station and does not restrict the licensing of the stations to only local, as opposed to State and federal government entities.

The permissible use rule in Section 90.242(a)(7) should lodge editorial control over the content of TIS broadcasts squarely with the government entity licensed to operate the station. Doing so will eliminate unnecessary Commission involvement in the operation of radio stations that are licensed exclusively to other government entities. Given the highly localized nature of these stations, the particular content broadcast on a station will be best determined by the government entity with jurisdiction over that specific location. In order to lodge editorial control squarely with the licensee, HIS requests that the permissible use rule be revised to provide that stations in the local government radio service may be used to broadcast information of a non-commercial nature as determined by the government entity licensed to operate the station and other government entities with which the licensee cooperates.

HIS also requests that the Commission eliminate the limitation on the sites for local government radio stations that confines such stations to areas near roads, highways and public transportation terminals. Other locations may exist were State and local governments have a legitimate need for a local government radio station. The determination of site locations should be left to the government licensee, provided that the interference criteria are met with respect to commercial AM radio station.

V. Conclusion

Wherefore, for the foregoing reasons, HIS respectfully requests that the Commission commence a rulemaking proceeding to consider amendments to the local government radio service rule in Part 90, Section 90.242.

Respectfully submitted,

Highway Information Systems, Inc.

By: _____
James A. Stenger

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Its Counsel

Dated: July 16, 2008

Attachment A

Requested Rule Amendments

Amend the title of Section 90.242 to "Local Government Radio Service."

Amend the references in Section 90.242 from "Travelers' Information Stations" to "Local Government Radio Stations."

Amend Section 90.242(a)(7) to state: "Local government radio stations shall only transmit noncommercial information as determined by the government entity licensed to operate the station and other government entities with which the licensee cooperates, including messages relating to Department of Homeland Security initiatives such as Citizen Corps and Ready.gov."