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March 30, 2012

VIA ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: WT Docket No. 12-17, American Time & Signal Company Request for Waiver to Permit Licensing of Certain Fixed Transmitters as Mobile Units

Dear Ms. Dortch:

On behalf of Forest Industries Telecommunications (FIT), and pursuant to Section 1.1206(b)(2) of the Commission's Rules, I am electronically filing this written *ex parte* communication in the above-referenced docket.[1] FIT, like Enterprise Wireless Alliance (EWA), opposes American Time & Signal's request for waiver.[2]

Essentially, AT&S seeks the benefit of mobile licensing, available under the Commission's low-power rules,[3] without complying with the applicable power limits. WT Docket No. 01-146, which established the present low-power rules, struck a careful balance between permitted power and flexibility in licensing. The Commission allowed the convenience of licensing fixed stations as mobile for licensees of frequency groups A, B, and D, assuming compliance with the power limits and other rules that apply to the respective groups.[4]

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1 *See, Wireless Telecommunications Bureau Seeks Comment on an American Time & Signal Company Request for Waiver to Permit Licensing of Certain Fixed Transmitters as Mobile Units*, WT Docket No. 12-17, Public Notice, DA 12-75 (released Jan. 23, 2012).

2 See, Comments of The Enterprise Wireless Alliance (filed Feb. 22, 2012). FIT is an FCC certified frequency coordinator for the Private Land Mobile Radio Service Industrial/Business frequency pool, and coordinates frequencies over 29-900 MHz. FIT has been in the business of assisting applicants to configure and license Part 90 facilities for 60 years.

3 47 C.F.R. § 90.267.

4 Group C frequencies are limited to mobile operation . 47 C.F.R. § 90.267(e)(1).

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To qualify for the waiver it seeks, AT&S must show either that the underlying purpose of the rules would not be served or would be frustrated by application to AT&S, so that that a grant of the requested waiver would be in the public interest; or alternatively show that in view of unique or unusual factual circumstances, application of the rules would be inequitable, unduly burdensome, or contrary to the public interest, or that AT&S has no reasonable alternative.[5]

AT&S has made none of these showings. To be sure, it makes a case for its own *private* interest. It claims to have been mis-advised that its equipment could be licensed as mobile, and having learned of its error, seeks to avoid the cost and inconvenience of re-licensing its facilities as they should have been licensed in the first place. But AT&S does not show how the requested waiver would be in the *public* interest, as Section 1.925(b)(3) requires.

According to AT&S, EWA "identif[ies] no valid public interest justification for requiring ATS to license its customer locations as fixed stations. . . ."[6] But AT&S has the burden backwards. AT&S has the burden of showing that its requested waiver is in the public interest—a burden it has utterly failed to meet.

AT&S tries to defend the waiver by stating that its wireless clock systems "fit the same technical and operational profile as the fixed low power data systems which the Commission allows to be licensed as mobile sites in the Group A low power frequencies . . . ." But AT&S's power levels considerably exceed the Group A power limits, and of course its frequency usage does not conform to Group A. EWA correctly points out that, if AT&S's system did in fact conform to the Group A requirements, then no waiver would be needed.[7]

Finally, AT&S and PCIA dispute EWA's suggestion that the requested waiver would threaten to impede frequency coordination in Part 90 UHF spectrum.[8] They may be correct, if one compares operation under the waiver to AT&S's current operation. But that is the wrong comparison. The public interest assessment should more properly compare operation under the waiver to compliant low-power operation under Section 90.267. It is obvious that coordinating low-power stations, even if there are more of them, in general leaves more room for other users than does coordinating higher-powered stations.

In short, AT&S seeks a waiver solely to recover from its own mistake, at minimum cost to itself. AT&S has not established that the waiver would be in the public interest in any of the respects mandated by Section 1.925(b)(3). The request for waiver therefore should be denied.

Respectfully submitted,

Kenton Sturdevant
Kenton Sturdevant
Executive Vice President,
Forest Industries Telecommunications

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[5] 47 C.F.R. § 1.925(b)(3).

[6] Reply Comments of AT&S at 4 (filed March 5, 2012)

[7] Comments of EWA at 4.

[8] Comments of EWA at 5-6; Reply Comments of AT&S at 3; Reply Comments of PCIA at 2 (filed March 5, 2012).