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February 1, 2013

VIA ELECTRONIC MAIL
Mr. Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Request for Clarification**

AMERICAN TIME & SIGNAL COMPANY
Call Sign WQFW336; FCC File No. 0005007890
WT Docket No. 12-17

Dear Mr. Stone:

On January 10, 2013, American Time & Signal Company ("ATS") responded to the December 18, 2012 Request for Clarification filed by the Enterprise Wireless Alliance ("EWA") with respect to the waiver granted to ATS by the FCC on November 29, 2012.[1] The ATS response confirms the need for FCC clarification as requested by EWA so that all parties understand what rules govern the operation of the facilities licensed under this and any other ATS authorization.

It is clear from its letter that ATS confuses the licensing and operating requirements aspects of the FCC's Part 90 rules. The FCC granted a waiver to allow ATS to license the fixed facilities at its customers' locations as mobiles. In doing so, however, the FCC did not magically transform that equipment from fixed facilities operating with antenna heights of up to 75' and transmitter power of up to 40 watts to mobiles/portables that operate at greatly reduced power levels and antenna heights, if they use external antennas at all.[2] The waiver was for the licensing convenience of ATS. It has no bearing on how these systems will operate in the real world and specifically in the Part 90 shared

[1] In the Matter of American Time & Signal Company, WT Docket No. 12-17, *Order*, DA 12-1915 (rel. Nov. 29, 2012) ("Waiver Order").
[2] ATS' confusion is exemplified by its statement that, contrary to EWA's assertion, "there is *only* mobile use (MO6) on the channels by the facilities in question. That is exactly what the Waiver Order decided." ATS Response at 2. But the Waiver made no such statement. In fact, it says the opposite: "…we grant the request for waiver to permit licensing of the fixed transmitters…as mobile units." Waiver Order at ¶ 9.

spectrum environment. It is precisely because ATS sought and the waiver addressed only the licensing aspect of these facilities that the FCC must clarify what operating rules apply to them.

EWA accepts the FCC's decision to allow ATS licensing flexibility with respect to its facilities. However, because these relatively high-site and high-power fixed transmitters will be sharing spectrum with co-channel systems, it is important to ensure that ATS, the FCC's frequency advisory committees, including, but not limited to EWA, and other users all are clear on the "rules of the road" applicable to their operation.

The complexity of the Part 90 operational rules, in large part, is driven by the need to enable disparate systems to co-exist in a primarily shared, primarily voice, primarily base/mobile spectrum environment. The fundamental mechanism for doing so is the requirement to monitor before transmitting on shared channels.[3] The operating rules in Section 90.235 govern fixed, non-voice facilities that do not have monitoring capability and are intended to prevent transmitters from monopolizing the capacity of a channel, including by inadvertently getting stuck in an "on" mode. These very specific operating restrictions apply even though this fixed use is secondary to the licensee's primary mobile operations, which are subject to normal monitoring requirements.

EWA requested clarification because the ATS system is neither fish nor fowl. It is licensed as mobile, but its operations consist entirely of fixed, non-voice transmissions that seemingly mirror systems subject to the requirements of Section 90.235. EWA is encouraged by ATS' statement that "Nothing in the Waiver Order relieves ATS of its obligation to share its licensed frequencies under Section 90.403(e) on the same basis as any other Part 90 licensee."[4] This is the first indication from ATS that its equipment is designed with some type of automatic monitoring capability that prevents the transmitters from sending data in the presence of a co-channel signal.[5] EWA asks the FCC to confirm that this equipment has that automatic capability with design parameters appropriate for avoiding interference. ATS' statement also means that it is not claiming a protected service area for its customers' locations, since monitoring would not be required in that event.[6]

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[3] 47 C.F.R. §90.403(e).
[4] ATS Response at 2.
[5] EWA assumes ATS' statement is not meant to suggest that there is a person at each customer facility who monitors the frequency before each and every transmission from each system controller, although that also would satisfy the FCC's monitoring requirements.
[6] ATS' comments regarding EWA's understanding of Section 90.187(b) are baffling. EWA is fully familiar with that provision and coordinates systems every day taking its requirements into account. ATS' reference to the loading standards of Section 90.313 suggests that ATS itself needs a refresher in Part 90 licensing. Section 90.313 applies only to systems operating on 470-512 MHz frequencies, not the frequencies being used by ATS.

Even then, however, EWA believes the FCC should clarify whether ATS' operations should be treated as primary or secondary for coordination purposes. For the most part, fixed operations are considered secondary on Part 90 base/mobile channels such as those used by ATS. ATS' reliance on the licensing status of its facilities, in EWA's opinion, is not determinative of this classification since, as noted above, the Waiver Order did not change the functional capabilities of the transmitters in question. Provided the FCC satisfies itself as to the monitoring capability ATS now professes its equipment to have, and also ensures that there are automatic protections against unintentional continuous operation, primary status may be appropriate.

Finally, EWA is intrigued by ATS' statement that EWA is incorrect in its presumption that the Waiver Order authorized ATS to hold the license for equipment it installs and maintains for its customers. Since ATS neglected to mention in what way EWA's premise allegedly is incorrect, it is not possible to respond to that claim. As for ATS' position that this issue has "implications far beyond the scope of ATS' waiver request and the determinations made in the Waiver Order,"[7] EWA must disagree. The Waiver Order allows ATS to hold the license for equipment it sells to customers, equipment that operates fromt those customers' locations and, from all appearances, is not under the control of ATS as control historically has been understood in Part 90. It is because the FCC determined that ATS was the proper licensee for those facilities that EWA has asked what the implications are for other potential equipment vendor/applicants. That Pandora's Box was opened in the Waiver Order and the industry needs to understand precisely what was intended by the Commission.

Sincerely,

Mark E. Crosby
President/CEO

cc: ATS (via U.S. mail)
Kenneth Hardman, Esq. (via electronic mail and U.S. mail)

[7] ATS Response at 3.