

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

In the Matter of)	
)	
American Time & Signal Co.)	WT Docket No. 12-17
Request for Waiver of)	
FCC Rule Section 90.7)	
Definition of Mobile Station)	

To: Chief, Wireless Telecommunications Bureau

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.45 of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its comments in the above-entitled proceeding.¹ The Commission has requested comment on a waiver request (“Waiver Request”) filed by the American Time & Signal Co. (“ATS”) in which ATS seeks to pursue certain relief from accepted Part 90 frequency coordination and licensing requirements for its fixed transmitters and, instead, to license them as mobile stations on a primary basis under its existing all sign, WQFW336.

The ATS Waiver Request is not simple. It seeks exemptions from numerous rules and established FCC licensing and frequency coordination processes. The request is an elegant approach for ATS, but there can be no remedial shortcuts given the shortage of Part 90 land mobile spectrum that remains available for primary voice communications. The Alliance recognizes that it would be less administratively burdensome and more economical for ATS to hold a single, mobile-only license covering the variety of fixed transmitters used by its customers

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

at sites throughout the country. However, grant of the waiver relief requested could potentially undermine the carefully calibrated coordination and licensing structures that enable a multiplicity of system users, architectures and technologies to share the very limited Part 90 spectrum. Rather than waive the rules to accommodate the technical parameters ATS has chosen for its products and customer operations, it would seem a better solution for ATS to conform those operations to the existing Part 90 licensing requirements or modify its products to operate in alternative spectrum.

EWA is a national trade association representing business enterprises, wireless sales and service providers, hardware and software system vendors, and technology manufacturers. The Alliance also is a Federal Communications Commission (“FCC”)-certified frequency advisory committee (“FAC”) that facilitates in excess of 10,000 FCC licensing application preparation, frequency selection, and certification transactions annually. As a FAC and on behalf of its business, industrial and commercial members, the Alliance has a direct interest in the matters herein.

As explained in its Waiver Request and in the Public Notice, ATS manufactures and sells wireless clock systems to schools, hospitals and other organizations nationwide that need to synchronize numerous clocks throughout a campus or other defined premises. The Public Notice states that each system uses a system controller to transmit brief data signals to receivers in clocks around the campus. It explains that 5-watt and 10-watt transmitters are used in smaller buildings, while external transmitters operating at 25 watts and 40 watts are utilized for larger buildings and multi-building facilities.² Fill-in transmitters of unspecified transmitter power are used to penetrate into otherwise uncovered areas.

² EWA assumes that the transmitter powers specified are output power. The effective radiated power (“ERP”) of these transmitters is not identified.

The current ATS license, call sign WQFW336, authorizes the operation of hundreds of temporary base stations and thousands of paging receivers on five Industrial/Business frequencies in the 464 MHz band.³ The Waiver Request states that ATS was misinformed by an unnamed party that its temporary base stations could be operated at the same locations indefinitely when it initially licensed this system. It did not understand that stations were required to be licensed as permanent base stations if they had remained or were intended to remain at the same location for more than one year.⁴ As stated in the Waiver Request, “in order to resolve any questions concerning the appropriateness of its current licensing, ATS desires to specifically license its customer locations and requests that they be authorized as ‘MO6’ sites on WQFW336.”⁵

Specifically, ATS requests a waiver of the definition of a mobile station in FCC Rule Section 90.7 to enable it to license the fixed transmitters at its customers’ locations as station class code MO6 with primary status. It proposes to include on call sign WQFW336 an MO6 service area at each customer location, using the coordinates of the system controller to define that service area with its radius determined by the system controller power level.⁶ In support of this request, ATS points to the rules permitting licensing of low-power fixed data transmitters as MO6 stations under the FCC’s Part 90 low-power licensing provisions in Rule Section 90.267. It argues that having to license individual fixed locations throughout the nation would be

³ Frequencies 464.600/625/650/675/700 MHz are authorized for full-power operation and are subject only to limitation 62, which permits fixed use in accordance with FCC Rule Section 90.261. ATS’s application specified “mobile,” not “fixed,” as the type of radio service in Item 42 on the Form 601, but the description of its operation in the Waiver Request does not identify any mobile or pager usage, only transmissions from fixed locations to other fixed sites. The FCC will need to determine if these one-way ATS transmissions are subject to the 20 watt output power limitation on fixed operations at locations less than 87 miles from population centers of 600,000 or more, as defined in Rule Section 90.261(b) and, if so, whether ATS is operating in conformance with that power restriction, which will require an identification of the locations of the ATS customer facilities.

⁴ Public Notice at 1.

⁵ Waiver Request at 1.

⁶ Public Notice at 1-2.

“extremely burdensome administratively for ATS and its frequency coordinators.”⁷ Additionally, it notes that this approach could not be accomplished under call sign WQFW336 since such call signs are limited to six transmitter locations per call sign.⁸

It is unfortunate that ATS was misadvised at the outset about whether the facilities at issue could be licensed under the Part 90 rules in a fashion that it would find other than burdensome. In light of its concerns about the applicable rules, the better approach might have been to secure Part 22 geographic licenses or to design its facilities to meet the Part 90 low-power rules, which, as noted by ATS, provide substantial latitude in terms of permissible power and licensing options. However, ATS seeks the flexibility of the low-power licensing provisions for facilities that operate with output power levels that are as much as twice the ERP levels that the Private Land Mobile Radio (“PLMR”) industry and the FCC recognize as appropriate for such systems. Thus, contrary to the Waiver Request, the facilities installed by ATS do not “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 in the 450-470 MHz band.”⁹ If they did, no waiver would be required.

Should this waiver be granted, the FCC can expect to receive similar requests from other entities, some of whom hold hundreds of licenses for relatively low-power fixed facilities that do not conform precisely to the Section 90.267 limitations. What technical parameters would the FCC then use to decide which were entitled to waiver relief and which were not? If the Section

⁷ Waiver Request at 2. EWA does not share the opinion that individual licensing would be burdensome for a frequency coordinator, since handling such matters is a core function for FACs and an activity for which certification was initially granted by the FCC.

⁸ ATS does not explain why this fact, applicable to all Part 90 licenses, is itself a justification for waiver relief. Presumably, the company finds it more administratively convenient to be responsible for only a single FCC license, a conclusion that undoubtedly would be shared by numerous Part 90 licensees that are required to manage multiple station licenses.

⁹ Waiver Request at 2.

90.267 power limitations no longer define fixed facilities that may be licensed as mobiles, then what upper power limit would be permitted?

While the Alliance believes that ATS should revisit all licensing alternatives available to it other than the solution presented within the Waiver Request, ATS's proposal to identify each customer's service area with center coordinates on an MO6 license to be held by ATS might alleviate one EWA concern, but raises a further question. Based on current coordination requirements, every unique customer service area would need to be coordinated vis-à-vis the operations of incumbent licensees to ensure that it did not infringe upon the service area of an authorized co-channel or adjacent channel centralized trunked system that has been granted exclusive use frequency pairs with FB8 channel designations. Thus, the coordination process applicable to ATS would effectively be comparable to that required for individually licensed fixed stations, although the FCC licensing requirement would be greatly simplified. However, in considering whether to grant such relief, the FCC also must assure itself that ATS retains sufficient control over the operation of its customers' facilities to hold the license for them. The description of the arrangement in the Waiver Request is not clear as to whether ATS is the appropriate licensee or whether the facilities are actually under the control of the individual entities that purchased their equipment from ATS and had ATS install it. If the FCC concludes that the latter is correct, then each ATS customer should hold its own FCC license under applicable FCC rules and policy.¹⁰

The very limited amount of spectrum allocated for Part 90 users is extremely congested and becoming more so. The FCC and the PLMR community are working to address these

¹⁰ In its Public Notice, the Commission asked whether it would be appropriate to grant the waiver under a secondary use status. EWA does not believe such designation is appropriate in this instance given the power levels of ATS's products, and the likelihood of interference both to ATS's customers and from ATS systems to incumbent operations. We also are unsure whether ATS's equipment has the ability to monitor prior to transmitting for communications in progress, a requirement for operating in a shared frequency environment.

spectrum limitations both by narrowbanding much of this allocation¹¹ and by introducing advanced, more efficient technologies into these bands, including the specific UHF frequencies that ATS has chosen for its products. These efforts demand frequency coordination and licensing procedures that will prevent interference between systems to the maximum extent possible in a highly dynamic spectrum environment. While ATS's proposal contemplates prior coordination based on the center coordinates of its clock system deployments, the FCC should scrutinize this Waiver Request carefully before allowing fixed 20 to 40-watt data transmitters to be classified as mobile units and authorizing ATS for private carrier MO6 status, thereby circumventing the FCC limitation of six (6) fixed sites per application and, possibly, the licensee control requirement. EWA is confident that the FCC will explore the precedential ramifications of the ATS Waiver Request thoroughly before reaching a decision on this matter.

ENTERPRISE WIRELESS ALLIANCE

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¹¹ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034 (2003) (*Second R&O*); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004) (*Third MO&O*); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Order*, WT Docket No. 99-87, RM-9332, 25 FCC Rcd 8861 (2010) (*Narrowbanding Waiver Order*); see also 47 C.F.R. §§ 90.203(j), 90.209(b).

CERTIFICATE OF SERVICE

I, Linda J. Evans, with the law firm of Lukas, Nace Gutierrez and Sachs, LLP, hereby certify that I have, on this 22st day of February, 2012 caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

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