

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
D & I ELECTRONICS, INC. )  
 )  
Licensee of Industrial/Business Pool )  
Station WPGQ917, Will County, Illinois, and )  
Station WPRU305, Cook County, Illinois )

**ORDER**

**Adopted: December 3, 2002**

**Released: December 5, 2002**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this *Order*, we consider a Petition for Reconsideration filed on September 12, 2001, by D&I Electronics, Inc. (D&I).<sup>1</sup> D&I requests reconsideration of an *Order on Reconsideration* of the Chief, Public Safety and Private Wireless Division (Division).<sup>2</sup> In the *Recon Order*, the Division denied D&I's request for reconsideration of a determination by the Chief, Licensing and Technical Analysis Branch (Branch) that D&I's operations on frequency 465.9875 MHz, in the Will County, Illinois area, are secondary to the operations of the Village of Lemont Emergency Management Agency (Lemont) on frequency 465.975 MHz.<sup>3</sup> For the reasons discussed below, we dismiss in part and otherwise deny D&I's Petition.

**II. BACKGROUND**

2. On November 3, 1994, the Commission authorized Lemont, under Call Sign WPFS667, to conduct emergency management operations on a frequency pair<sup>4</sup> allotted to the Business Radio Service and reserved for persons rendering a central station commercial protection service.<sup>5</sup> In 1995, the

<sup>1</sup> Petition for Reconsideration filed by D&I Electronics, Inc. on October 22, 2001 (Petition).

<sup>2</sup> See D&I Electronics, Inc., *Order*, 16 FCC Rcd 15243 (WTB PSPWD 2001) (*Recon Order*).

<sup>3</sup> See Letter from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission to D&I Electronics, Inc. (dated Oct. 13, 2000) (Branch Letter).

<sup>4</sup> The authorization for Station WPFS667 permits Lemont to operate on 460/465.9750 MHz, in the Lemont, Illinois area, with a bandwidth of 20 kHz.

<sup>5</sup> See 47 C.F.R. § 90.35(c)(66). A central station commercial protection service is an electrical protection and supervisory service rendered to the public from and by a central station accepted and certified by one or more of the recognized rating agencies, or the Underwriters Laboratories, or Factory Mutual System. See 47 C.F.R. § 90.35(c)(63).

Commission authorized D&I, a central station alarm company, under Call Sign WPGQ917, to operate on 465.9875 MHz within a geographic area that includes some or all of the Village of Lemont.<sup>6</sup> Station WPGQ917 is authorized to operate 3600 low power transmitters (*i.e.*, not exceeding 2 watts) to send alarm signals from customer premises to centrally located alarm monitoring facilities. Originally, D&I's authorized bandwidth was sixteen kilohertz (kHz); however, it subsequently requested and received a modified license indicating an authorized bandwidth of 7.2 kHz.<sup>7</sup>

3. In response to requests from both the Association of Public Safety Communications Officials International, Inc. (APCO)<sup>8</sup> and Lemont,<sup>9</sup> Commission staff initiated an investigation of whether harmful interference existed between Lemont's Station WPFS667 and D&I's Station WPGQ917. At the conclusion of the investigation, the Branch confirmed the interference and determined that D&I's operation of Station WPGQ917 is secondary to Lemont's operation of Station WPFS667.<sup>10</sup> Specifically, the Branch noted that D&I had not fully complied with Section 90.267(b) of the Commission's Rules, which provides that licensees operating with an emission designator wider than 11.25 kHz, as of August 5, 1999, on certain frequencies including those on which D&I operates, may obtain primary status with respect to co-channel licensees by supplying their coordinates to the Commission.<sup>11</sup> The Branch noted that D&I's application to modify Station WPGQ917 to a bandwidth of 7.2 kHz, which was filed and granted after August 5, 1999, did not supply coordinates. Therefore, the Branch found that D&I had not obtained primary status vis-a-vis co-channel users and that it was still considered secondary to adjacent channel users.<sup>12</sup> Additionally, the Branch directed D&I to notify the Commission within thirty days that any interference caused by its station's operations had ceased.<sup>13</sup>

4. On November 13, 2000, D&I filed a petition for reconsideration of the Branch's determination that D&I's Station WPGQ917 is secondary to Lemont's Station WPFS667.<sup>14</sup> D&I contended that it was not required to supply its coordinates pursuant to Section 90.267(b) of the Commission's Rules because it uses Station WPGQ917 to provide fire and burglary protection to its customers, and disclosure of the coordinates for its customers' alarm systems could provide burglars with

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<sup>6</sup> D&I is authorized, under Call Sign WPGQ917, to operate within a 121-kilometer radius around a center point located in Will County, Illinois. Lemont is within Cook County, Illinois, which is adjacent to Will County.

<sup>7</sup> The Branch granted D&I's modification application on June 8, 2000; thereafter, Call Sign WPGQ917 authorizes D&I to operate under emission designator 7K20F2D.

<sup>8</sup> See Letter from Chris Phelps, APCO International, to W. Riley Hollingsworth, Federal Communications Commission (dated June 28, 1999) (APCO Letter). APCO is a Commission-certified frequency coordinator for Public Safety Pool frequencies.

<sup>9</sup> See Letter from Larry Wall, Deputy Coordinator, Lemont Emergency Management, Village of Lemont, to the Federal Communications Commission (undated letter received July 5, 2000).

<sup>10</sup> Branch Letter at 1.

<sup>11</sup> See 47 C.F.R. § 90.267(b).

<sup>12</sup> See Branch Letter at 1.

<sup>13</sup> *Id.*

<sup>14</sup> Petition for Reconsideration, dated November 13, 2000 (*Recon Petition*).

a list of attractive properties, thereby jeopardizing citizen safety.<sup>15</sup> D&I also argued that low power operations can achieve primary status on a low power pool channel by narrowbanding its operations, and because it had done so, its operations were co-primary to Lemont's.<sup>16</sup> D&I further argued that because its operations are co-primary to Lemont's, "[w]hen interference occurs under these circumstances, the Commission has indicated that the wide-band licensee must install narrowband equipment, or suffer the consequences of interference."<sup>17</sup> Finally, D&I noted that Lemont's emergency communications system is operating on a channel reserved for central station alarm operations.<sup>18</sup>

5. In its *Recon Order*, the Division noted that D&I failed to address the Branch's request for notification that any interference from its station had ceased.<sup>19</sup> The Division further noted that the filing of the *Recon Petition* did not stay the effectiveness of the Branch Letter and that D&I had not filed a motion for stay.<sup>20</sup> Expressing its concern that D&I was causing harmful interference to Lemont's emergency communications system, the Division stated that it was referring the matter to the Commission's Enforcement Bureau for such further action as it deemed appropriate.<sup>21</sup>

6. With regard to the merits of the *Recon Petition*, the Division agreed with D&I that it was not required to supply its coordinates pursuant to Section 90.267(b) of the Commission's Rules, affirming that low power licensees and central alarm station applicants were not required to provide geographical coordinates for all fixed transmitters in a system.<sup>22</sup> The Division further noted that D&I's Station WPGQ917 is a narrowband operation (*i.e.*, utilizing an emission bandwidth less than or equal to 11.25 kHz), while Section 90.267(b) is applicable to wideband operations (*i.e.*, operations utilizing a bandwidth

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<sup>15</sup> *Recon Petition* at 2-4 (citing Replacement of Part 90 by Part 88 to Revise the Private Land Mobile radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, PR Docket No. 92-235, *Memorandum Opinion and Order*, 11 FCC Rcd 16676, 17706 ¶ 69 (1996); Letter from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC, to Mitchell Lazarus, counsel to Hexagram, Inc. (dated June 26, 2000) (*Hexagram Letter*). Notwithstanding this concern, D&I supplied the coordinates for several low-power, operational fixed sites in and around Lemont, including for the site that Lemont identified as the likely source of interference, WPGQ917.

<sup>16</sup> *Recon Petition* at 3 (quoting Freeze on the Filing of High Power Applications for 12.5 kHz Offset Channels in the 450-460 MHz Band to be Lifted January 29, 2001, *Public Notice*, 15 FCC Rcd 9996 (2000)).

<sup>17</sup> *Recon Petition* at 4 (citing Replacement of Part 90 by Part 88 to Revise the Private Land Mobile radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, PR Docket No. 92-235, *Report and Order and Further Notice of Proposed Rule Making*, 10 FCC Rcd 10076, 10100 ¶ 40 (1995) (*Refarming R&O*)).

<sup>18</sup> *Recon Petition* at 3.

<sup>19</sup> *Recon Order*, 16 FCC Rcd at 15247 ¶ 10.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 15248 ¶ 13. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, PR Docket No. 92-235, *Fifth Memorandum Opinion and Order*, 16 FCC Rcd 416, 421 ¶ 13 (2000) (*Refarming Fifth MO&O*).

greater than 11.25 kHz).<sup>23</sup> Additionally, Section 90.267(b) confers co-primary status among co-channel licensees, whereas D&I and Lemont are licensed on adjacent channels.<sup>24</sup> Thus, the Division set aside as harmless error the discussion concerning Section 90.267(b).<sup>25</sup>

7. Nevertheless, the Division agreed with the Branch's determination that D&I's operations on frequency 465.9875 MHz are secondary to Lemont's operations on frequency 465.975 MHz. The Division first noted that frequency 465.9875 MHz, is governed by Section 90.35(c)(64) ("Limitation 64") of the Commission's Rules, which states that persons who render a central station commercial protection service are authorized to operate fixed stations on a secondary, noninterference basis to base-to-base/mobile operations.<sup>26</sup> Emphasizing that Limitation 64 was unqualified, *i.e.* fixed operations are secondary to base/mobile operations whether co-channel or adjacent channel, the Division determined that D&I's fixed operations on Station WPGQ917 are secondary to the base/mobile operations of Lemont's Station WPF667.<sup>27</sup>

8. The Division also disagreed with D&I's contention that wideband licensees either must install narrowband equipment or suffer the consequences of interference from D&I's adjacent channel narrowband operation.<sup>28</sup> In this connection, the Division concluded that D&I had misinterpreted the Commission's statement, in the *Refarming R&O*, that as a general matter, as systems reach the end of their useful lives and new radios are bought, users will have a natural inducement, without a Government mandate, to use the narrower bandwidth [radios] in order to avoid excessive adjacent channel interference.<sup>29</sup> Finally, while acknowledging D&I's claim that Lemont was operating on a channel reserved for central station alarm operations, the Division noted that because Lemont was operating on the subject frequency pursuant to a waiver, it is entitled to the same protection from secondary fixed operations that all base-to-base/mobile operations are provided under Section 90.35(c)(64).<sup>30</sup> Accordingly, the Division dismissed D&I's *Recon Petition*.

9. On September 12, 2001, D&I requested reconsideration of the *Recon Order*. On October 22, 2001, D&I filed a "Motion for Leave to File Supplement to Petition for Reconsideration" and a "Supplement to Petition for Reconsideration" (Supplement).

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<sup>23</sup> *Recon Order*, 16 FCC Rcd at 15247 ¶ 11.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 15248 ¶ 13. *See* 47 C.F.R. § 90.35(c)(64).

<sup>27</sup> *Recon Order*, 16 FCC Rcd at 15248 ¶ 13.

<sup>28</sup> *Id.* at 15247 ¶ 12.

<sup>29</sup> *Id.* *See Refarming R&O*, 10 FCC Rcd at 10100 ¶ 40, & n.91 (stating that equipment that is type-accepted prior to each of the transition dates set out in the *Refarming R&O* may continue to be manufactured and used indefinitely). Although the Commission created a natural inducement for users to migrate to narrowband equipment, the Commission also spoke of a "natural transition," to narrowband by wideband equipment users. *Id.* at 10100 ¶ 40.

<sup>30</sup> *Recon Order*, 16 FCC Rcd at 15248 ¶ 14.

### III. DISCUSSION

10. The Supplement includes an agreement between D&I and Lemont indicating that the interference problem has been resolved by D&I's provision of dual-mode radios to Lemont.<sup>31</sup> Insofar as the interference problem has been corrected, we find that the instant controversy is now moot.

11. Notwithstanding our determination that the controversy between D&I and Lemont has been resolved, we nonetheless conclude that the Petition must be denied on the merits. First, we note that the Petition reiterates D&I's argument that its use of wideband equipment requires Lemont to transition to more efficient equipment when experiencing interference from narrowband operations such as D&I's.<sup>32</sup> We find that this argument was thoroughly considered and properly resolved in the *Recon Order* and decline to address it further herein.<sup>33</sup>

12. D&I also seeks reconsideration of the Division's conclusion that D&I's fixed operations are secondary to Lemont's mobile operations pursuant to Section 90.35(c)(64) of the Commission's Rules. Specifically, D&I asserts that the rule, designed to allow central station alarm companies to license high power fixed stations while preventing the monopolization of mobile frequencies for high power uses, was imposed on the referenced frequency because such frequency was being made available for high power operations.<sup>34</sup> However, because the frequency has since been designated as part of the Low Power Pool, D&I argues that the basis for applying Limitation 64 thereto has been eliminated.<sup>35</sup> As noted previously, "Limitation 64" states that persons who render a central station commercial protection service are authorized to operate fixed stations on a *secondary, noninterference* basis to base-to-base/mobile operations.<sup>36</sup> Because D&I seeks reevaluation of Section 90.35(c)(64) and questions its applicability to D&I's operations, D&I's argument is a direct challenge to the validity thereof. The proper forum for such a challenge is a rulemaking proceeding.<sup>37</sup> Inasmuch as D&I's challenge has not been appropriately presented in a rulemaking proceeding, we decline to consider such challenge herein.

13. D&I also requests that the Division refrain from referring it to the Enforcement Bureau.<sup>38</sup> D&I asserts that such a referral is not warranted because it did respond to the Branch's directive.<sup>39</sup> It

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<sup>31</sup> See Motion for Leave to file Supplement to Petition for Reconsideration, dated October 22, 2001; Letter to D&I Electronics, Inc., from Tom Ballard, Coordinator, Lemont Emergency Management Agency, dated September 21, 2001. Although supplements must be filed within the thirty-day period required for petitions for reconsideration, an untimely supplement may be considered upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement. 47 C.F.R. § 1.106(f). We find that D&I has complied with Section 1.106(f) and hereby accept the supplement as properly filed.

<sup>32</sup> Petition at 2-3.

<sup>33</sup> See *Recon Order*, 16 FCC Rcd at 15247 ¶ 12.

<sup>34</sup> Petition at 3-4.

<sup>35</sup> *Id.*

<sup>36</sup> See para. 7, *supra*, citing 47 C.F.R. § 90.35(c)(64) (emphasis added).

<sup>37</sup> See *Telecom Services, Inc.*, 16 FCC Rcd 18623, 18624 ¶ 9 (PSPWD 2001).

<sup>38</sup> Petition at 6-8.

<sup>39</sup> *Id.* at 6. Even if D&I's request was not moot, it would nonetheless be denied. We disagree that D&I's petition was responsive to the Branch's directive. The Branch's directive was very clear—D&I was instructed to notify (continued....)

further asserts that such a referral is unfair because, in the *Recon Order*, the Division found error in the Branch's decision. Because the Division's decision was based on a different legal theory, D&I claims it did not have adequate notice thereof, and that this lack of notice was prejudicial.<sup>40</sup> We find that this request is also moot because referral to the Enforcement Bureau occurred with the release of the *Recon Order*. We nonetheless will also refer D&I's Petition to the Enforcement Bureau to ensure that it is made aware of the most recent developments in this matter and D&I's responses to the Division's findings in the *Recon Order*.

#### IV. CONCLUSION & ORDERING CLAUSES

14. Inasmuch as the interference problem between D&I and Lemont has been resolved, we find that many of the issues raised in D&I's latest petition for reconsideration is moot. Furthermore, we find that D&I has presented repetitive arguments that do not warrant reconsideration. Finally, we conclude that D&I has inappropriately challenged the validity of Section 90.35(c)(64) of the Commission's Rules in this proceeding.

15. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed on September 12, 2001, on behalf of D&I Electronics, Inc. IS DISMISSED IN PART AND DENIED IN PART.

16. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

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the Branch within thirty days that the interference to Lemont's emergency communication system had ceased. Branch Letter at 1. Instead, D&I requested that the Division reconsider its status relative to Lemont's. Thus, D&I's actions were not responsive to the Branch's directive.

<sup>40</sup> *Id.* at 6-7.