

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: August 8, 2001

Released: August 13, 2001

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

I. INTRODUCTION

1. On November 13, 2000, D & I Electronics, Inc. (D&I) filed a petition for reconsideration of the October 13, 2000, determination by the Chief, Licensing and Technical Analysis Branch (Branch) that D&I's operations on 465.9875 MHz, in the Will County, Illinois area, are secondary to the operations of the Village of Lemont Emergency Management Agency (Lemont) on 465.975 MHz. D&I alleges in its Petition that it is licensed, under Call Sign WPGQ917, to operate on a primary basis on 465.9875 MHz. For the reasons discussed below, we deny D&I's Petition.

2. On January 31, 2001, the Branch granted D&I a license, under Call Sign WPRU305, to operate a fixed station (FXO) on frequency 465.9875 MHz at a specific site located in Lemont, Illinois. Lemont filed a petition for reconsideration of this action on February 26, 2001. For the reasons set forth below, we dismiss Lemont's Petition.

II. BACKGROUND

3. On November 3, 1994, the Commission granted Lemont authority, under Call Sign WPFS667, to conduct emergency management operations on a frequency pair that was allocated to the

1 Petition for Reconsideration filed by D & I Electronics, Inc. on November 13, 2000 (Petition).

2 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 Communications (dated Oct. 13, 2000) (Branch Letter).

3 Petition at 1.

4 Letter from Larry Wall, Deputy Coordinator, Lemont Emergency Management, to Secretary, FCC, filed Feb. 26, 2001) (Lemont Petition).

5 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.

Business Radio Service and reserved for persons rendering a central station commercial protection service.<sup>6</sup> In this connection, the Commission's records reflect that Lemont received a waiver of Section 90.17(b) of the Commission's Rules<sup>7</sup> "to permit [Lemont] to license central station alarm frequency pair 460/465.975 MHz in the PL [former Local Government Radio] service for operation of a mobile relay."<sup>8</sup> Under this license, Lemont operates a mobile relay that receives mobile and dispatch signals on 465.975 MHz and retransmits these signals at a higher power on 460.975 MHz, which Lemont's mobiles and control station receive.

4. In 1995, the Commission granted D&I authority, 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>9</sup> D&I is a central station alarm company<sup>10</sup> and Call Sign WPGQ917 authorizes it to operate 3600 low-power transmitters, which are used to send alarm signals from customer premises to centrally located alarm monitoring facilities.<sup>11</sup> There is 12.5 kHz adjacent channel separation between D&I's frequency assignment (465.9875 MHz) and the frequency on which Lemont's mobile relay "listens" for mobile and dispatch signals (465.9750 MHz). Originally, D&I's authorized bandwidth was 16 kHz; however, it subsequently requested and received a modified license indicating an authorized bandwidth of 7.2 kHz.<sup>12</sup>

5. By letter dated June 28, 1999, the Association of Public-Safety Communications Officials International, Inc. (APCO) requested that the Commission investigate an interference problem between

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<sup>6</sup> See 47 C.F.R. § 90.75(28) (1994). The frequency pair is currently allocated to the Industrial/Business Pool and reserved for assignment to persons rendering a central station commercial protection service. 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).

<sup>7</sup> 47 C.F.R. § 90.17(b) (1994). This rule contained a table indicating the frequencies that were available for assignment to stations in the Local Government Radio Service.

<sup>8</sup> See Village of Lemont, *Bureau Chief Waiver of Commission's Rules*, FCC Form PR7, dated October 26, 1994 (Waiver). The Waiver noted that Central Station Alarm Association, the Commission's certified frequency coordinator for Business Radio Service frequencies reserved for central station alarm operation, concurred with Lemont's proposal. Additionally, it noted that granting the waiver request was "consistent with numerous precedent waivers." *Id.*

<sup>9</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>10</sup> "Applicant is a UL-listed central station providing central station commercial protection service to the public." See, e.g., D & I Electronics, Inc., FCC Form 601-Schedule H (File No. 0298854).

<sup>11</sup> See, e.g., 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, Alarm Industry Communications Committee of the Central Station Alarm Association, Further Petition for Clarification and/or Reconsideration, 2, filed on March 7, 2001. Radio-based systems are used where preferable to telephone lines or where insurance underwriters require businesses to use two methods of sending an alarm signal for an added measure of security. *Id.*

<sup>12</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.

Lemont's Station WPFS667 and D&I's Station WPGQ917.<sup>13</sup> APCO stated in its June 28, 1999, letter that the interference sounded like data bursts from D&I's Station WPGQ917 bleeding over into the input of Lemont's adjacent Station WPFS667.<sup>14</sup> Additionally, APCO stated that "D&I Electronics was issued frequency 465.9875 MHz per FCC Rule 90.267, which is on a secondary basis to primary users. D&I Electronics has been notified by APCO that they are responsible for correcting the interference, however, nothing has been done to resolve the problem."<sup>15</sup> Subsequently, on July 5, 2000, the Commission received a letter from Lemont, complaining that its Station WPFS667 was receiving interference from D&I's Station WPGQ917.<sup>16</sup> In this connection, Lemont requested a Commission determination as to whether its Station WPFS667 was co-primary or primary/secondary to D&I's Station WPGQ917.<sup>17</sup>

6. *The Branch Letter.* On October 13, 2000, the Branch determined that D&I's operations on Station WPGQ917 are secondary to Lemont's operations on Station WPFS667.<sup>18</sup> Specifically, the Branch noted that D&I had "not fully complied with Section 90.267(b) of the Commission's Rules to obtain primary status and protection from co-channel licensees."<sup>19</sup> Section 90.267(b) provides that licensees operating with a bandwidth 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>20</sup> In this connection, 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 to co-channel users and that it was still considered secondary to adjacent channel users.<sup>21</sup> Accordingly, the Branch Letter required D&I to notify the Commission within thirty days that any interference caused by its station's operations had ceased.<sup>22</sup>

7. *The Petition.* On November 13, 2000, D&I filed the instant petition for reconsideration of the Branch's determination that D&I's Station WPGQ917 is secondary to Lemont's Station WPFS667.<sup>23</sup> D&I contends that its Station WPGQ917 was co-primary with Lemont's station even though D&I did not

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<sup>13</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>14</sup> *Id.* at 1.

<sup>15</sup> *Id.*

<sup>16</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>17</sup> *Id.*

<sup>18</sup> See Branch Letter at 1.

<sup>19</sup> *Id.*

<sup>20</sup> See 47 C.F.R. § 90.267(b).

<sup>21</sup> See Branch Letter at 1.

<sup>22</sup> *Id.*

<sup>23</sup> Petition at 1-7.

supply coordinates to the Commission pursuant to Section 90.267(b) of the Commission's Rules.<sup>24</sup> D&I explains that it uses Station WPGQ917 to provide fire and burglary protection to its customers and that requiring disclosure of the coordinates for its customers' alarm systems could provide burglars with a list of attractive properties, thereby jeopardizing citizen safety.<sup>25</sup> In this connection, D&I avers that the Commission has recognized that for certain types of low power operations, it is neither feasible nor desirable for a licensee to furnish coordinates for all transmitters in the system.<sup>26</sup> Thus, D&I contends that the Branch erred in finding it secondary because it did not supply coordinates for every site. Moreover, the just described concerns apparently notwithstanding, the Petition goes on to describe an application that D&I filed, subsequent to the Branch Letter, that supplied the coordinates for several low-power, operational fixed sites in and around Lemont. These sites include the site that Lemont identified as the likely source of interference, which D&I previously operated under the authority of Call Sign WPGQ917.<sup>27</sup>

8. D&I further contends that the Branch erred, in finding D&I secondary to Lemont, because Section 90.267(b) of the Commission's Rules is inapplicable to determining the primary or secondary status of Station WPGQ917. In this connection, D&I avers that this rule provision allows eligible wideband operations, *i.e.*, operations with bandwidth wider than 11.25 kHz, to be grandfathered on channels that the Commission designated for narrowband operations, *i.e.*, those with bandwidth of 11.25 kHz or less, for licenses first issued after August 5, 1999. These grandfathering provisions are inapplicable, according to D&I, because Station WPGQ917 operates narrowband (7.2 kHz bandwidth).<sup>28</sup> In this connection, D&I asserts that its view is supported by Commission statements that low power operations can achieve primary status on a low power pool channel by narrowbanding their operations and that low power stations are only secondary to adjacent channel operations if wideband equipment is used.<sup>29</sup>

9. D&I further argues that any interference experienced by Lemont is due to Lemont "using antiquated broadband equipment on a channel which is now subject to narrowbanding under the Commission's Refarming Rules."<sup>30</sup> D&I also argues that its operations are co-primary with Lemont's operations, therefore "[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

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<sup>24</sup> *Id.* at 1, 5.

<sup>25</sup> 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*)).

<sup>26</sup> Petition at 2.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.* at 2, 4.

<sup>29</sup> *Id.* 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>30</sup> Petition at 2.

interference.”<sup>31</sup> Moreover, D&I notes that Lemont is operating on a channel reserved for central station alarm operations.<sup>32</sup>

### III. DISCUSSION

#### A. D&I Petition

10. As an initial matter, we note that D&I failed to address the Branch’s request for notification that any interference from its station had ceased.<sup>33</sup> The filing of the Petition did not stay the effectiveness of the Branch Letter and we note that D&I did not file a motion for stay.<sup>34</sup> Moreover, the general denials contained in the Petition notwithstanding, we note with concern the allegations made by the Village of Lemont that D&I Electronics, Inc. is causing harmful interference to its emergency communications system. Accordingly, we are referring this matter to the Commission’s Enforcement Bureau for such further action as it deems appropriate.

11. Turning to the Petition, we agree with the Branch’s determination that D&I’s operations on 465.9875 MHz are secondary to Lemont’s operations on 465.975 MHz. However, we set aside the discussion in the second paragraph of the Branch Letter concerning Section 90.267(b), which is harmless error. We agree with D&I that the primary or secondary status of Station WPGQ917, as to Lemont’s Station WPFS667, is not dependent on whether D&I supplied coordinates to the Commission for its customer sites under Section 90.267(b). Section 90.267(b) is a grandfathering provision that gives eligible wideband operations, that were licensed as of August 5, 1999, co-primary status with co-channel narrowband operations licensed thereafter. By comparison, D&I’s Station WPGQ917 is a narrowband operation. Moreover, we note that Section 90.267(b) confers co-primary status among co-channel licensees, whereas D&I and Lemont are licensed on adjacent channels. We otherwise affirm the Branch Letter as set forth below.

12. In the *Refarming R&O*, the Commission stated, as a general matter, that 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>35</sup> D&I reads this to mean that Lemont, as the wideband licensee, either must install narrowband equipment or suffer the consequences of interference from D&I’s adjacent channel narrowband operation. We disagree.<sup>36</sup>

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<sup>31</sup> 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>32</sup> Petition at 3 (the Old Quarry Middle School site).

<sup>33</sup> See Branch Letter at 1.

<sup>34</sup> See 47 C.F.R. § 1.106(n).

<sup>35</sup> *Refarming R&O*, 10 FCC Rcd at 10100 ¶ 40.

<sup>36</sup> See *id.* at 10100 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.

13. Call Sign WPGQ917 authorizes D&I to operate on the frequency 465.9875 MHz, which Section 90.35(b) of the Commission's Rules identifies as an Industrial/Business Pool frequency governed by limitations set forth in Sections 90.35(c)(30),(64) and (66).<sup>37</sup> "Limitation 64," *i.e.*, 47 C.F.R. § 90.35(c)(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>38</sup> This limitation is unqualified: fixed operations are secondary to base/mobile operations whether co-channel, adjacent channel.<sup>39</sup> Thus, D&I's fixed operations on Station WPGQ917 are secondary to the base/mobile operations of Lemont's Station WPFS667. In this connection, we agree with D&I's contention that it should not be required to provide geographical coordinates for all of its customer's alarm systems. In the *Refarming Fifth MO&O*, the Commission disclaimed any intention of requiring low power licensees to provide geographical coordinates for all fixed transmitters in a system<sup>40</sup> and noted that the rules exempted central alarm station applicants from supplying the geographical coordinates of all transmitters in a system. Instead, the Commission noted, such stations could "be licensed on an area basis whereby a licensee need only specify the coordinates of the center of an operating area and a radius extending from that center that defines a circle corresponding to the licensee's operating area."<sup>41</sup>

14. We also acknowledge D&I's point that Lemont is operating on a frequency pair that is reserved, under the Commission's Rules, for licensing to central station alarm eligibles. In this connection, the Commission recently observed that "central station alarm frequencies are inherently 'primary' relative to other services because they are limited to alarm-related use by Sections 90.35(c)(63), 90.35(c)(64), and 90.35(c)(66) . . . ."<sup>42</sup> However, the instant matter is, by definition, an exception to the general rules because Lemont is authorized to operate on a central alarm frequency pair pursuant to the Waiver. Specifically, under the Waiver, Lemont is licensed on 460/465.975 in the former Local Government Radio Service, which is now part of the Public Safety Pool. Accordingly, although the rules reserve the subject frequency pair for central station alarm operations, Lemont's duly authorized mobile relay station 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>43</sup>

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<sup>37</sup> See the Industrial/Business Pool Frequency Table located at 47 C.F.R. § 90.35(b)(iii), at frequency 465.9875 MHz. See also 47 C.F.R. §§ 90.35(c)(30), (64), (66).

<sup>38</sup> 47 C.F.R. § 90.35(c)(64).

<sup>39</sup> See *id.*

<sup>40</sup> 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*).

<sup>41</sup> *Id.* See also *Hexagram Letter* (confirmed that area-wide type of licensing sought by Hexagram was still permitted, even after the Commission's *Refarming* Proceeding, for low power automatic meter reading systems).

<sup>42</sup> 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, *Sixth Memorandum Opinion and Order*, FCC 01-174, ¶ 6 (rel. May 25, 2001) (*Refarming Sixth MO&O*).

<sup>43</sup> Although D&I is licensed for mobile operations under Station WPGQ917, the operations that interfere with Lemont are fixed, and these fixed operations are governed by 47 C.F.R. §§ 90.35(c)(64) and 90.267(b).

## B. Lemont Petition

15. As noted above, on January 31, 2001, the Branch granted D&I a license under Call Sign WPRU305, which authorizes D&I to operate an operational fixed (FXO) station on frequency 465.9875 MHz at the Lemont Oakwood School in Lemont, Illinois.<sup>44</sup> The Commission's licensing records reflect that Station WPRU305 is located approximately 4.2 km (2.6 mi) from the site of Lemont's mobile relay for Station WPFS667. On February 26, 2001, Lemont filed a petition for reconsideration against this grant. However, the record reflects that Lemont failed to serve its Petition on D&I as required under Section 1.106(f) of the Commission's Rules.<sup>45</sup> Accordingly, we find the Lemont Petition to be procedurally defective and we dismiss it.<sup>46</sup> Moreover, had the Lemont Petition not been defective on this basis, we would have dismissed it in part as moot relative to D&I in light of our action on D&I's Petition.

## IV. CONCLUSION

16. Based upon the foregoing, we affirm the Branch's October 13, 2000, determination that D&I's Station WPGQ917 is secondary to Lemont's Station WPFS667. Additionally, we dismiss the Lemont Petition as procedurally defective. Nonetheless, we are referring this matter to the Commission's Enforcement Bureau for such further action as that Bureau deems appropriate in view of D&I's failure to address the Branch's directive,<sup>47</sup> and Lemont's subsequent allegation that D&I continues to cause harmful interference to Lemont's emergency communications system.

## V. ORDERING CLAUSES

17. 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 November 13, 2000, on behalf of D&I Electronics, Inc. IS DENIED.

18. IT IS FURTHER 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(f) of the Commission's Rules, 47 C.F.R. § 1.106(f), that the petition for reconsideration filed on February 26, 2001, on behalf of the Village of Lemont Emergency Management Agency IS DISMISSED.

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<sup>44</sup> See FCC Application File No. 298854 (filed Nov. 21, 2000, and granted Jan. 30, 2001).

<sup>45</sup> 47 C.F.R. § 1.106(f) (petition for reconsideration shall be served upon parties to the proceeding).

<sup>46</sup> The Lemont Petition also seeks reconsideration of a grant issued under Call Sign WPRV224. The Commission's records reflect that on February 9, 2001, the Branch granted Alarm Detection Systems, Inc. (Alarm) a license to operate an operational fixed (FXO) station, under Call Sign WPRV224, on frequency 465.9875 MHz at a site proximate to Lemont's Station WPFS667. See FCC Application File No. 314468 (filed Dec. 21, 2000, and granted Feb. 9, 2001). However, the record before us reflects that Lemont failed to serve the Petition on Alarm and thus the Petition is defective. Moreover, Lemont does not allege, and the record does not reflect, any affiliation between D&I and Alarm; thus it appears that Alarm is not a party to the instant proceeding.

<sup>47</sup> See para. 10, *supra*; Branch Letter at 1 (required D&I to notify the Commission within thirty days that any interference from its station had ceased).

19. 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