

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street 11th floor
Arlington VA 22209
703-812-0400 (voice)
703-812-0486 (fax)

MITCHELL LAZARUS
703-812-0440
LAZARUS@FHHLAW.COM

November 19, 2003

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: ET Docket No. 03-108, Cognitive Radio Technologies
Ex parte Communication

Dear Ms. Dortch:

On behalf of Vanu, Inc. and pursuant to Section 1.1206(b)(1) of the Commission's Rules, I am electronically filing this written *ex parte* communication. Vanu, Inc. is a leading developer of software for software-defined radios, and intends to participate in the development of cognitive radios.

Vanu, Inc. is concerned about the first sentence of Section 2.932(e) of the Commission's Rules, which provides:

Manufacturers must take steps to ensure that only software that has been approved with a software defined radio can be loaded into such a radio.¹

It is unclear exactly what obligations the "must take steps" language imposes on a manufacturer. Vanu, Inc. fears the vagueness inherent in this wording might effectively require manufacturers to play it safe by taking unnecessarily extreme security measures, which in turn would create an undesirable economic burden on a nascent industry. While we agree manufacturers should be obligated to use commercially reasonable efforts toward security, we ask the Commission to clarify that its intent does not go beyond that. In particular, a manufacturer should not be required to provide absolute assurance that even a highly motivated

¹ 47 C.F.R. Sec. 2.932(e).

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and knowledgeable individual with great resources can never modify a device to take it out of compliance.

For these reasons we ask the Commission to include in its Rules a provision along these lines:

A manufacturer will be deemed to comply with the first sentence of Section 2.932(e) if it has taken measures that are commercially reasonable in light of standards employed in the software defined radio industry and other analogous industries at the time, provided that it has not marketed a device containing a software vulnerability that was publicly known, or known to the manufacturer, at the time of marketing.

We further ask the Commission to seek public comment on the related question: "What standard of care should apply to manufacturers of software-defined radios with respect to security measures that govern the software that may be loaded into such radios?"

If there are any questions about this letter, please call me at the number above.

Respectfully submitted,

Mitchell Lazarus
Counsel for Vanu, Inc.

cc: Ed Thomas, Chief, OET
Julius P. Knapp, Deputy Chief, OET
Bruce A. Franca, Deputy Chief, OET
James D. Schlichting, Deputy Chief, OET
Michael J. Marcus, Associate Chief (Technology), OET
Alan J. Scrimme, Chief, Policy and Rules Division, OET