

Draft Report & Order in ET Docket No. 15-26

- ***The Alliance of Automobile Manufacturers (“Alliance”) is concerned about one narrow aspect of the Draft Report & Order’s (“Draft R&O”) phase out schedule for unlicensed wideband and ultra-wideband (“UWB”) vehicular radar operations in the 23.12-29 GHz and 22-29 GHz bands (“24 GHz Band”), as it pertains to defective or malfunctioning equipment. The National Traffic and Motor Safety Act of 1966, Pub. L. No. 89-563 (Sept. 9, 1966), as amended, NHTSA’s organic statute, requires auto manufacturers to replace such defective or malfunctioning equipment for the life of the vehicle. See 49 USC §30120(a). Moreover, the statute requires auto manufacturers “to remedy the defect . . . without charge when the vehicle or equipment is presented for remedy.” Id. §30120(a); see also id. §30118. The Fixing America’s Surface Transportation Act (“FAST Act”) extended the obligation to remedy without charge for a full 15 years after the vehicle was purchased by its first buyer. See id. §30120(g).***
  - Although the Alliance and its members recognize that the Commission’s goal of consolidating future vehicular radar operations in the 76-81 GHz band promotes the efficient use of spectrum, these gains should not come at the expense of auto manufacturer compliance with these requirements.
- ***The Draft R&O’s 24 GHz wideband and UWB vehicular radar phase out schedule may have the unintended consequence of preventing auto manufacturers from providing adequate remedies for defective or malfunctioning vehicular radar equipment.***
  - If the Draft R & O is adopted as written, the use of unlicensed 24 GHz wideband and UWB vehicular radars that are already installed or in use by January 1, 2022 will be grandfathered for the life of the equipment. Draft R & O at ¶31. **However, starting on or after January 1, 2022, the Commission will not permit the manufacture, importation, marketing, sale, or installation of, or Class II permissive changes for, such devices. See Draft R & O at ¶30.**
  - This poses potential problems.
    - It may not be technically feasible to replace a defective or malfunctioning 24 GHz wideband or UWB vehicular radar with a 76-81 GHz vehicular radar in older vehicle models, but that would be the only remedy possible after January 1, 2022.
- ***A narrow exception to the phase out that allows parties to manufacture, import, market, sell, install, and make permissive changes to wideband or UWB vehicular radars operating in the 23.12-29 GHz and 22-29 GHz bands (respectively) that were installed in vehicles on or before January 1, 2022 and that are defective or malfunctioning (applicable for the life of the vehicle on which the 24 GHz wideband or UWB vehicle radar was installed) would further the public interest.***
  - A narrow exception that is limited to addressing 24 GHz wideband and UWB vehicular radar devices that are defective or malfunctioning after January 1, 2022 would not disrupt the “graceful migration” of unlicensed 24 GHz wideband and UWB vehicular radars to the 76-81 GHz band, but would allow for the efficient replacement of such equipment.
  - Accordingly, the Alliance proposes the following modifications to section 15.37 of the FCC’s rules, as set forth in Appendix A of the Draft R & O (new language is underlined and bolded):

**§ 15.37 Transition provision for compliance with the rules.**

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(l) The certification of wideband vehicular radars designed to operate in the 23.12-29 GHz band under § 15.252 and ultra-wideband vehicular radars designed to operate in the 22-29 GHz band under § 15.515 of the rules shall not be permitted on or after [INSERT DATE ONE YEAR AFTER DATE OF FEDERAL REGISTER PUBLICATION].

(m) The manufacture, importation, marketing, sale, and installation of wideband or ultra-wideband vehicular radars that are designed to operate in the 23.12-29 GHz band under § 15.252 and in the 22-29 GHz band under § 15.515 of the rules shall not be permitted after January 1, 2022. **Notwithstanding the foregoing, the manufacture, importation, marketing, sale, and installation of wideband or ultra-wideband vehicular radars that are designed to operate in the 23.12-29 GHz band under § 15.252 or in the 22-29 GHz band under § 15.515 of the rules are authorized on or after January 1, 2022 for the purposes of repairing or replacing such radar installed in a vehicle on or before January 1, 2022 that is either defective, damaged or malfunctioning, included within a vehicle service procedure, or subject to a product recall whether voluntary or pursuant to a legal obligation under the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. § 301 et. seq.**

(n) Wideband or ultra-wideband vehicular radars operating in the 23.12-29 GHz band under § 15.252 and/or in the 22-29 GHz band under § 15.515 of the rules that are already installed or in use may continue to operate in accordance with their previously obtained certification. Class II permissive changes for such equipment shall not be permitted after January 1, 2022. **Notwithstanding the foregoing, Class II permissive changes to wideband or ultra-wideband vehicular radars that are designed to operate in the 23.12-29 GHz band under § 15.252 or in the 22-29 GHz band under § 15.515 of the rules are authorized on or after January 1, 2022 for the purposes of repairing or replacing such radar installed in a vehicle on or before January 1, 2022 that is either defective, damaged or malfunctioning, included within a vehicle service procedure, or subject to a product recall whether voluntary or pursuant to a legal obligation under the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. § 301 et. seq.**