

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

In the Matter of )
)
EXPERT LINEARS AMERICA, LLC ) WT Docket No. 16-243
)
Request for Waiver of the 15 dB Amplification )
Limit for External RF Power Amplifiers in the )
Amateur Radio Service )

ORDER

Adopted: December 23, 2016

Released: December 27, 2016

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. This Order addresses a request filed by Expert Linears America, LLC, (Expert)1 for waiver of section 97.317(a)(2) of the Commission’s rules.2 Expert seeks a waiver of the 15 dB gain limitation on amateur amplifiers currently embodied in Section 97.317(a)(2), to permit importation, marketing, and use of Expert’s Model 1.3K FA amplifier. Expert seeks this waiver pending the resolution of its petition for rulemaking proposing to eliminate the 15 dB gain limitation.3 For the reasons set forth below, we deny the waiver request.

2. Background. Section 97.317 establishes standards for certification of external radio frequency (RF) power amplifiers used in the Amateur Radio Service. It requires, inter alia, that such amplifiers “not be capable of amplifying the input RF power (driving signal) by more than 15 dB gain.”4 Expert is the United States sales representative and maintenance and repair services provider for SPE Expert Linear Amplifiers, which produces the Model 1.3K FA. The Model 1.3K FA that is sold internationally is capable of considerably more than 15 dB amplification, but the version that Expert imports into the United States has been modified to comply with section 97.317(a)(2).5

3. In its petition for rulemaking, Expert argues that the 15 dB limitation should be eliminated because advancements in amateur radio transmitter technology have led to the availability of highly compact, sophisticated low-power transmitters that require more than 15 dB of amplification to achieve the maximum permissible power output of 1500 watts, and that the original purpose of the limitation (to prevent use of high-power amplifiers in the Citizens Band Radio Service) is accomplished through other rules.6 Most commenters support the proposed rule change, but a minority are concerned

1 Letter from James M. Talens, counsel for Expert, to Roger Sherman, Chief, Wireless Telecommunications Bureau (June 11, 2016) (Request).

2 47 CFR § 97.317(a)(2).

3 Petition of Expert Linears America, LLC, for Rulemaking, RM-11767 (filed Apr. 7, 2016) (Petition). The Commission sought comment on the rulemaking petition. See Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed, Public Notice, Report No. 3041 (CGB Apr. 27, 2016). That proceeding remains pending.

4 47 CFR § 97.317(a)(2).

5 Request at 3. Expert refers in its request to “other of its amplifiers,” but does not provide information regarding any amplifier other than the Model 1.3K FA.

6 See Petition at 1-3.

that eliminating the 15 dB limitation would lead to a general increase in power levels, including transmissions that intentionally or unintentionally exceed the maximum power limit. The petition remains under consideration.

4. Expert seeks a waiver in order to be able to import and market the unmodified version of the Model 1.3K FA pending the resolution of the rulemaking petition.<sup>7</sup> In its waiver request, Expert argues that the public interest would be served by permitting use of a higher-powered amplifier, because it would improve the communications capabilities of amateurs using portable, low-power transmitters by enabling them to approach the maximum legal power output.<sup>8</sup> Expert also notes that the Model 1.3K FA has proprietary software that prevents it from transmitting in the 26-28 MHz band, so it cannot be used in the Citizens Band Radio Service.<sup>9</sup>

5. On July 29, 2016, we sought comment on Expert's waiver request.<sup>10</sup> Most commenters support the waiver request, for reasons that reiterate the arguments advanced in the rulemaking proceeding in support of eliminating the 15 dB limitation.<sup>11</sup>

6. Two commenters oppose the waiver request. One commenter opposes the waiver request for reasons that reiterate the arguments advanced in the rulemaking proceeding in opposition to eliminating the 15 dB limitation.<sup>12</sup> The other, FlexRadio Systems (FlexRadio), supports the proposed rule change but argues that granting Expert's waiver request while the rulemaking remains pending would unfairly advantage one manufacturer over others and be contrary to the public interest.<sup>13</sup> Both commenters argue that existing amplifiers in the market are able to operate effectively while complying with the Commission's rules, and there is therefore no immediate need to waive section 97.317(a)(2).<sup>14</sup>

7. *Discussion.* Section 1.925(b)(3) of the Commission's rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (2) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>15</sup> We find that a waiver is not warranted under the circumstances presented.

8. In light of the conflicting comments regarding the desirability of eliminating the 15 dB limitation, we conclude that waiving the limitation at this stage of the rulemaking proceeding would

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<sup>7</sup> Expert also seeks authority to export the unmodified Model 1.3K FA from the United States to other countries in North and South America. See Request at 3-4. We note, however, that the Commission's rules already permit importation of equipment that is not authorized for use in the United States if the equipment is imported solely for export and is not marketed or offered for sale in this country. See 47 CFR § 2.1204(a)(5).

<sup>8</sup> See Request at 4.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Wireless Telecommunications Bureau Seeks Comment on Expert Linears America, LLC, Request for Waiver of the 15 dB Amplification Limit for External RF Power Amplifiers in the Amateur Radio Service*, Public Notice, 31 FCC Rcd 8629 (WTB MD 2016).

<sup>11</sup> See Comments of PD Sohn; Comments of Alan V. Cook; Comments of Fred Goldstein; Comments of Michael Heusser; Comments of Hidenori Takahashi; Comments of Timothy Robert O'Rourke; Comments of James C. Owen, III; Comments and Reply Comments of Expert Linears America, LLC.

<sup>12</sup> See Comments of Nickolaus E. Leggett at 2-3.

<sup>13</sup> Comments of FlexRadio Systems at 2.

<sup>14</sup> Comments of Nickolaus E. Leggett at 3; Comments of FlexRadio Systems at 2.

<sup>15</sup> 47 CFR § 1.925(b)(3).

prejudice the rulemaking proceeding and prematurely dispose of commenters' concerns.<sup>16</sup> Moreover, we agree with FlexRadio that granting Expert's waiver request while the rulemaking petition remains pending would provide an unfair market advantage for one equipment model over other manufacturers' RF power amplifiers that would still be limited by section 97.317(a)(2). Given that all current equipment providers, including Expert, are able to sell under the Commission's existing rules, we see no basis for a finding that it is unduly burdensome or contrary to the public interest to apply section 97.317(a)(2) to Expert while the rulemaking proceeding remains pending. Rather than preemptively waiving the rule for one manufacturer, we believe that the public interest is better served by giving full consideration to the pending issues and applying the result of the rulemaking proceeding to all Amateur Radio Service equipment. Finally, we note that a waiver generally is not warranted merely to accommodate technical parameters that are based solely on harmonization with the manufacturer's products available abroad.<sup>17</sup>

9. *Conclusion.* We conclude that Expert has not shown good cause for waiver of the rules to allow amplification in excess of the 15 dB limit as it applies to Expert's Model 1.3K FA amplifier. Therefore, we deny the request to waive section 97.317(a)(2). This action is without prejudice to Expert's pending rulemaking petition.

10. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the waiver request filed by Expert Linears America, LLC, on June 11, 2016, IS DENIED.

11. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>16</sup> Cf. *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSPAC Regions and the Availability of Additional Sprint Vacated Channels*, Public Notice, 31 FCC Rcd 12891, 12896 (PSHSB/WTB 2016).

<sup>17</sup> See *Whiffletree Corporation Inc.*, Order, 28 FCC Rcd 3231, 3232, para. 6 (WTB MD 2013); *ReconRobotics, Inc.*, Order on Reconsideration, 26 FCC Rcd 5895, 5898, para. 10 (WTB/PSHSB/OET 2011) (citing *Terry Mahn, Esq.*, Letter Order, 21 FCC Rcd 14409 (WTB MD 2006)).