

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

In the Matter of)
)
Revision of Part 15 of the Commission’s Rules to)
Permit Unlicensed National Information) ET Docket No. 13-49
Infrastructure (U-NII) Devices in the 5 GHz Band)

To: The Commission

JOINT PETITION FOR WAIVER OF EFFECTIVE DATES

The undersigned parties hereto (“Joint Petitioners”), pursuant to Sections 1.3 and 1.41 of the Commission’s Rules, hereby respectfully request waiver of Section 15.37(h) to extend by six months the deadlines by which Part 15 devices in the 5725-5850 MHz band must meet new equipment certification requirements and marketing restrictions.¹ The Joint Petitioners believe that a brief six-month extension will enable the Commission, other federal agencies and commercial interests to consider the Joint Petitioners’ recent consensus proposal to amend Section 15.407 to help compensate for the elimination of the less-restrictive out-of-band emission (“OOBE”) requirements in Section 15.247, without increasing the potential for harmful interference to Terminal Doppler Weather Radar (“TDWR”) facilities.²

¹ See *Revision of Part 15 of the Commission’s Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, First Report and Order, 29 FCC Rcd 4127 (2014) (“*R&O*”).

² See Letter from Joint Petitioners to Marlene H. Dortch, FCC Secretary, ET Docket No. 13-49 (filed March 31, 2015); Letter from Joint Petitioners to Marlene H. Dortch, FCC Secretary, ET Docket No. 13-49 (filed March 23, 2015) (earlier version of consensus proposal; minor changes and additional information is contained in the March 31 ex parte letter) (collectively, “Consensus Proposal”).

Introduction

Prior to adoption of the *R&O*, Commission rules permitted Part 15 devices in the 5725-5850 MHz band to be certified under either Section 15.247 or Section 15.407. In the *R&O*, the Commission consolidated equipment certifications for the 5725-5850 MHz band, thereby eliminating certifications for such devices under the less-restrictive OOB limits in Section 15.247. To “implement the changes as soon as possible,”³ the Commission adopted Section 15.37(h), which states in relevant part that:

Effective June 2, 2015 devices using digital modulation techniques in the 5725-5850 MHz bands will no longer be certified under the provisions of §15.247. . . . Effective June 2, 2016 systems using digital modulation techniques in the 5725-5850 MHz band certified under the provisions of §15.247 may no longer be imported or marketed within the United States.⁴

All of the Joint Petitioners filed for reconsideration of the Commission’s decision to eliminate Section 15.247 equipment certifications.⁵ Section 15.247 afforded users greater flexibility to operate long-range point-to-point links using high-gain antennas. Petitioners explained that the rule change will impose significant operational and financial hardships on wireless Internet service providers (“WISPs”), backhaul providers and on critical infrastructure interests. The reconsideration petitions are supported by an overwhelming record substantiating the economic and other costs that the new rule imposes on manufacturers, operators and consumers.

The Joint Petitioners include manufacturers of 5 GHz point-to-multipoint and point-to-point equipment, WISPs and critical infrastructure providers who have collaborated to develop a

³ *R&O* at 4162.

⁴ *Id.* 4162-63. The Commission also grandfathered existing devices. *See id.* at 4162.

⁵ *See* Petition for Partial Reconsideration of the Wireless Internet Service Providers Association, ET Docket No. 13-49 (filed June 2, 2014); Petition for Reconsideration of Cambium Networks Ltd., ET Docket No. 13-49 (filed June 2, 2014); Petition for Reconsideration of JAB Wireless, Inc., ET Docket No. 13-49 (filed June 2, 2014); Petition for Partial Reconsideration of Motorola Solutions, Inc., ET Docket No. 13-49 (filed June 2, 2014). The interests of Motorola Solutions are now held by Zebra Technologies.

detailed Consensus Proposal for changes to Section 15.407 and other Part 15 rules affecting the 5 GHz band. Among other things, the Consensus Proposal offers three new equipment certification options that will enable manufacturer and operator flexibility without increasing the potential for increased harmful interference to TDWR facilities. The Consensus Proposal represents the collective efforts of the Joint Petitioners over several months and includes detailed technical information and support.

Discussion

Section 1.3 of the Commission’s Rules permits the Commission to waive a rule for “good cause shown.”⁶ As the U.S. Court of Appeals for the D.C. Circuit stated in *Northeast Cellular*, “[t]he Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.”⁷ The Commission may grant a waiver where both application of the rule would be contrary to the public interest and special circumstances warrant a deviation from the rule.”⁸ The Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy.”⁹ Waiver of Section 15.37(h) to extend the June 2, 2015 and June 2, 2016 effective dates for a six-month period meets these standards.

First, the Joint Petitioners strongly believe that the Consensus Proposal will promote the public interest by allowing consumers to continue to obtain robust fixed wireless service and by enabling critical infrastructure companies to continue to deliver existing services. As has been well-documented in this proceeding, confining all equipment certifications to the more restrictive

⁶ 47 C.F.R. § 1.3.

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

⁸ *Id.*

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

Section 15.407 OOBE requirements will impose significant financial hardship on those entities using the 5725-5850 MHz band to provide ongoing service. Moreover, the Joint Petitioners have designed the Consensus Proposal to ensure that TDWR facilities will not experience interference from operations using equipment certified in accordance with the revised Section 15.407 requirements. Manufacturers and users will have options for compliance based on certification and/or deployment parameters that have been carefully tailored to balance flexibility with interference protection.

Second, it is consistent with the public interest for the Commission to suspend the implementation dates so that manufacturers are not required to meet a certification standard that may change if the Consensus Proposal is adopted. The Joint Petitioners believe that a brief six-month extension will allow manufacturers to adjust research and design activities to meet the standard that would apply if the rules are further amended.

Third, the Commission requires sufficient time to consider the Consensus Proposal both internally and in consultation with other federal agencies. Given the technical nature and scope of the proposed changes and the need for inter-agency discussions, this process can reasonably be expected to extend beyond the June 2, 2015 deadline that eliminates equipment certifications under Section 15.247. Unlike rule changes that originate with the Commission before they take effect, the Consensus Proposal was cooperatively developed by industry and, therefore, the Commission has not had an opportunity to consider the technical underpinnings of the proposed changes.¹⁰ If the requested waiver is not granted and the rules are subsequently amended,

¹⁰ In the recent E911 location accuracy proceeding, the Commission delayed adoption of rules so that it could consider an industry-developed “Roadmap” and “Parallel Path.” *See Wireless E911 Location Accuracy Requirements*, Fourth Report and Order, PS Docket No. 07-114, FCC 15-9 (rel. Feb. 3, 2015). The Commission gave “significant weight” to these proposals in fashioning final rules. *See id.* at 2-3.

manufacturers would have wasted the time and money to design equipment to meet one set of rules, only to abandon that equipment when the rules are amended. The public interest warrants such full consideration in light of the benefits that will stem from adoption of the Consensus Proposal.

Fourth, the submission of the Consensus Proposal represents “special circumstances” that warrant waiver or extension of the deadlines. The Consensus Proposal manifests significant effort by industry over the course of several months, and proposes alternative approaches that warrant serious consideration.

Fifth, waiver of Section 15.37(h) would promote the overall Commission policy of encouraging broadband deployment.¹¹ WISPs will retain the ability to serve their existing subscribers without having to replace existing equipment with inadequate equipment. Backhaul providers and critical infrastructure industries will not be required to operate with reduced power and to deploy many new links simply to maintain existing service levels. By preserving many of the benefits of Section 15.247 certification rules through the Consensus Proposal, providers will be able to continue to deliver existing services and to invest in equipment that extends service to areas that are currently unserved or underserved.

Finally, extension of the implementation dates would be consistent with previous cases. For example, the Commission found good cause to extend the compliance date under the Twenty-First Century Communications and Video Accessibility Act of 2010 because of difficulties associated with meeting new technical requirements.¹² Here, the Consensus Proposal

¹¹ See 47 U.S.C. § 1302.

¹² See *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, 27 FCC Rcd 9630, 9633-37 (2012). See also *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description*, 28 FCC Rcd 4871, 4901-05 (2013) (granting Weather Channel and DIRECTV waivers to provide

offers industry-developed certification and deployment alternatives that are more easily met and confer significant public interest benefits on users and consumers.

Conclusion

The Joint Petitioners respectfully seek waiver of Section 15.37(h) to extend the deadlines stated therein by six months to afford the Commission sufficient time to fully consider the Consensus Proposal.

April 14, 2015

Respectfully submitted,

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additional time to comply with Commission rules because of technological limitations); *Hearing Aid-Compatible Telephones (Waiver for Dual-Mode GSM Handsets)*, 20 FCC Rcd 15108, 15112-16 (2005) (extending compliance deadlines because of technological challenges associated with meeting the deadline).