

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of) WT Docket No. 10-4
the Commission’s Rules to Improve Wireless)
Coverage Through the Use of Signal Boosters)

REQUEST FOR WAIVER

Axell Wireless (“Axell”), by its counsel and pursuant to Sections 1.3 and 1.925 of the FCC’s rules^{1/} hereby requests waiver of Section 90.219(e)(5) of the Commission’s rules with respect to its Digital Multi Band Repeater for Public Safety (“DMBR”) device. Waiver of the rules is in the public interest, and the purpose of the Commission’s rules will continue to be observed.

Background and Waiver Request

Section 90.219, which governs signal boosters in the Private Land Mobile Radio (“PLMR”) Services, distinguishes between Class A (narrowband) signal boosters and Class B (wideband) signal boosters and requires Part 90 signal boosters to be labeled as either a Class A or a Class B device.^{2/} The rules require that the label state that the operator must have a license to use the booster or the consent of the licensee to do so. The label is also required to notify users that Class B boosters must be registered with the FCC.^{3/}

Axell’s DMBR signal booster is capable of operating as *either* a Class A or Class B signal booster. This versatility is software-controlled by a factory-embedded interface to select

^{1/} 47 C.F.R. §§ 1.3, 1.925.

^{2/} 47 C.F.R. § 90.219(e)(5).

^{3/} *Id.*

the mode in which the device operates. However, the rules only contemplate a signal booster's operation as either a Class A or Class B device and do not permit Axell to market and label the DMBR as *both* a Class A and Class B device.^{4/} As a result, Axell has been required to secure two equipment authorizations – one for the device as operated in the Class A mode and the other as operated in the Class B mode.^{5/} Once the device is sold as either a Class A or Class B device, the user is unable to employ the software to select Class A or Class B mode; the device operates consistent with the label it bears. That result defeats the flexibility that Axel has built into the DMBR signal booster. Moreover, it unnecessarily requires Axell to create two sets of labelled products for what are electrically identical devices.

Accordingly, Axell asks that the Commission waive Section 90.219(e)(5) to permit it to use a single label on its DMBR products indicating that the device may operate as either a Class A or Class B device.^{6/} Axell proposes that the following be part of the labeling:

WARNING. This is NOT a CONSUMER device. It is designed for installation by FCC LICENSEES and QUALIFIED INSTALLERS. You MUST have an FCC LICENSE or express consent of an FCC Licensee to operate this device. This booster can be configured by software as a Class A or a Class B signal booster. If configured as Class B signal booster (as defined in 47 CFR 90.219), you MUST register this signal booster online at www.fcc.gov/signal-boosters/registration. Unauthorized use may result in significant forfeiture penalties, including penalties in excess of \$100,000 for each continuing violation.

^{4/} See 47 C.F.R. § 90.219.

^{5/} The Commission's equipment authorization for the device operating in Class A mode may be viewed at the FCC's Office of Engineering and Technology ("OET") database website at https://apps.fcc.gov/oetcf/eas/reports/Eas731GrantForm.cfm?mode=COPY&RequestTimeout=500&application_id=PIiecWQ0h4HTd4atHxae5w%3D%3D&fcc_id=NEODMBA30073008PS, and the equipment authorization for the device operating in Class B mode may be viewed at https://apps.fcc.gov/oetcf/eas/reports/Eas731GrantForm.cfm?mode=COPY&RequestTimeout=500&application_id=Q2ULUTHgVCLBRxVOqMHEgA%3D%3D&fcc_id=NEODMBR30073008PS.

^{6/} Because they are electrically identical, the Commission may direct which of Axell's two DMBR products should be marketed in the future with the single label and Axell will seek modified equipment authorization based on the Commission's direction.

Axell also proposes including safeguards in the DMBR’s software user interface to remind the user to register the device if the user intends to use it as a Class B signal booster. If the user does not explicitly select operation of the device as a Class B signal booster, the DMBR’s software will not permit a filter width to be programmed greater than 75 kHz and will therefore permit operation only as a Class A (narrowband) signal booster.

Waiver Justification

The Commission may grant a request for waiver if the petitioner establishes that: (1) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.^{7/} The Commission may also waive a provision of the rules “for good cause shown.”^{8/}

In this case, the unique factual circumstances of the DMBR signal booster device and the protections to which Axell is willing to agree support a finding that application of Section 90.219 would be inequitable, unduly burdensome, or contrary to the public interest. In adopting its new signal booster rules, the Commission emphasized how “the deployment of Part 90 PLMR signal boosters has generated significant benefits . . . We seek to support the continued use of well-designed, properly installed signal boosters and believe the actions we take in this proceeding . . . will further reduce the potential for harmful interference caused by signal boosters.”^{9/} The

^{7/} 47 C.F.R. § 1.925(b)(3).

^{8/} 47 C.F.R. § 1.3.

^{9/} *Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission’s Rules to Improve Wireless Coverage Through the Use of Signal Boosters*, Report and Order, 28 FCC Rcd. 1663, ¶¶ 9, 146 (2013) (“Report and Order”).

labeling requirements in particular were intended to “increase rule compliance and remind signal booster operators about proper implementation of the devices.”^{10/}

Grant of the requested waiver would not frustrate the Commission’s goal of ensuring that signal boosters are well designed, properly installed, and limit the potential for interference. The devices have already been type approved for use, but with two different labels. Use of a single label will not affect the design, proper installation, or interference potential of the device. Use of a single label along with the user interface instructions that Axell will employ would similarly continue to result in rule compliance and remind signal booster operators about proper implementation of the devices. The proposed labelling would be nearly identical to that required by the rules, except to remind users that *if* the device is operated in Class B mode it must be registered.

Grant of this waiver would be consistent with the Commission’s action granting a similar request by Bird Technologies (“Bird”).^{11/} In that case the Commission found that allowing Bird to label and market its Signal Booster III as both Class A and Class B with a single label met the Commission’s goals of “ensuring Part 90 PLMR licensees have continued access to non-interfering Part 90 signal boosters that best suit their needs while helping to ensure proper operation of the signal booster.”^{12/} The Commission therefore found that granting Bird’s request was in the public interest.^{13/}

The Commission should extend the same reasoning to this request. Axell’s DMBR functions like the Signal Booster III; both devices allow the end user to employ a software

^{10/} *Id.* at ¶ 188.

^{11/} *See* 47 C.F.R. § 90.219(e)(5); *Bird Technologies’ Request for Waiver of Section 90.219 Regarding Signal Booster Designation*, Letter Decision, 30 FCC Rcd. 2356 (2015) (“Bird Waiver”).

^{12/} *See* Bird Waiver at 2358.

^{13/} *See id.*

interface to select whether the device operates as a Class A or Class B signal booster – providing “licensees who require signal boosters increased choice and flexibility.”^{14/} Like the Signal Booster III, the DMBR will “reduce the potential for harmful interference” by including the label specified in the Bird Waiver,^{15/} noting potential operation as either a Class A or Class B device, and by providing the same software interface safeguards that require the user to acknowledge that operation as a Class B device requires registration with the FCC. Accordingly, grant of a waiver of Section 90.219(e)(5) here would likewise be in the public interest and serve the underlying purpose of the rule.

^{14/} *See id.* at 2356-57.

^{15/} *See id.* at 2358, *quoting* Report and Order ¶ 146.

Conclusion

Axell Wireless respectfully requests waiver of the Commission's rules so that its Digital Multi Band Signal Booster for Public Safety may be labeled and marketed as both a Class A and Class B signal booster, consistent with relief provided in the past. The public interest would be better served by the Commission's grant of a rule waiver than requiring Axell to market the same electrically identical product as two separate devices for narrowband and wideband operation. Waiver of the rules will not increase the potential for harmful interference.

Respectfully submitted,

/s/ Russell H. Fox

Russell H. Fox
Stephen J. Wang^{*/}
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue N.W.
Suite 900
Washington, D.C. 20004
Tel: (202) 434-7300
Fax: (202) 434-7400
rfox@mintz.com
sjwang@mintz.com

Counsel for Axell Wireless

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^{*/} Admitted to practice in California only, and practicing under the supervision and guidance of Members of the Washington, DC office of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.