

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended)	WT Docket No. 99-87
)	
Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies)	RM-9332
)	

PETITION FOR RECONSIDERATION

Kenwood U.S.A. Corporation (Kenwood) a major manufacturer of high-quality telecommunications products, including mobile and portable radio communication systems for the VHF and UHF land mobile services, hereby respectfully submits its Petition for Reconsideration in this proceeding. Kenwood requests that the Commission reconsider and modify several portions of the *Second Report and Order* (Second Report and Order and Second Further Notice of Proposed Rulemaking , *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies*, FCC 03-34, 68 Fed. Reg. 18054, released February 25, 2003) in this proceeding. That *Second Report and Order* was published in the Federal Register on July 17, 2003, and therefore this Petition is timely filed pursuant to Section 1.429(d) of the Commission’s Rules. As good cause for its Petition, Kenwood states as follows:

1. In the *Second Report and Order*, the Commission has addressed a perceived need to mandate utilization of spectrally efficient equipment in the Commission’s 150-174 MHz and 450 – 512 MHz bands allocated for land mobile use. Previously, in 1995 in the so-called “Refarming” proceeding, the Commission required that manufacturers produce equipment

capable of operation on reduced channel bandwidths. The Commission now asserts that merely specifying equipment authorization requirements applicable to equipment manufacturers alone has not yet resulted in more efficient utilization of the spectrum. While Kenwood supports the Commission's plan to encourage more efficient use of the 150-174 MHz and 450 – 512 MHz frequency bands, the rules adopted by the Commission in the *Second Report and Order*:

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- Are premature considering the state of the user base and available migration technology;
 - May compromise or hinder the original intent to encourage narrowband operation on an achievable schedule; and
 - Are seemingly based on a misinterpretation (or abandonment) of the Commission's *Refarming* spectrum efficiency plan.

2. Kenwood, therefore, respectfully suggests the Commission reconsider some of the decisions in the *Second Report and Order* as particularly described hereinafter and, under certain circumstances, continue to allow certification, importation and manufacture of equipment with channel bandwidths greater than 12.5 kHz. It is also requested that the Commission permit certain new and modified license applications specifying 25 kHz channel bandwidths, at least until a date certain sufficiently advanced as to permit maintenance of existing systems until they can be replaced with narrowband systems.

3. First, Kenwood applauds the Commission for attempting to improve the efficient use of the relevant spectrum. In 1995, in the *Refarming* proceeding, the Commission adopted a flexible plan premised on reliance on marketplace forces to encourage narrowband conversion. That plan, the Commission noted, was premised on avoiding the “command and control” approach to regulation of channel bandwidths and narrowband conversion. The Commission stated, at paragraph 37 of the 1995 *Report and Order* in the *Refarming* proceeding¹ that:

¹ See the *Report and Order*, FCC 95-255, released June 23, 1995 in PR Docket No. 92-235.

The discussion regarding channelization has been dominated by concerns regarding time frames for introducing narrowband technology. The comments generally discuss extended schedules, e.g. 26 years in the User Coalition plan. Most of these time frames conservatively favor full amortization of equipment, and assume unnecessarily long lead times for development and marketing of new narrowband technologies. We have decided to adopt a plan that provides a flexible framework within a much shorter period of time by which market based incentives can be introduced into these private wireless bands. In contrast to many comments and the User Coalition plan, we have decided not to implement a comprehensive set of dates mandating strict manufacturing and licensing requirements. Rather, we conclude that the best approach is to specify type acceptance dates to guide the transition process. Recognizing that there is over \$25 billion in equipment investment in these PLMR bands, we will provide users immediate flexibility in equipment decisions and provide a period for the development of new technologies. This transition plan provides users the option of continuing to use existing equipment, transitioning immediately to more efficient narrowband equipment, or waiting until a full line of affordable narrowband equipment is available and costs become competitive, before changing out their systems. This, this plan allows each licensee the freedom to choose equipment and a transition schedule that best fulfills their needs while balancing technical capabilities and financial considerations...

This rationale was reasonable at the time it was adopted, and, Kenwood would argue, is reasonable now. There has not been sufficient time to permit this market-based, flexible approach to narrowband implementation to take full effect, and it is suggested that the Second R&O in the instant proceeding, which essentially abandons the flexible approach in favor of a “command and control” approach, is unreasonable and premature.

4. Kenwood understands that the Commission embarked on this effort during a period of strong economic growth and significant breadth in the state and local tax base to support the migration from 25 kHz operation to narrowband technology. However, Kenwood believes that the Commission’s attempt to implement more efficient use of the relevant spectrum by arbitrarily creating numerous, apparently arbitrary, milestones limiting existing wideband systems is misguided. As a result, Kenwood requests that the Commission reconsider its decision to limit channel bandwidths to 12.5 kHz. The Commission can and should reconsider its decision to limit channel bandwidths to 12.5 kHz in the 150-174 MHz and 450-512 MHz

frequency bands on any timetable, absent compelling evidence that final and effective date for narrowband migration can be achieved as a practical matter.

5. In the *Refarming* proceeding, the Commission determined, Kenwood believes appropriately, that the concept of “equivalent spectrum efficiency” is a key factor in insuring the best approach to achieve maximum channel use within the limited available spectrum. Kenwood is actively developing narrowband products to satisfy the Commission’s 2005 *Refarming* efficiency mandates. Kenwood representatives have participated in many special interest committees including assisting in developing technical rules for the new 700 MHz public safety spectrum. The Commission’s efforts to improve the efficient utilization of the 150-174 MHz and 450-512 MHz land mobile frequency bands. Kenwood is concerned that rules associated with the *Second Report* may not best satisfy the public interest of improved efficiency in the 150-174 MHz and 450-512 MHz land mobile frequency bands.

6. The Second R&O in this proceeding does the following:

- It prohibits any applications for new facilities using 25 kHz channels, beginning January 17, 2004;
- It prohibits any modification applications that expand the authorized contour of an existing station if the bandwidth specified in the modification application is greater than 12.5 kHz, again beginning January 17, 2004;
- It prohibits the certification of equipment capable of operating at one voice path per 25 kHz of spectrum, i.e., equipment that includes a 25 kHz channel bandwidth mode, beginning January 1, 2005;
- It prohibits the manufacture and importation of any 150-174 MHz and 421-512 MHz band equipment that can operate on a 25 kHz bandwidth beginning January 1, 2008;
- It imposes deadlines for migration to 12.5 kHz technology for PLMRS systems operating in the 150-174 MHz and 421-512 MHz bands. The deadlines are January 1, 2013 for non-public safety systems and January 1, 2018 for public safety systems.

These requirements, Kenwood urges, are in the main premature restrictions on licensees and manufacturers of land mobile equipment. Kenwood suggests the following changes.

7. First, instead of prohibiting any applications for new operations using 25 kHz channels, beginning January 17, 2004, the Commission should allow all existing licensees with systems licensed for 25 kHz channel bandwidths to continue operation on 25 kHz channels through December 31, 2012. Second, instead of prohibiting any modification applications that expand the authorized contour of an existing station if the bandwidth for transmissions specified in the modification application is greater than 12.5 kHz, beginning January 17, 2004, Kenwood recommends that the Commission permit existing facilities which have 25 kHz bandwidths to be modified without restriction, provided that such stations must cease operation on December 31, 2012 unless they are, prior to that date, modified to operate on channel bandwidths of 12.5 KHz or less.

8. Third, rather than prohibiting the certification of any equipment capable of operating at one voice path per 25 kHz of spectrum beginning January 1, 2005, Kenwood recommends that the Commission allow manufacturers to certify equipment as required to meet the user need for such equipment. However, authority to certify, manufacture or import equipment specifying a 25 kHz channel bandwidth mode should expire on December 31, 2012. Finally, instead of prohibiting the manufacture and importation of any 150-174 MHz and 421-512 MHz band equipment that can operate on a 25 kHz channel bandwidth beginning January 1, 2008, Kenwood recommends that the Commission permit such manufacture and importation through December 31, 2012. Establishing this as a deadline will have the effect of limiting the production of equipment. Original equipment manufacturers will tailor their production and availability of equipment to market incentives, and no further regulation is necessary. This alternative would insure:

(A) Backward compatibility/Interoperability consistent with the APCO P25 standard for public safety digital communications systems; and

(B) Facilitation of the necessary migration from 25 KHz channels to narrowband technology and allowance for a practical migration period consistent with technology and available financing, and a reasonable amortization period for existing and immediately planned systems.

9. The Second R&O imposes deadlines for migration to 12.5 kHz channel bandwidths for PMRS systems operating in the 150-174 MHz and 421-512 MHz bands. The deadlines are January 1, 2013 for non-public safety systems and January 1, 2018 for public safety systems. Kenwood recommends, in order to expedite the effective and consistent migration of users within the VHF and UHF bands to narrowband technology, the Commission uniformly mandate December 31, 2012 for all licensees in the subject bands to implement 12.5 kHz channel bandwidths. Mixed rules for public safety and non public safety licensees will confuse the migration path for users and others associated with the operation of these bands. A uniform timetable will insure that the coordinators, users, manufacturers and service community act in concert to bring the Commissions vision for spectral efficiency to these bands. The shorter period specified in this Petition for public safety entities is neither unreasonably long or unreasonably short, given the urgent need to implement narrowband technology and realize the efficiency and interference relief that Kenwood trusts will result from such. However, the arbitrary creation of milestones making continued operation of incumbent 25 kHz systems difficult or impossible on a shorter timetable is unreasonable and will actually hinder the conversion process. Licensees of 25 kHz channel bandwidth systems will not hasten the conversion to 12.5 kHz channels, because the problem is not one of availability of 12.5 kHz equipment. Rather, the problem is the current economic climate for CMRS, PMRS and Public Safety licensees; budgetary limitations; and the very real business need to amortize existing wideband systems. The Commission must realize the trickle-down costs that were brought on by the burdens on telecommunications associated with the terrorist attacks, resultant Homeland

Security requirements and obligations, and the sluggish economic environment, all of which have reduced state and local budgets. Radio manufacturers, too, have been affected in their ability to remain financially viable and invest in research and development of advanced technologies. Manufacturers need relief in order to amortize their product lines, and extension of the arbitrary timetables as recommended herein would help substantially. The Commission cannot alter the effects of the external forces here, except by specifying a reasonable timetable to budget for, obtain, and implement narrowband channel systems sufficiently far in the future to solve all of the above obstacles. A uniform changeover date will allow the necessary planning and implementation, and it will allow licensees and manufacturers a sufficient amortization period for their respective investments in equipment, and for manufacturers, the research and development investment in their current and planned systems.

10. Kenwood strongly believes in the Commissions policies recited in the Refarming proceeding, which provide a framework to achieve a practical approach to spectrally efficient systems. Kenwood is concerned that licensees will not be able to maintain systems that are essential to the public welfare – particularly expanded public safety commitments to Homeland Security and related interoperability – in the face of the arbitrary timetables specified in the Second R&O. The Commission has, in the Second R&O, reverted to a philosophy of “command and control” that does not take into account current economic realities, commitments and obligations of public safety licensees which have 25 kHz bandwidth systems in place and reliably operating now, and it creates restrictions that will not hasten the narrowband conversion that is the essential goal of this proceeding.

11. Further “narrow banding” discussed in the Further Notice of Proposed Rule Making in this proceeding may also create a serious threat to users who are faced with premature, forced migration to 6.25 KHz technology, for the same reasons discussed herein. Kenwood will address this issue in comments in response to the Further NPRM.

Therefore, the foregoing considered, Kenwood U.S.A. Corporation respectfully suggests that the Commission reconsider and revise the rules adopted pursuant to the *Second Report and Order* in accordance with the arguments made herein.

Respectfully submitted,

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