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

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

COMMENTS OF THE
LAND MOBILE COMMUNICATIONS COUNCIL
IN SUPPORT OF THE
JOINT PETITION TO DEFER ENFORCEMENT OF SECTION 90.203(j)(5)
OF THE COMMISSION'S RULES

The Land Mobile Communications Council ("LMCC") hereby submits the following comments in response to the Joint Petition to Defer Enforcement of Section 90.203(j)(5) of the Commission's Rules ("Joint Petition"), filed by EFJohnson Company, Kenwood U.S.A. Corporation, and Motorola, Inc. (collectively, "Joint Petitioners").[1] As discussed in more detail below, the LMCC encourages the Commission to accept the Joint Petition and defer enforcement of the Commission's rule.

LMCC is a non-profit association of organizations representing virtually all users of land mobile radio systems, providers of land mobile services, and manufacturers of land mobile radio equipment. LMCC acts with the consensus, and on behalf, of the vast majority of public safety,

[1] 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, *Petition to Defer Enforcement of Section 90.203(j)(5) of the Commission's Rules*, WT Docket No. 99-87, RM-9332 (July 14, 2004) ("Joint Petition").

business, industrial, private, commercial and land transportation radio users, as well as a diversity of land mobile service providers and equipment manufacturers. Membership includes the following organizations:

- Aeronautical Radio, Inc. (ARINC)
- American Association of State Highway and Transportation Officials (AASHTO)
- American Automobile Association (AAA)
- American Mobile Telecommunications Association, Inc. (AMTA)
- American Petroleum Institute (API)
- Association of American Railroads (AAR)
- Association of Public Safety Communications Officials-International, Inc. (APCO)
- Central Station Alarm Association (CSAA)
- Forest Industries Telecommunications (FIT)
- Forestry-Conservation Communications Association (FCCA)
- Industrial Telecommunications Association, Inc. (ITA)
- Intelligent Transportation Society of America, Inc. (ITSA)
- International Association of Fire Chiefs (IAFC)
- International Association of Fish and Wildlife Agencies (IAFWA)
- International Municipal Signal Association (IMSA)
- Manufacturers Radio Frequency Advisory Committee (MRFAC)
- National Association of State Foresters (NASF)
- PCIA – The Wireless Infrastructure Association (PCIA)
- Telecommunications Industry Association (TIA)
- United Telecom Council (UTC)

The LMCC membership has been an active participant in the Commission's efforts to promote the use of spectrally efficient technologies in the Private Land Mobile Radio Services (PLMRS) since the subject was first initiated as part of the refarming proceeding.[2] With this filing, the LMCC notes that there is significant industry concern surrounding obligations to migrate to 6.25 kHz technologies before there are multiple product solutions. These concerns are real and justify a decision deferring the enforcement of Rule Section 90.203(j)(5) on behalf of

[2] See Replacement of Part 90 by Part 88 to Revise the Land Mobile Radio Services and Modify the Policies Governing Them, *Notice of Proposed Rule Makin*g, PR Docket No. 92-235, 7 FCC Rcd 8105 (1992).

end users operating in Part 90 spectrum. Given these circumstances, the LMCC concurs with, and supports, the Joint Petition of the manufacturers.

Section 90.203(j)(5) of the Commission's rules, which was established to encourage the efficient and effective migration of Part 90 licensees to narrowband technologies, states,

> "Applications for part 90 certification of transmitters designed to operate on frequencies in the 150–174 MHz and/or 421–512 MHz bands, received on or after January 1, 2005, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 6.25 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth."[3]

The Commission has noted, however, that this regulatory approach to spectrally efficient technologies has proven ineffective at successfully encouraging Part 90 licensees to complete a narrowband migration.[4] To further advance the conversion to narrowband equipment, therefore, the Commission established additional rules that would mandate the end of the 12.5 kHz transition on January 1, 2018, while it continues to seek comment on a date certain for 6.25 kHz operations.[5] The Commission received numerous Petitions for Reconsideration of its decision, placing licensees in a quandary, as the current deadlines for the 12.5 kHz transition remain in flux, yet a transition to 6.25 kHz technology is perceived as the Commission's final goal.

Introducing 6.25 kHz equipment into the marketplace at this uncertain regulatory stage would not improve spectral efficiency on Part 90 channels, as several thousands of 25 kHz systems remain in operation, and will continue to be operating at such bandwidth, legally, for many years to come. In this environment, enforcing 6.25 kHz capabilities in new Part 90

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[3] 47 C.F.R. § 90.203(j)(5).

[4] *See* 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, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 3034 (2003) at ¶ 12 (Second R&O).

[5] Second R&O.

systems would not advance the intent of Rule Section 90.203(j)(5) – namely, spectrum efficiency – as broader bandwidth technologies, both 25 kHz and 12.5 kHz systems, would continue to be deployed.

In addition to regulatory uncertainty and the large-scale deployment of broader bandwidth technologies currently in operation, the industry position on 6.25 kHz equipment standards can aptly be characterized as fluid, as the Project 25 steering committee debates and develops a "two-slot TDMA technology" for type acceptance.[6] Should the Commission enforce Rule Section 90.203(j)(5) on January 1, 2005, two problems unfold for Part 90 end users. First, end users purchasing new systems would obtain equipment that becomes outdated immediately after Project 25 standards have been completed. Second, equipment manufacturers would likely develop two sets of 6.25 kHz equipment – one set hurriedly developed to comply with the Commission's deadline, and a second meeting Project 25 standards. Economies of scale in equipment research and development, then, are lost, and the cost of re-developing equipment will be passed on to Part 90 equipment seekers.[7] Based on economic implications to end users and the potential for obsolete equipment, therefore, the LMCC suggests that the Commission defer enforcement of Rule Section 90.203(j)(5).

Finally, the LMCC notes that narrowbanding is not the only way to achieve spectrum efficiency. Many technologies, especially data communication systems, enjoy spectrally efficiency through medium other than narrow, designated channels. Indeed, technologies developed for other wireless services increasingly make use of wider channels to create

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[6] Joint Petition at p. 6-8.

[7] *See* Letter to Marline H. Dortch, Secretary, Federal Communications Commission from Ron Backlund, Manager Projects and Regulatory Strategy, Daniels Electronics, Ltd. On filed August 24, 2004, in WT Docket No. 99-87, stating that the deadline, if enforced, "increases the cost of LMR equipment to our customers." *See also,* Comments of Ritron, WT Docket No 99-87, July 29, 2004, stating that land mobile radio purchasers "will be encumbered with costly technology for which they have little use."

additional voice and data paths. As such, the LMCC is concerned that forced migration to an arguably outdated channel plan will drive the land mobile user community away from the potential benefits of advanced technologies; thus, harming progress toward spectrum efficiency. Instead, licensees should retain the flexibility to deploy systems using new technologies.

As discussed above, the LMCC encourages the Commission to accept the Joint Petition and defer enforcement of Rule Section 90.203(j)(5). The LMCC does not believe that enforcement of the rule would successfully advance the efficient use of the spectrum at this time, a notion confirmed by the Commission in its *Second Report and Order*.[8] Furthermore, deferment of the Commission's enforcement of the rule would protect Part 90 applicants and end users from obsolete equipment purchases, at an inflated price driven by the necessary re-development of equipment.

Respectfully submitted,

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[8] Second R&O at ¶ 12.