



PUBLIC NOTICE

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DA 09-676

Released: March 26, 2009

OFFICE OF ENGINEERING AND TECHNOLOGY DECLARES THE STARKEY LABORATORIES, INC. REQUEST FOR A WAIVER OF PART 15 FOR THE 902-928 MHZ BAND TO BE A "PERMIT-BUT-DISCLOSE" PROCEEDING FOR EX PARTE PURPOSES AND REQUESTS COMMENTS

ET Docket No. 09-38

Comment Date: April 27, 2009

Reply Comment Date: May 11, 2009

Starkey Laboratories, Inc., ("Starkey Laboratories") has filed a request for waiver of Part 15 of the Commission's rules to permit a reduction in the 6 dB-bandwidth requirements under Section 15.247(a)(2) for unlicensed operation of systems using digital modulation techniques in the 902-928 MHz (915 MHz) band.¹ Starkey Laboratories states that its proposed system would facilitate audio enhancement capabilities for the hearing impaired via the use of digital audio equipped assistive listening devices ("ALDs").

Section 15.247(a)(2) permits operation of systems using digital modulation techniques within the 915 MHz band with a minimum 6 dB bandwidth of 500 kilohertz. Starkey Laboratories requests that its transmitters be permitted to operate in the 915 MHz band with a narrower 6 dB bandwidth of 100 kilohertz, while maintaining the 8 dBm/3 kHz power spectral density limit specified in Section 15.247(e) of the Commission's rules. Starkey Laboratories states that grant of this waiver would make for better and more efficient use of bandwidth, and would not cause any harmful interference to other users. It also states that grant of this waiver request would allow its ALDs to send digital audio information to hearing aid wearers for the purpose of improving the signal-to-noise ratio of audio information presented in a classroom, an auditorium, a place of worship, and similar public venues. In addition, grant of this waiver would allow the operation of wireless devices for transmitting public service announcements and alarms, hearing assistance devices that permit two-way digital audio communication and related control, and programming devices for configuration and maintenance of hearing instruments. Although Starkey Laboratories acknowledges that one megahertz centered at 217 megahertz has been allocated for use by hearing assistance devices, it states

¹ See Starkey Laboratories, Inc., Request for Waiver of Section 15.247 (a)(2) of the Commission's Rules, filed April 11, 2008; Starkey Laboratories, Inc., Amended Request for Waiver of Section 15.247 (a)(2) of the Commission's Rules, filed November 12, 2008. The 902-928 MHz spectrum is occupied by a number of Federal, non-Federal, licensed, and unlicensed spectrum users, including Part 15 operations and multilateration Location and Monitoring Service (M-LMS) licensees. Because of the shared uses of this band, the requested waiver may impact both Part 15 operations, as well as non-Part 15 uses and services such as M-LMS. We note that the Commission is currently reviewing the rules governing M-LMS. See Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, WT Docket No. 06-49, *Notice of Proposed Rulemaking*, 21 FCC Rcd 2809 (2006).

that this allocation is limited to one-way communication and is allocated in 5-50 kilohertz channels, which it claims makes control, wireless programming, and bi-directional communication impossible and is insufficient for transporting digital high fidelity audio information.

Starkey Laboratories states that its petition for waiver is intended to facilitate the operation of ALDs in the 915 MHz band until the Commission considers revising its rules. In this regard, Starkey Laboratories also submitted a petition for rulemaking on which the Commission is seeking comment separately.

The Commission's Office of Engineering and Technology ("OET") is reviewing the waiver request. OET has concluded that in order to develop a complete record on the complex issues presented by this request, this proceeding will be treated, for *ex parte* purposes, as a "permit-but-disclose" proceeding, in accordance with Section 1.1200(a) of the Commission's rules, and is subject to the requirements under Section 1.1206(b) of the rules.

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **April 27, 2009**, and reply comments on or before **May 11, 2009**. All filings should refer to **ET Docket No. 09-38**. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS at <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal at <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by First-Class or Overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service First-Class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, D.C. 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties should also send a copy of their filings to Patrick Forster, Office of Engineering and Technology, Federal Communications Commission, Room 7-A266, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to patrick.forster@fcc.gov. Parties must also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Documents in **ET Docket No. 09-38** are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Office of Engineering and Technology contact: Patrick Forster at (202) 418-7061.

By the Chief, Office of Engineering and Technology.

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