DOCKET FILE COPY ORIGINAL

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

MAILED
JUL - 9 2010
FCC Mail Room

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

ORDER

Adopted: June 29, 2010 **Released: June 30, 2010**

By the Commission:

I. INTRODUCTION

1. In this order, we grant in part and deny in part a petition filed by the National Public Safety Telecommunications Council (NPSTC) requesting a stay of the January 1, 2011 interim deadlines associated with the narrowbanding of private land mobile radio (PLMR) licensees in the 150-174 MHz and 421-512 MHz bands.[1] In previous orders, the Commission set January 1, 2013 as the final deadline for PLMR licensees in these bands to migrate to narrowband (12.5 kHz or narrower) technology, and January 1, 2011 as the deadline for certain interim measures relating to licensing and equipment.[2] For the reasons set forth herein, we deny NPSTC's request with respect to the interim licensing deadlines, but we grant the requested relief in part with respect to certain interim equipment deadlines.

II. BACKGROUND

2. In 1995, the Commission adopted rule changes to promote the efficient use of the PLMR service and facilitate the introduction of advanced technologies.[3] To promote the transition to a more efficient narrowband channel plan, the Commission provided, *inter alia*, that "only increasingly efficient

[1] The National Public Safety Telecommunications Council Petition for Stay of Interim Narrowband Implementation Dates of Section 90.209(b)(6), 90.203(j)(4) and (5), and 90.203(j)(10), WT Docket No. 99-87 (filed Sept. 29, 2009) (NPSTC Petition).

[2] *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, 18 FCC Rcd 3034 (2003) (*Second R&O*); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, 19 FCC Rcd 25045 (2004) (*Third MO&O*). Specifically, these narrowbanding deadlines apply to frequencies in the 150.8-162.0125 MHz, 173.2-173.4 MHz, and 421-512 MHz bands. Narrowbanding in the 150.05-150.8 MHz, 162-174 MHz, and 406.1-420 MHz bands, which are allocated primarily for Federal Government use, is governed by a different schedule. *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for Narrowband Private Land Mobile Radio Channels in the 150.05-150.8 MHz, 162-174 MHz, and 406.1-420 MHz Bands that Are Allocated for Federal Government Use, *Report and Order*, ET Docket No. 04-243, 20 FCC Rcd 5793 (2005); 47 C.F.R. § 90.265. Similarly, the narrowbanding requirements for 700 MHz public safety narrowband systems are subject to a different schedule, and are not affected by this proceeding. *See* 47 C.F.R. §§ 90.203(m), (n), 90.535.

[3] *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 10 FCC Rcd 10076, 10077 ¶ 1 (1995).

equipment" would be approved.[4] The Commission did not set a date after which it would no longer approve equipment with a wideband (25 kHz) mode, or after which such equipment could no longer be manufactured or used.[5] The Commission contemplated that, as systems reached the end of their service life and new radios were needed, users would migrate to the narrower bandwidth multi-mode radios in order to avoid the adjacent-channel interference that could occur from systems using the adjacent narrowband channels.[6]

3. Subsequently, the Commission determined that the 1995 rules failed to provide adequate incentive to realize the Commission's spectrum efficiency goals in these bands, and stronger measures would be required to bring about a timely transition to narrowband technology.[7] The Commission therefore amended the rules to provide that, by January 1, 2013, Industrial/Business and Public Safety Radio Pool licensees in the 150-174 MHz and 421-512 MHz bands must migrate to 12.5 kHz channel bandwidth, or utilize a technology that achieves equivalent efficiency.[8]

4. The Commission also adopted interim deadlines to facilitate this transition to narrowband technology. Specifically, beginning January 1, 2011: (1) the manufacture, import, or certification of equipment capable of operating with only one voice path per 25 kHz of spectrum, *i.e.*, equipment that includes a 25 kHz mode, will be prohibited;[9] (2) the Commission will no longer accept applications for new wideband 25 kHz operations, or modification applications that expand the authorized contour of existing 25 kHz stations;[10] and (3) the Commission will no longer accept applications for certification of equipment that cannot operate in 6.25 kHz mode or with equivalent efficiency.[11] Since that time, the Commission has reiterated its commitment to the narrowbanding transition, as demand for scarce PLMR spectrum continues to grow.[12]

5. NPSTC states that it fully supports the 2013 deadline for licensees to transition to narrowband technology, but it requests a stay of the 2011 deadlines.[13] It argues that enforcement of the prohibition on new or expanded 25 kHz licenses, and on the manufacture, import, or certification of equipment that includes a 25 kHz mode, will hamper public safety interoperability during the final two years of the transition, and requests that these deadlines be stayed until January 1, 2013.[14] NPSTC also contends that the prohibition on certification of equipment that does not include 6.25 kHz capability will unnecessarily raise equipment costs, and should be stayed until January 1, 2015.[15] NPSTC argues that the Commission's stay of these deadlines would not prevent or deter licensee implementation of narrowband

[4] *Id.* at 10081 ¶ 7.

[5] *Id.* at 10100 ¶ 40.

[6] *Id.*

[7] *See Second R&O*, 18 FCC Rcd at 3038 ¶ 12.

[8] *See* 47 C.F.R. § 90.209(b)(5).

[9] 47 C.F.R. § 90.203(j)(4) (certification), (10) (manufacture and import).

[10] 47 C.F.R. § 90.209(b)(6).

[11] 47 C.F.R. § 90.203(j)(5).

[12] *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Third Report and Order*, WT Docket No. 99-87, 22 FCC Rcd 6083, 6092 ¶ 20 (2007) (*Third R&O*); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Fourth Memorandum Opinion and Order*, WT Docket No. 99-87, 23 FCC Rcd 8042, 8044-45 ¶¶ 7-8 (2008) (*Fourth MO&O*).

[13] *See* NPSTC Petition at 1; NPSTC Reply Comments at 5.

[14] *See* NPSTC Petition at 5-6.

[15] *Id.* at 11-12.

technology prior to 2013, or prevent manufacturers from voluntarily including 6.25 kHz efficiency in new equipment.[16]

6. The Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau sought comment on NPSTC's request.[17] Commenters generally favor an extension of the interim measures relating to equipment manufacture, importation, and certification; but are split with regard to extending the interim licensing deadlines.[18] Commenters agree that any action should apply equally to Industrial/Business and Public Safety licensees.[19]

III. DISCUSSION

7. While NPSTC describes its petition as a stay request, we believe that it is more accurately characterized as a request for a temporary waiver of the 2011 deadlines.[20] Pursuant to Section 1.925(b)(3) of our Rules, we may grant a request for waiver if it is shown that (a) the underlying purpose of the rules would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (b) in view of unique or unusual factual circumstances, application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[21] We remain committed to bringing about a timely transition to narrowband technology in the PLMR services, in order to alleviate congestion in this crowded spectrum. Nevertheless, for the reasons set forth below, we find that a waiver is warranted with respect to certain aspects of NPSTC's request, and we accordingly grant the request in part and deny it in part. Specifically, we: (1) extend the timeframe for manufacturing or importing equipment that includes a 25 kHz mode, but not the deadline for prohibiting certification applications for equipment that includes a 25 kHz mode; (2) maintain the deadline for new or expanded 25 kHz operations; and (3) extend the timeframe for certifying equipment that is not capable of operating in 6.25 kHz mode, but only until 2013, rather than 2015 as requested by NPSTC. Consistent with the comments we have received, all

[16] *Id.* at 4.

[17] *See* Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on National Public Safety Telecommunications Council Petition for Stay of Interim Narrowband Implementation Deadlines, *Public Notice*, WT Docket No. 99-87, 24 FCC Rcd 13495 (WTB/PSHSB 2009). Comments and/or reply comments were filed by the Association of American Railroads (AAR); the Association of Public-Safety Communications Officials, Inc. (APCO); the Bergen County, New Jersey, Police Department (Bergen County); William J. Carter; Comm Enterprises, LLC (Comm Enterprises); Engineers for the Integrity of Broadcast Services Spectrum (EIBASS); Enterprise Wireless Alliance (EWA); Freeport-McMoRan Cooper and Gold, Inc. (FCX); the Joint Council on Transit Wireless Communications (Joint Council); Motorola, Inc. (Motorola); NPSTC; National Science and Technology Network, Inc. (NSTN); the City of New York (New York); the New York City Transit Authority (NYCTA); PacifiCorp; Quality MobileCommunications, LLC (Quality); and Tait North America (Tait). EIBASS filed its comments in the event that the PLMR narrowbanding deadlines are deemed to apply to Remote Pickup Broadcast Auxiliary Service stations. *See* EIBASS Comments at 1. We conclude that the narrowbanding deadlines do not apply to such stations. *See* Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules, *Memorandum Opinion and Order*, ET Docket No. 01-75, 18 FCC Rcd 21828, 21834 ¶ 14 (2003).

[18] In its comments, New York asks us to extend the final deadline for migration to 12.5 kHz technology from 2013 to at least 2018, and to reexamine the mandate for further migration to 6.25 kHz technology. *See* New York Comments at 2-3, 6-9. These requests are beyond the scope of the instant proceeding, and will not be addressed herein.

[19] *See, e.g.*, Comm Enterprises Comments at 1-2; FCX Comments at 2-4; NPSTC Reply Comments at 4.

[20] *See* Winstar Broadcasting Corp., *Memorandum Opinion and Order*, 17 FCC Rcd 6126, 6128 ¶ 8 (2002); *cf.* Southwestern Bell Telephone Company, *Order*, 2 FCC Rcd 5173, 5175 n.7 (CCB 1987).

[21] 47 C.F.R. § 1.925(b)(3).

narrowbanding deadlines will continue to apply equally to Industrial/Business and Public Safety licensees.

8. Manufacture or import of equipment with a 25 kHz mode. NPSTC argues that prohibiting the manufacture or import of equipment that includes a 25 kHz mode[22] will effectively prevent existing systems from replacing or adding radios during the last two years of the narrowbanding transition, which would hamper interoperability between systems (or different parts of the same system) that are at different stages of the narrowbanding conversion.[23] When the Commission adopted the 2011 deadlines, it specifically stated that the narrowbanding schedule was designed to avoid complicating efforts to establish public safety interoperability.[24] Moreover, we agree that it would be contrary to the public interest to prevent licensees from keeping 25 kHz systems in full working order until they complete the migration to narrowband technology.[25] Relief arguably is not necessary to avoid an equipment shortage, given that the rules do not prohibit the marketing and sale of existing inventories of 25 kHz-capable equipment after January 1, 2011.[26] Nonetheless, we believe that a temporary waiver of the prohibition on manufacture or import of 25 kHz-capable equipment is appropriate, in order to ensure that necessary equipment remains available during the narrowbanding transition.[27] We therefore grant a blanket waiver of Section 90.203(j)(10) until January 1, 2013.

9. Certification of equipment with a 25 kHz mode. With respect to new certifications of equipment capable of operating in 25 kHz mode, however, we conclude that a waiver would not be appropriate. Permitting the continued manufacture and import of existing 25 kHz-capable models is sufficient to ensure that adequate supplies remain available in order to maintain existing systems during the narrowbanding transition. In contrast, there is no convincing evidence or argument upon which to conclude that certifying new types of 25 kHz-capable equipment is necessary for maintaining those systems, or that it would otherwise be in the public interest to expand the range of available 25 kHz-capable equipment as the 12.5 kHz migration deadline approaches.[28] We therefore decline to grant a waiver of Section 90.203(j)(4).[29]

---

[22] Tait asserts that Section 90.203(j) is ambiguous with respect to whether manufacture, import, and certification of 25 kHz-capable equipment that includes a 6.25 kHz mode will be prohibited as of January 1, 2011, and requests that the rule be clarified. *See* Tait Comments at 2. We take this opportunity to affirm that, as the Commission has stated on multiple occasions, the rule prohibits the manufacture, import, or certification of *any* 150-174 MHz or 421-512 MHz band equipment that includes a 25 kHz mode as of that date. *See, e.g.*, *Fourth MO&O*, 23 FCC Rcd at 8042 ¶ 2; *Second R&O*, 18 FCC Rcd at 3034 ¶ 2.

[23] *See* NPSTC Petition at 5-8; *see also, e.g.*, Motorola Comments at 3; NYCTA Comments at 5; PacifiCorp Reply Comments at 4-5.

[24] *See Third MO&O*, 19 FCC Rcd at 25055 ¶ 22 ("We believe that it is in the public interest to avoid the difficulties that could be caused to licensees' current and future operations, especially but not exclusively public safety operations, and in particular efforts to establish public safety interoperability."). The Commission places great importance on facilitating public safety interoperability. *See, e.g.*, The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *Fourth Memorandum Opinion and Order*, PR Docket No. 96-86, 17 FCC Rcd 4736, 4746 ¶ 24 (2002).

[25] *See* Joint Council Comments at 1-2.

[26] *See* EWA Comments at 3-4.

[27] *See, e.g.*, Joint Council Comments at 1-2; NYCTA Comments at 5.

[28] *See* NSTN Comments at 2.

[29] That is, as of January 1, 2011, we will no longer accept new applications for equipment that includes a 25 kHz mode. Permissive changes to already-approved equipment will still be permitted.

10. New or expanded 25 kHz operations. We also deny NPSTC's request with respect to the deadline in Section 90.209(b)(6) for applications for new 25 kHz operations, or modification applications that expand the authorized contour of existing 25 kHz stations. NPSTC argues that prohibiting new or modified 25 kHz licenses will hamper interoperability between systems.[30] The relief requested, however, is much broader, and would permit new or expanded 25 kHz operations for any reason.[31] The interim deadlines were intended to encourage licensees to begin planning and implementing migration to narrowband technology well before January 1, 2013.[32] We conclude that continuing to authorize new or expanded 25 kHz operations after January 1, 2011 generally would be contrary to the public interest, and would otherwise undermine our goals in establishing the narrowbanding transition deadlines in the first instance. As 25 kHz licensees migrate to narrowband technology, spectrum becomes available to other licensees to relieve congestion.[33] We decline to take any action that would leave spectrum encumbered by 25 kHz operations longer than necessary. In situations where authorizing new or expanded 25 kHz operations would further the public interest, case-by-case relief may be considered through the waiver process.[34]

11. Certification of equipment lacking a 6.25 kHz mode. Finally, NPSTC argues that requiring applications for equipment certification to specify 6.25 kHz capability as of January 1, 2011 will increase equipment costs with no accompanying benefit for 12.5 kHz or 25 kHz licensees.[35] NPSTC also notes that a public safety interoperability standard for 6.25 kHz operation is still under development, and argues that compelling the purchase of more expensive equipment that may need to be replaced once a standard is adopted would burden public safety resources.[36] NPSTC therefore requests that this requirement be extended to January 1, 2015,[37] which would align it with the deadline requiring manufacturers of 700 MHz public safety band equipment to certify, manufacture, market, and import only equipment with a 6.25 kHz capability.[38] In the *Third Report and Order* in this proceeding, the Commission agreed with NPSTC and others that it would be premature to take regulatory action toward a migration to 6.25 kHz technology before standards for such equipment are developed.[39] Because the standards still have not been finalized, we agree with NPSTC that the deadline for complying with the 6.25 kHz requirement in Section 90.203(j)(5) should be delayed. We do not, however, believe that it is necessary to move this deadline to the same date as the 700 MHz deadline.[40] Because our intent is to avoid any to impediment to 150-174 MHz or 421-512 MHz licensees' migration to 12.5 kHz technology,

[30] *See* NPSTC Petition at 9; *see also* Motorola Comments at 3-4.

[31] *See* AAR Comments at 4.

[32] *See Third MO&O*, 19 FCC Rcd at 25055 ¶ 22.

[33] *See* Bergen County Comments at 1-2.

[34] *See, e.g.*, APCO Reply Comments at 2; NSTN Comments at 2-3. The Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau have delegated authority to act on such waiver requests. *See* 47 C.F.R. §§ 0.131(a), 0.191(c).

[35] *See* NPSTC Petition at 9-10; *see also* New York Comments at 3. NPSTC states that 6.25 kHz operation can be achieved only by digital equipment, which is more expensive than analog equipment. *Id.*; *see also* Quality Comments at 1-2; Joint Council Comments at 2; *but see* AAR Comments at 4-5 (asserting that 6.25 kHz-capable equipment is not appreciably more expensive than 12.5 kHz-capable equipment).

[36] *See* NPSTC Petition at 10-11; *see also* NYCTA Comments at 6.

[37] *See* NPSTC Petition at 12.

[38] *See* 47 C.F.R. § 90.203(m), (n).

[39] *See Third R&O*, 22 FCC Rcd at 6089 ¶ 12; *see also Fourth MO&O*, 23 FCC Rcd at 8045 ¶ 8.

[40] In the *Third Report and Order*, the Commission declined a suggestion to align the 6.25 kHz capability requirements. *See Third R&O*, 22 FCC Rcd at 6090 ¶¶ 15-16.

we grant a waiver of Section 90.203(j)(5) only until January 1, 2013.[41]

IV. CONCLUSION AND ORDERING CLAUSE

12. For the aforementioned reasons, we grant the NPSTC request in part and deny it in part. We recognize the concerns of NPSTC and some commenters that enforcing certain interim deadlines as of January 1, 2011 could hamper operations during the final two years of the transition and unnecessarily raise equipment costs. Consequently, we

- waive until January 1, 2013 the deadline for ceasing manufacture or import of equipment that includes a 25 kHz mode, but deny the request to stay the deadline for prohibiting certification applications for 25 kHz-capable equipment;

- decline to waive the deadline for seeking new or expanded 25 kHz operations; and

- waive until January 1, 2013 the deadline for certifying equipment that is not capable of operating in 6.25 kHz mode.

We emphasize our commitment to the January 1, 2013 deadline for migrating to narrowband technology, which the Commission first adopted in 2003 and subsequently affirmed,[42] in order to promote the efficient use of PLMR spectrum and facilitate the introduction of advanced technologies.

13. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 11, 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 161, 303(g), and 303(r), that the Request for Stay filed by the National Public Safety Telecommunications Council on September 29, 2009 IS GRANTED IN PART and DENIED IN PART, to the extent set forth above.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

[41] If 6.25 kHz standards still are not in place at that point, interested parties may request a further extension.

[42] *See Second R&O*, 18 FCC Rcd at 3038 ¶ 12; *Third MO&O*, 19 FCC Rcd at 25047 ¶ 2.