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

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FCC Mail Room

In the Matter of	)	
	)	
Service Rules Governing Public Safety Narrowband Operations in the 769-775/799-805 MHz Bands	)))	WT Docket No. 96-86

DECLARATORY RULING

Adopted: July 27, 2011 **Released: July 27, 2011**

By the Commission:

I. INTRODUCTION

1. In this Declaratory Ruling, we clarify that the five- and ten-year "substantial service" deadlines that apply to state-licensed 700 MHz public safety narrowband channels, set forth in section 90.529 of the Commission's rules,[1] run from the June 12, 2009, completion date of the DTV transition, and thus occur on June 13, 2014, and June 13, 2019, respectively.

II. BACKGROUND

2. In 1998, the Commission established the initial band plan and service rules for the 24 megahertz of public safety spectrum in the 700 MHz band that was reallocated from television broadcast use as a result of implementation of the DTV transition.[2] In 2000, the Commission, among other things, designated 2.4 megahertz of the 700 MHz narrowband spectrum for statewide geographic licensing.[3] Consistent with its treatment of geographic licenses issued in the commercial wireless context, the Commission established "substantial service" performance requirements for the statewide licenses to ensure efficient use of the spectrum, including the provision of service to rural, remote, and insular areas. The Commission also established five- and ten-year benchmarks for state licensees to establish specified levels of substantial service within their statewide license areas.

3. In determining the timing of the substantial service benchmarks, the Commission noted that the continued presence of incumbent TV broadcasters in the 700 MHz band could limit state licensees' ability to deploy systems on statewide narrowband channels.[4] Accordingly, the Commission determined that the five- and ten-year benchmarks would be calculated from the date that incumbent broadcasters were required to vacate the 700 MHz band. At the time the Commission made this determination, the anticipated DTV transition date for incumbent broadcasters was December 31, 2006.

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[1] *See* 47 C.F.R. § 90.529(b)(1) and (2).

[2] *See* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152 (1998).

[3] *See* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Third Memorandum Opinion and Order and Third Report and Order*, 15 FCC Rcd 19844, 19864, para. 48 (2000).

[4] *See id.* at 19871, para. 61.

Thus, the Commission calculated the substantial service benchmarks using January 1, 2007, as the starting date, causing the five-year benchmark (provision of substantial service to one-third of the statewide population or territory) to fall on January 1, 2012, and the ten-year benchmark (provision of substantial service to two-thirds of the statewide population or territory) to fall on January 1, 2017.[5]

4. After the Commission adopted the substantial service requirements for statewide narrowband licensees, the deadline for completing the DTV transition was twice extended, and ultimately the transition was completed on June 12, 2009.[6] However, section 90.529 of the Commission's rules, which codifies the substantial service requirements, has not been updated to reflect these extensions.[7] The language of the rule, therefore, continues to indicate January 1, 2012, and January 1, 2017, respectively, as the five- and ten-year benchmark dates, while also referencing these dates as occurring five and ten years after the DTV transition.[8]

III. DISCUSSION

5. In this Declaratory Ruling, we clarify that the five- and ten-year substantial service deadlines set forth in section 90.529(b) for state licensees to comply with substantial service requirements on their statewide narrowband channels run from the actual DTV transition date of June 12, 2009.[9] Specifically, the five-year benchmark date will fall on June 13, 2014, five years after the June 12, 2009, final DTV transition date. Similarly, the ten-year benchmark date will fall on June 13, 2019, ten years after the final DTV transition date.

6. In issuing this clarification, we observe that it has always been the Commission's intent that the five- and ten-year substantial service periods for the statewide narrowband channels would commence upon the actual DTV transition date. The original language of section 90.529(b) indicates as much, expressly describing the deadlines as occurring five and ten years from "the date that incumbent broadcasters are required to relocate to other portions of the spectrum."[10] The Commission's failure to update the numerical five- and ten-year dates set forth in section 90.529(b) to reflect the extension of the DTV transition date to June 12, 2009, was an inadvertent omission. With this Declaratory Ruling, we correct that administrative oversight and provide clarity to state public safety licensees.

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[5] *See id.*, para. 62.

[6] In 2006, Congress established a "hard" DTV transition date of February 17, 2009. *See* Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006). In 2009, Congress extended the DTV transition deadline from February 17, 2009, to June 12, 2009. *See* DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009).

[7] *See* 47 C.F.R. § 90.529(b)(1) and (2).

[8] *See id.*

[9] We note that the Region 24 700 MHz Regional Planning Committee (Region 24) filed a petition for rulemaking in which it requested, *inter alia*, that we amend section 90.529(b) of the Commission's rules to update the five- and ten-year substantial service deadlines that apply to public safety licensees operating on narrowband channels designated for state licensees to reflect the actual date of the DTV transition. *See* Petition for Rulemaking of the Region 24 700 MHz Regional Planning Committee, RM-11551 (filed electronically via the Commission's Electronic Comment Filing System (ECFS) in PS Docket 06-229 and WT Docket 96-86 on May 15, 2009) (Region 24 Petition). The comments filed in response to the Region 24 Petition all supported its request. *See* Comments of Motorola Inc., RM-11433, PS Docket No. 06-229, WT Docket No. 96-86 (filed August 31, 2009) (Motorola Comments); Comments of the New York State Office for Technology, RM-11433, PS Docket No. 06-229, WT Docket No. 96-86 (filed August 28, 2009); Comments of the Association of Public Safety Communications Officials, RM-11433, PS Docket No. 06-229 (filed August 27, 2009). Because the instant Declaratory Ruling clarifies that the five- and ten-year substantial service deadlines identified in section 90.529(b) run from the actual DTV transition date of June 12, 2009, the portion of the Region 24 Petition seeking such relief is moot. We will address the remaining aspects of the Region 24 Petition in a separate proceeding.

[10] *Id.*

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act Analysis

7. Section 213 of the Consolidated Appropriations Act of 2000 provides that the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, shall not apply to the rules governing the 746-806 MHz Band,[11] which includes the rules governing the public safety narrowband frequencies at 769-775 MHz and 799-805 MHz. For this reason, and because the RFA does not apply to rules that are not adopted in notice and comment rulemaking proceedings, we have not performed an Initial or Final Regulatory Flexibility Analysis in connection with the instant Order.[12]

8. In addition, the Commission will not send a copy of this Declaratory Ruling pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

B. Paperwork Reduction Act Analysis

9. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, section 213 of the Consolidated Appropriations Act of 2000 provides that rules governing frequencies in the 746-806 MHz Band, which includes the rules governing the public safety narrowband frequencies at 769-775 MHz and 799-805 MHz, become effective immediately upon publication in the Federal Register without regard to certain sections of the Paperwork Reduction Act.[13] We are therefore not inviting comment pursuant to the Paperwork Reduction Act on any information collections associated with this document.

V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, 4(i), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 303(r), and 332, this *Declaratory Ruling* in WT Docket No. 96-86 IS hereby ADOPTED.

11. IT IS FURTHER ORDERED that this *Declaratory Ruling* shall become effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[11] In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Sections 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act of 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)-(B); *see* 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)-(B).

[12] *See* 5 U.S.C. § 603(a).

[13] *Id.*