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

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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

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ORDER

Adopted: April 25, 2012 **Released: April 26, 2012**

By the Chief, Wireless Telecommunications Bureau, Chief, Public Safety and Homeland Security Bureau, and Chief, Office of Engineering and Technology:

I. INTRODUCTION

1. In this *Order*, we waive, on our own motion, the January 1, 2013 deadline for private land mobile radio (PLMR) licensees in the 470-512 MHz band to migrate to narrowband (12.5 kHz or narrower) technology.[1] We also waive a related rule pertaining to manufacture and importation of PLMR equipment. We take this action in light of recent legislation directing the Commission to reallocate spectrum in the 470-512 MHz band.

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.[2] To promote the transition to a more efficient narrowband channel plan, the Commission provided, *inter alia*, that "only increasingly efficient equipment" would be approved.[3] 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.[4] 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

[1] *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.

[2] *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).

[3] *Id.* at 10081 ¶ 7.

[4] *Id.* at 10100 ¶ 40.

order to avoid the adjacent-channel interference that could occur from systems using the adjacent narrowband channels.[5]

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.[6] 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.[7] In addition, beginning January 1, 2013, the manufacture or import 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.[8]

4. Congress recently enacted the Middle Class Tax Relief and Job Creation Act of 2012.[9] Section 6103 of the legislation provides that, not later than nine years after the date of enactment, the Commission shall "reallocate the spectrum in the 470-512 MHz band (referred to in this section as the 'T-Band spectrum') currently used by public safety eligibles as identified in section 90.303 of title 47, Code of Federal Regulations" and "begin a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for the use of the spectrum."[10] It also provides that "relocation of public safety entities from the T-Band spectrum" shall be completed not later than two years after completion of the system of competitive bidding.[11]

III. DISCUSSION

5. Pursuant to Section 1.925(b)(3) of our Rules, we may waive specific requirements of the Commission's Rules 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.[12] In the instant case, Section 6103 of the legislation specifically requires the eventual relocation of public safety entities from the 470-512 MHz band, and also raises issues about the disposition of the band generally. Pending further action by the Commission, however, there is substantial uncertainty regarding whether application of the narrowbanding deadline in the T-Band would continue to serve its original purpose. Continuing to require narrowbanding could force many licensees in the band to invest in narrowband systems that may subsequently have to be relocated. In addition, Commission staff has taken steps to freeze future licensing in the 470-512 MHz band.[13] Thus, T-Band

[5] *Id.*

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

[7] *See* 47 C.F.R. § 90.209(b)(5).

[8] *See* 47 C.F.R. § 90.203(j)(10). This deadline was extended from January 1, 2011 to January 1, 2013. *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Order*, WT Docket No. 99-87, 25 FCC Rcd 8861, 8864-65 ¶¶ 8-11 (2010) (*Waiver Order*).

[9] Pub. L. No. 112-96, 126 Stat. 156 (2012).

[10] *Id.*, § 6103(a).

[11] *Id.*, § 6103(b), (c).

[12] 47 C.F.R. § 1.925(b)(3).

[13] *See* Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, DA 12-643 (WTB/PSHSB rel. Apr. 26, 2012).

spectrum that might be freed up by the narrowbanding process will not be made available for licensing.

6. Given this uncertainty, we conclude that it would be inequitable and contrary to the public interest to require PLMR licensees to meet the January 1, 2013 narrowbanding deadline with respect to frequencies in the 470-512 MHz band. Consequently, while 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, we find that a waiver is warranted with respect to 470-512 MHz band frequencies.[14]

7. Specifically, we waive the requirement that Industrial/Business and Public Safety Radio Pool licensees in the 470-512 MHz band migrate to 12.5 kHz channel bandwidth or utilize a technology that achieves equivalent efficiency by January 1, 2013. We emphasize that this waiver applies only to PLMR frequencies in the 470-512 MHz band. T-Band licensees that also operate on frequencies in the 150-174 MHz and 421-470 MHz bands must meet the narrowbanding deadline with respect to those frequencies even if the other frequencies are authorized at the same location or under the same call sign as T-Band frequencies, unless the licensee obtains an individual waiver.[15] The Commission will consider how long this waiver relief should remain in effect once it takes further steps that clarify the status of incumbent T-Band licensees. Consistent with past actions, narrowbanding deadlines will apply equally to Industrial/Business and Public Safety Pool licensees.[16]

8. In addition, we waive the January 1, 2013 deadline which cuts off the manufacture or importation of equipment capable of operating with only one voice path per 25 kHz of spectrum in the 470-512 MHz band. We conclude that prohibiting the manufacture or import of equipment capable of operating in 25 kHz mode could effectively prevent existing 470-512 MHz band systems from replacing or adding radios during the waiver period, which would hamper interoperability between systems (or different parts of the same system) that are at different stages of the narrowbanding conversion.[17] It would be contrary to the public interest to prevent licensees from keeping 25 kHz systems in full working

[14] *See* Letter dated Mar. 14, 2012 from Gregory T. Riddle, President, APCO International to Rear Admiral Jamie Barnett (Ret.), Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission at 1 (stating that, in light of the Middle Class Tax Relief and Job Creation Act of 2012, "a substantial question arises as to whether it is still in the public interest to require public safety T-band licensees to go through the expensive and disruptive process of converting to narrowband operations," and recommending "that the Commission consider modifying its rules, or adopting an expanded waiver policy").

[15] *See* Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology Provide Reminder of January 1, 2013 Deadline for Transition to Narrowband Operations in the 150-174 MHz and 421-512 MHz Bands and Guidance for Submission of Requests for Waiver and Other Matters, *Public Notice*, 26 FCC Rcd 9647 (WTB/PSHSB/OET 2011); Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Provide Supplemental Guidance for Licensees in the 150-174 MHz and 421-512 MHz Bands Seeking Waivers of the January 1, 2013 Narrowbanding Deadline, *Public Notice*, 27 FCC Rcd 1936 (WTB/PSHSB 2012).

[16] *See Waiver Order*, 25 FCC Rcd at 8863-64 ¶ 7.

[17] *See id.* at 8864 ¶ 8. The Commission specifically stated that the narrowbanding schedule was designed to avoid complicating efforts to establish public safety interoperability. *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).

order during the waiver period.[18] Note, however, that we waive the deadline only with respect to the 470-512 MHz band; the manufacture or import of equipment capable of operating with only one voice path per 25 kHz of spectrum in the 150-174 MHz or 421-470 MHz bands still will be prohibited as of January 1, 2013.[19]

IV. CONCLUSION AND ORDERING CLAUSES

9. For the aforementioned reasons, we waive the requirement that Industrial/Business and Public Safety Radio Pool licensees in the 470-512 MHz band migrate to 12.5 kHz channel bandwidth or utilize a technology that achieves equivalent efficiency by January 1, 2013. We also waive the prohibition on the continued manufacture and importation of equipment capable of operating with only one voice path per 25 kHz of spectrum in the 470-512 MHz band. We take these actions in light of the provisions in the Middle Class Tax Relief and Job Creation Act of 2012 affecting the T-Band. Nonetheless, we reiterate our commitment to the narrowbanding transition in the 150-174 MHz and 421-470 MHz bands, as demand for scarce PLMR spectrum continues to grow.[20]

10. 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), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that Sections 90.203(j)(10) and 90.209(b)(5) of the Commission's Rules, 47 C.F.R. §§ 90.203(j)(10), 90.209(b)(5), ARE WAIVED to the extent set forth above.

[18] This 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, 2013. Nonetheless, we believe that a 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 waiver period. *See Waiver Order*, 25 FCC Rcd at 8864 ¶ 8.

[19] We recognize that most equipment currently in production is programmable and that manufacturers can limit their equipment to different operational parameters in different bands through software. Manufacturers can submit requests for permissive changes to enable the wider band operation in the 470-512 MHz band if their current grant is limited and if the change is made through software.

[20] *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); 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).

11. This action is taken under delegated authority pursuant to Sections 0.31, 0.131, 0.191, 0.241, 0.331, and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.31, 0.131, 0.191, 0.241, 0.331, 0.392.

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