

Solutions anticipates that new, equipment will need to be manufactured after January 1, 2013, to ensure that the systems of waiver recipients remain in full working order until their migration to narrowbanding technology is complete.

As the Commission has recognized previously in this docket, waiver recipients must have the flexibility to maintain their existing communications systems. The Commission's staff has acknowledged on its own motion that continued manufacturing is necessary to meet the needs of public safety licensees in the 470-512 MHz T-band.⁴ We believe the same rationale holds for licensees who receive a waiver of the deadline in 150-174 MHz and 421-470 MHz bands. A limited waiver will guarantee that these licensees retain the ability to purchase equipment to keep their systems fully functional and interoperable. Moreover, as these newly-manufactured radios will have the capability to operate on both 25 kHz and narrowband (12.5 kHz or lower) channels, waiver recipients will ultimately realize the Commission's goals of spectrum efficiency and capacity increase after carrying out their transition by utilizing the narrowbanding capability of the newly-manufactured radios. Denying the extension could result in service interruptions, unpredictable variations in coverage for waiver recipients, and other negative effects which jeopardize public safety.

I. BACKGROUND

Motorola Solutions and other manufacturers support the Commission's efforts to migrate PLMR licensees in the VHF/UHF bands to narrowband technology. Likewise, they applaud the

⁴ "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. It would be contrary to the public interest to prevent licensees from keeping 25 kHz systems in full working order during the waiver period." *T-Band Order*, ¶ 8.

FCC's repeated recognition of the practical concerns of all stakeholders, including licensees and manufacturers in facilitating this transition.

In anticipation of the January 1, 2013, narrowbanding deadline, many PLMR licensees have already transitioned to narrowband systems in the VHF/UHF bands. For other licensees, the transition has not yet been possible for a variety of economic or technical reasons. As of November 29, 2012, the Commission has granted 19 licensees a waiver of the January 1, 2013, deadline requiring PLMR licensees in the VHF/UHF bands to operate using channel bandwidth of no more than 12.5 kHz after that date, and other waiver requests remain pending.⁵

The lengthy record in this docket demonstrates that licensees maintain their systems through a range of means, including the purchase of new or refurbished equipment and the repair

⁵ *Onslow County Emergency Communications*, Order, DA-1864 (rel. Nov. 19, 2012) (granting petitioner a waiver until May 31, 2014); *Regional Public Safety Partners in Pierce County, Washington*, Order, DA 12-1796 (rel. Nov. 9, 2012) (granting petitioner a waiver until December 31, 2014); *Pennsylvania State Police*, Order, DA 12-1812 (rel. Nov. 9, 2012) (granting petitioner a waiver until December 31, 2013); *Pima County, Arizona*, Order, DA 12-1813 (rel. Nov. 9, 2012) (granting petitioner a waiver until July 1, 2014); *Pacificorp*, Order, DA 12-1650 (rel. Oct. 16, 2012) (granting petitioner a waiver until October 31, 2013); *Peoria County Emergency Telephone System Board*; *County of Hawai'i*, Order, DA 12-1365 (rel. Aug. 23, 2012) (granting petitioner a waiver until September 30, 2014); *State of Oregon*, Order, DA 12-1357 (rel. Aug. 20, 2012) (granting petitioner a waiver until November 1, 2013); *Monterey County, California*, Order, DA 12-1299 (rel. Aug. 10, 2012) (granting petitioner a waiver until July 31, 2013); *University of Iowa Hospitals and Clinics*, Order, DA 12-1300 (rel. Aug. 10, 2012) (granting petitioner a waiver until December 31, 2013); *Pittsylvania County, Virginia*, Order, DA 12-1300 (rel. Aug. 10, 2012) (granting petitioner a waiver until August 30, 2013); *New York City Transit Authority*, Order, DA 12-1236 (rel. Aug. 1, 2012) (granting petitioner a waiver until June 30, 2016); *First Student, Inc.*, Order, DA 12-1227 (rel. July 31, 2012) (granting petitioner a waiver until January 1, 2014); *King County, Washington*, Order, 2012003759/MKS (rel. July 26, 2012) (granting petitioner a waiver until December 31, 2013); *Arizona Water Company*, Order, DA 12-1159 (rel. July 20, 2012) (granting petitioner a waiver until January 1, 2014); *Puget Sound Energy*, Order, DA 12-958 (rel. June 19, 2012) (granting petitioner a waiver until October 31, 2013); *Avista Corp.*, Order, DA 12-960 (rel. June 19, 2012) (granting petitioner a waiver until September 30, 2014); *Delta Air Lines, Inc.*, Order, DA 12-793 (rel. May 21, 2012) (granting petitioner a waiver until December 31, 2013); *County of St. Louis*, Order, DA 12-245 (rel. Feb. 21, 2012) (conditionally granting petitioner a waiver until December 31, 2013).

of existing equipment. Base equipment and radio systems have a long, but limited lifespan, and portable and mobile radio units are subject to damage in the field.⁶ Licensees have enjoyed the flexibility to meet the unique operational needs of their systems, including the ability to purchase new, 25 kHz-capable equipment from reputable manufacturers.

In addition, in many cases, especially those with large public safety entities, the sale of PLMR equipment involves radios that are custom manufactured for each individual system. For instance, while one licensee might require VHF mobile based radios, another licensee might require UHF portable based radios. From the time an order is placed, the time it takes to deliver PLMR products to the customer varies from a few days to a few months based upon the actual requested delivery date, supply of raw material to build the radio (IC components, etc.), and manufacturing-line capacity. This ordering process limits the amount of equipment that manufacturers have in inventory that would meet a particular entity's requirements. With this marketplace in mind, Motorola Solutions proposes the following limited waiver of the rule prohibiting the manufacture and importation of 25 kHz-capable equipment:

- The waiver will apply to all manufacturers of 25 kHz-capable equipment in 150-174 MHz and 421-470 MHz bands;
- Only those licensees who have been granted a waiver would be able to purchase newly-manufactured or imported 25 kHz-capable equipment;
- The length of the waiver on the manufacture and importation of equipment to meet the requirement of a waiver recipient would be the same as the duration of the waiver from the narrowbanding deadline for that entity. In other words, a manufacturer could manufacture and import 25 kHz-capable equipment for a particular licensee until that licensee's narrowband waiver expires; and
- The limited waiver would not affect the prohibition on the manufacture and importation of 25 kHz-capable equipment for licensees that did not receive a

⁶ See 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, at 5 (filed Sept. 29, 2009) ("NPSTC Petition").

narrowband waiver. Pursuant to Commission Order, the Rule 90.203(j)(10) prohibition on the manufacture and importation of 25 kHz-capable equipment would begin for these licensees on January 1, 2013.

II. A LIMITED WAIVER OF THE NARROWBAND MANUFACTURING DEADLINE IS IN THE PUBLIC INTEREST

Consistent with Commission precedent and practice, the public interest would be served by the grant of a limited waiver to allow manufacturers to build or import 25-kHz equipment for those licensees who have received narrowband waivers in order that the continued interoperability and reliability of their systems can be maintained. In its July 13, 2011, Public Notice, the Commission articulated that waiver of the narrowbanding deadline would be subject to the Section 1.925 waiver standard.⁷ Section 1.925 of the Commission's rules requires a waiver petitioner to demonstrate either that "(i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the waiver would be in the public interest or; (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."⁸

The Commission has twice extended the rule prohibiting the manufacture or importation of 25 kHz-capable equipment in the 150-174 MHz and 421-512 MHz bands. And each time, the Commission balanced the need for migration to narrowband technology with the necessity of

⁷ See *Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology Provide Reminders of the 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) ("Waiver Request Guidance Public Notice"). Though the guidance in the Public Notice applied to "licensees," the limited waiver request of Motorola Solutions of Section 90.203(j)(10) is directly related to those licensees granted waiver requests. *Id.*, at 2. Therefore, Motorola Solutions will apply the 1.925 waiver standard.

⁸ 47 C.F.R. § 1.925(b)(3).

licensees to maintain the stability and functionality of their networks by purchasing newly-manufactured 25-kHz capable equipment.

In the 2004 *Third MO&O*, which extended the deadline from January 1, 2008, to January 1, 2011, the Commission stated that the extension would “ensure that operators have maximum flexibility to maintain existing systems without significantly delaying the overall migration of operations”⁹ In addition, the extension would “ensure the availability of quality equipment and infrastructure from reputable manufacturers.”¹⁰

In the 2010 *Narrowbanding Waiver Order*, which granted a blanket waiver of Section 90.203(j)(10) until January 1, 2013, the Commission stated 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.”¹¹ Further, the temporary waiver would “ensure that necessary equipment remains available during the narrowbanding transition.”¹²

Just as in those past extensions, the underlying purpose of the narrowbanding transition would not be served by strict application of the manufacturing prohibition for licensees granted waiver of the narrowbanding deadlines. As the Commission noted in a recent licensee waiver grant, “waiver will allow [the licensee] to continue its contracted transition to narrowbanding technology *without jeopardizing essential system reliability* as it upgrades.”¹³ A necessary component of maintaining “essential system reliability” is the ability of a licensee to purchase

⁹ *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 Rulemaking and Order, 19 FCC Rcd 25045, ¶ 25 (2004) (“*Third MO&O*”).

¹⁰ *Id.*, ¶ 25 n.77.

¹¹ *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended*, Order, 25 FCC Rcd 8861, ¶ 8 (2010) (“*Narrowbanding Waiver Order*”).

¹² *Id.*

¹³ *New York City Transit Authority*, DA 12-1300, ¶ 8 (emphasis added).

customized, newly-manufactured equipment when their current equipment fails. Strict application of the manufacturing ban would hinder the ability of these licensees to procure the necessary equipment during their migration to narrowband technology and could interrupt critical public safety communications needs.¹⁴

Moreover, the marketplace for customized PLMR equipment makes grant of a limited waiver here more pressing than in past extensions of the manufacturing prohibition deadline. In the *Narrowbanding Waiver Order*, the Commission stated that “[r]elief 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 Rule 90.203(j)(10) is applicable].” Motorola Solutions agrees that the rules will not prohibit the marketing and sale of its existing inventories of 25 kHz-capable equipment after January 1, 2013. However, as noted above, most of the equipment sold to PLMR licensees is not equipment that sits in inventory. Thus, though manufactures will exhaust their existing inventory to the extent feasible, there is no “existing inventory” of equipment that would be available to meet the demand from each waiver recipient licensee. As the Commission acknowledged in the *Third MO&O*, “limiting availability of new 25 kHz equipment will cause existing 25 kHz systems to be repaired or replaced with used, refurbished or rescued spare parts that may not be adequate to restore acceptable communications in functioning networks.”¹⁵

Under these circumstances, strict application of the deadline would be inequitable, unduly burdensome and contrary to the public interest, and the Request should be granted.

¹⁴ See, e.g., *First Student, Inc.*, DA 12-1227, ¶ 4 (“Strict application of the narrowbanding rules could result in interruption of FGA’s communications, which could put children’s safety at risk.”).

¹⁵ *Third MO&O*, ¶ 17.

III. CONCLUSION

For the foregoing reasons, Motorola Solutions respectfully requests a limited waiver of Section 90.203(j)(10) of the Commission's rules as described herein. Grant of the waiver will serve the public interest by ensuring that those licensees receiving narrowbanding waivers maintain essential system interoperability and reliability during their narrowbanding transition.

Respectfully submitted,

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