

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

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|--|---|---------------------|
| 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 |
| |) | |

FOURTH MEMORANDUM OPINION AND ORDER

Adopted: May 12, 2008

Released: May 13, 2008

By the Commission:

I. INTRODUCTION

1. In the *Third Report and Order* in this proceeding, the Commission indicated that it intends to establish a fixed timeline for private land mobile radio (PLMR) licensees to transition to 6.25 kHz technology, but did not at that time establish specific dates.¹ In this *Fourth Memorandum Opinion and Order*, we address a petition for reconsideration and a request for clarification of the *Third Report and Order*. Specifically, we clarify that a notice of proposed rulemaking will be released prior to adoption of a 6.25 kHz technology transition schedule; and that language in the *Third Report and Order* encouraging licensees to consider migrating directly to 6.25 kHz technology was not intended to dissuade migration to 12.5 kHz technology by licensees that have already begun the process.

II. BACKGROUND

2. Earlier in this proceeding, the Commission took the following actions in order to bring about a timely transition to narrowband technology: (1) set January 1, 2013, as the deadline for Industrial/Business and Public Safety Radio Pool licensees in the 150-174 MHz and 421-512 MHz bands to either migrate to 12.5 kHz technology, or utilize a technology that achieves equivalent efficiency; (2) prohibited any applications for new systems using 25 kHz channels, or modification applications that expand the authorized contour of an existing 25 kHz station, effective January 1, 2011; (3) prohibited the manufacture and importation of any 150-174 MHz or 421-512 MHz band equipment capable of operating with only one voice path per 25 kHz of spectrum, *i.e.*, equipment that includes a 25 kHz mode, beginning January 1, 2011; and (4) prohibited the certification of any equipment that includes a 25 kHz mode beginning January 1, 2011.²

¹ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Report and Order*, WT Docket No. 99-87, RM-9332, 22 FCC Rcd 6083, 6088 ¶ 10 (2007) (*Third Report and Order*).

² See 47 C.F.R. §§ 90.203(j), 90.209(b); see also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Second Report and Order and Second Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034 (2003) (*Second Further Notice*); Implementation of Sections 309(j) and 337 of the

(continued....)

3. In the *Second Further Notice of Proposed Rule Making* in this proceeding, the Commission sought comment on whether measures similar to those adopted to encourage the migration to 12.5 kHz narrowband technology should also be implemented to facilitate migration to 6.25 kHz technology.³ Noting that 12.5 kHz technology was a transitional standard to facilitate migration to 6.25 kHz technology, the Commission tentatively concluded that similar measures would facilitate migration to 6.25 kHz technology.⁴ It also sought comment on a date or dates by which licensees must migrate to 6.25 kHz technology.⁵

4. In the *Third Report and Order*, however, the Commission declined to establish a fixed date for users to transition to 6.25 kHz technology, because it agreed with the majority of commenters “that adopting such a measure would be premature, and . . . more time is warranted to allow further development and field testing of the 6.25 kHz [interoperability] standard.”⁶ The Commission nonetheless reiterated that 12.5 kHz technology is a transitional step in the eventual migration of PLMR systems to 6.25 kHz technology, and it stated,

When that technology matures to the point that sufficient equipment is available for testing, we will expeditiously establish a transition date for users to convert to that more spectrum-efficient technology. . . . Given that the Commission will adopt a date by which users must migrate to 6.25 kHz technology, we strongly urge licensees to consider the feasibility of migrating directly from 25 kHz technology to 6.25 kHz technology prior to January 1, 2013. Such a course could be more efficient and economical than first migrating to 12.5 kHz technology by 2013, then further migrating to 6.25 kHz technology thereafter.⁷

5. Two petitions were filed in response to the *Third Report and Order*. First, Kenwood USA Corporation, Communications Sector (Kenwood) requests that we clarify that the Commission’s statement urging licensees to consider migrating directly to 6.25 kHz technology was not intended to delay or discourage migration to 12.5 kHz technology.⁸ It reports that the *Third Report and Order* has caused end-users, including entities that already were in the process of converting to 12.5 kHz technology

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Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). Language relating to the 2013 deadline was erroneously deleted from Section 90.209(b)(5) of the Commission’s Rules, 47 C.F.R. § 90.209(b)(5), in an unrelated rulemaking proceeding last year. See Amendment of Part 90 of the Commission’s Rules, *Notice of Proposed Rulemaking and Order*, WP Docket No. 07-100, 22 FCC Rcd 9595, 9629 (2007). We take this opportunity to correct the error and restore the deleted language. Moreover, as a portion of the deleted passage was worded in a slightly imprecise manner, we have revised it. We find that notice and public procedure are unnecessary because this amendment of the rules is non-substantive in nature and simply increases the ease of reference to previously established obligations. Accordingly, for good cause, we are revising the rule as set forth in the Appendix, pursuant to the notice and comment exceptions of 5 U.S.C. § 553(b).

³ See *Second Further Notice*, 18 FCC Rcd at 3045 ¶ 27.

⁴ *Id.* (citing 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, 10095 ¶ 28 (1995) (*Refarming Report and Order*)).

⁵ *Id.*

⁶ *Third Report and Order*, 22 FCC Rcd at 6088 ¶ 10.

⁷ *Id.* at 6088-89 ¶ 11.

⁸ Letter dated May 9, 2007 from Christopher D. Imlay, Regulatory Counsel, Kenwood USA Corporation, Communications Sector to Fred Campbell, Chief, Wireless Telecommunications Bureau, at 3.

in order to comply with the 2013 deadline, to adopt a “wait and see” approach rather than invest in 12.5 kHz equipment that may be rendered obsolete before the end of its useful life.⁹ The City of New York (New York) echoes Kenwood’s concern that an early date for 6.25 kHz migration would result in stranded investment, and raises other concerns.¹⁰ New York urges the Commission to release a notice of proposed rulemaking prior to adoption of a 6.25 kHz technology transition date, in order to allow licensees an opportunity to plan and implement a reasoned migration path.¹¹ The commenters to New York’s petition unanimously support this request.¹²

III. DISCUSSION

6. As an initial matter, we are cognizant of the concerns raised by New York and commenters supporting New York’s petition that their 12.5 kHz equipment not be rendered obsolete prematurely.¹³ Accordingly, we clarify that we intend to provide notice and seek comment prior to adopting final rules establishing a 6.25 kHz migration schedule,¹⁴ and thus grant New York’s petition to that extent. At that time, interested parties will have an opportunity to comment on such a proposal.

7. We are aware that many licensees of larger, more complicated systems have already commenced the transition to 12.5 kHz technology in order to comply with the 2013 deadline. We applaud these efforts, and do not believe that they should be suspended or abandoned. We therefore clarify that the language in the *Third Report and Order* urging licensees to consider migrating directly to 6.25 kHz technology was not intended to dissuade migration to 12.5 kHz technology by licensees that have already begun the process. To that extent, we grant the Kenwood petition.

8. We reiterate, however, that 12.5 kHz technology is a transitional step in the eventual migration of PLMR systems to 6.25 kHz technology. As the demand for scarce PLMR spectrum continues to grow, the Commission will closely monitor the progress made by standards-setting

⁹ *Id.*

¹⁰ Petition for Reconsideration of the City of New York at 1-3 (filed May 18, 2007) (New York Petition).

¹¹ *Id.* at 1, 11.

¹² Association of American Railroads (AAR), Association of Public-Safety Communications Officials-International, Inc. (APCO), Enterprise Wireless Alliance, Land Mobile Communications Council (LMCC), Motorola, Inc. (Motorola), Nassau County Fire and Rescue Services, Nassau County Police Department, National Public Safety Telecommunications Council, State of California, and Utilities Telecom Council filed comments. In addition, Icom, Inc. filed an *ex parte* statement.

¹³ See New York Petition at 6; AAR Comments at 1-2, 9; APCO Comments at 2; LMCC Comments at 2; Motorola Comments at 4. We note that throughout the rulemaking proceedings regarding PLMR narrowbanding, the Commission has been cognizant of licensees’ desire to maximize the useful life of their equipment. See *Second Further Notice*, 18 FCC Rcd at 3041-42 ¶¶ 18-19; *Refarming Report and Order*, 10 FCC Rcd at 10099 ¶ 37.

¹⁴ It is not unusual for the Commission to reach a general decision, such as the decision ultimately to adopt rules mandating migration to 6.25 kHz technology, while deferring adoption of final rules implementing the decision to further notice-and-comment rulemaking proceedings. See, e.g., *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, MM Docket No. 99-325, 22 FCC Rcd 10344 (2007) (resolving operational and other issues that were presented in the *Further Notice of Proposed Rulemaking* in that proceeding after the *Report and Order* selected in-band, on-channel as the technology enabling AM and FM radio broadcast stations to commence digital audio broadcasting); *Review of Part 87 of the Commission’s Rules Concerning the Aviation Radio Service*, *Second Report and Order and Second Further Notice of Proposed Rule Making*, WT Docket No. 01-289, 21 FCC Rcd 11582, 11590-92 ¶¶ 13-14 (2006) (concluding that Aeronautical Mobile Satellite (Route) Service should be licensed under Part 87 as well as Part 25, but deferring implementation of the policy pending the resolution of flexibility and priority issues).

organizations and equipment manufacturers to develop more spectrum-efficient PLMR systems. As we indicated in the *Third Report and Order*, when 6.25 kHz technology matures to the point that sufficient equipment is available for testing, we will expeditiously establish a transition date for users to convert to that more spectrum-efficient technology. Consequently, licensees that may not migrate to 12.5 kHz technology until the January 1, 2013 deadline approaches should consider the feasibility of migrating directly to 6.25 kHz technology. Such a course could be more efficient and economical for licensees—and result in greater overall spectrum efficiency—than first migrating to 12.5 kHz technology by 2013, then further migrating to 6.25 kHz technology thereafter.

IV. PROCEDURAL MATTERS

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, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.2 of the Commission’s Rules, 47 C.F.R. § 1.2, the Request for Clarification filed by Kenwood USA Corporation, Communications Sector on May 9, 2007 IS GRANTED to the extent set forth herein.

11. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.429 of the Commission’s Rules, 47 C.F.R. § 1.429, the Petition for Reconsideration filed by City of New York on May 18, 2007 IS GRANTED to the extent set forth herein.

12. IT IS FURTHER ORDERED that Part 90 of the Commission’s Rules IS AMENDED as specified in the Appendix, effective 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Final Rules

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

2. Section 90.209 is amended by revising footnote 3 to the table in paragraph (b)(5) to read as follows:

§ 90.209 Bandwidth limitations.

(b) * * * * *

(5) * * *

³ Operations using equipment designed to operate with a 25 kHz channel bandwidth will be authorized a 20 kHz bandwidth. Operations using equipment designed to operate with a 12.5 kHz channel bandwidth will be authorized a 11.25 kHz bandwidth. Operations using equipment designed to operate with a 6.25 kHz channel bandwidth will be authorized a 6 kHz bandwidth. All stations must operate on channels with a bandwidth of 12.5 kHz or less beginning January 1, 2013, unless the operations meet the efficiency standard of § 90.203(j)(3).

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