

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

In the Matter of
ICOM AMERICA, INC.
Request for Waiver of Section 80.225(a)

ORDER

Adopted: March 24, 2015

Released: March 25, 2015

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. We have before us a Request for Waiver (Waiver Request) filed by Icom America, Inc. (Icom), seeking a waiver of Section 80.225(a)(5) of the Commission’s Rules, which prohibits the manufacture, importation and sale of handheld, portable Digital Selective Calling (DSC) equipment built to the prior technical standard, as of March 25, 2015. For reasons discussed below, we deny the Waiver Request.

2. Background. In 2006, the Commission adopted a Third Report and Order in WT Docket No. 00-48, in which it amended a number of the Commission’s Part 80 rules governing maritime communications. Among other things, it amended Section 80.225(a)(5) of the Commission’s Rules to require that Class D VHF DSC marine radio equipment comply with a new standard for such equipment published by the International Electro-technical Commission (IEC). The Commission noted that IEC 62238 “includes a functional requirement requiring dual receivers, to ensure that a DSC call can be received while voice traffic is being received on another channel” The Commission stated that “the safety benefits of requiring compliance with the newer standards are not disputed.”

3. To minimize the burden of complying with the new standards, the Commission also adopted “significant grandfathering protections” to permit the continued manufacture, importation, sale

1 Request for Waiver, filed Feb. 19, 2015, by Icom America, Inc. (Waiver Request).

2 47 C.F.R. § 80.225(a)(5).

3 Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications, Memorandum Opinion and Order, Third Report and Order, and Third Further Notice of Proposed Rule Making, WT Docket No. 00-48 and PR Docket No. 92-257, 21 FCC Rcd 10282 (2006) (Third Report and Order).

4 Id. at 10298-300 ¶¶ 27-29.

5 Id. at 10298 ¶ 26. Radios compliant with IEC 62238 will also incorporate “other new safety features and functions, including . . . revised alarming designed to prevent sound interference with ongoing safety communications, and Global Positioning System (GPS) interconnection alarms designed to ensure that distress alerts include a valid position.” Id. at 10298 ¶ 27. DSC equipment meeting the new requirements will provide improved detection of distress alerts, a reduced rate of false alarms, and a reduction in incessant alarming. Wireless Telecommunications Bureau Reminds Mariners, Manufacturers, and Retailers That Handheld, Portable DSC Radios Approved Under Prior Technical Standard May Not Be Manufactured, Imported, or Sold as of March 25, 2015, Public Notice, 29 FCC Rcd 14517, 14517 n.2 (WTB 2014).

6 Third Report and Order, 21 FCC Rcd at 10298 ¶ 27.

and use of DSC equipment authorized under the earlier standards.⁷ Of particular relevance here, it permitted the continued manufacture, importation and sale of handheld, portable DSC radios that did not comply with the new standard (but remained in compliance with the predecessor standard) for seven years after the effective date of the new rules.⁸ The end of the seven-year grandfathering period was later fixed at March 25, 2015, based on the date of publication in the Federal Register.⁹

4. Icom now requests a waiver of Section 80.225(a)(5) to permit the continued manufacture and sale of handheld, portable DSC radios without dual receiver capability.¹⁰ Icom says that the IEC has yet to establish a dual receiver standard for portable units, so if it were to modify its radio designs now to incorporate dual receiver capability, it could be required to modify its designs again after a standard is adopted.¹¹ Icom states that “having to modify radio designs twice would be inefficient, extremely costly and would delay implementation of the most advanced radios for the industry when the new standard is adopted.”¹² It also argues that “the purpose of the rule would not be served until such time as there is an industry standard to which manufacturers build. Non-standard designs in the field at this time could lead to communications failure during emergencies.”¹³ Icom requests a temporary waiver of the dual receiver requirement for two years after an IEC standard for dual receiver DSC units is adopted.¹⁴

5. *Discussion.* Under Section 1.925(b)(3) of the Rules, we may grant a waiver if it is shown that (i) the 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 requested waiver would be in the public interest; or (ii) in 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.¹⁵ We conclude that grant of Icom’s requested waiver of Section 80.225(a)(5) is not warranted under either prong of this waiver standard.

6. We are not persuaded that the underlying purpose of Section 80.225(a)(5) would not be served or would be frustrated by application to Icom in these circumstances, or that a grant of the requested waiver would be in the public interest. A primary purpose of requiring Class D DSC handheld, portable radios to comply with the newer, more rigorous requirements of IEC 62238, in particular the dual receiver requirement, is to promote maritime safety.¹⁶ The Commission noted that, “in order to arrive at a

⁷ *Id.* at 10299 ¶ 28.

⁸ *Id.* at 10300 ¶ 29. The Commission adopted lengthier grandfathering periods for both the certification and for the manufacture, importation, and sale of handheld DSC radios than it did for non-handheld DSC radios, explaining that a “longer transition period is warranted for handheld equipment because of the greater design challenges involved in incorporating additional safety features in units of smaller size.” *Id.* at 10299 n.127.

⁹ See 73 Fed. Reg. 4475, 4483 (Jan. 25, 2008).

¹⁰ See Waiver Request at 2.

¹¹ *Id.* at 2-3. Icom says that “[w]hile there is presently an ETSI [European Technical Standards Institute] standard for dual receiver capability, it has not been adopted as the IEC standard. *Id.* at 3 n.7.

¹² *Id.* at 3; see also *id.* at 4 (“The costs to design, and then redesign, radios to meet the rule, and then the standard, is unduly burdensome to Icom, and there is no reasonable alternative for Icom to pursue.”).

¹³ *Id.* at 3-4.

¹⁴ *Id.* at 3, 4.

¹⁵ 47 C.F.R. § 1.925(b)(3).

¹⁶ Cf. *Raymarine, Order*, 27 FCC Rcd 15264, 15265 ¶ 6 (WTB MD 2012) (*Raymarine*) (explaining, in denying a waiver of a rule requiring non-portable DSC radio equipment to comply with the updated ITU standard, that “[t]he purpose of periodically revising the Part 80 rules to require compliance with the most recently adopted international standards is to promote maritime safety by ensuring that mariners are using radios with up-to-date features, advanced functionality, and international interoperability”).

low-cost design, a number of performance compromises were made [in the prior technical standard, known as SC101], perhaps most significantly the requirement for only one receiver. This means that an SC101 radio will not receive a distress call if the receiver is in use for another call.”¹⁷ Permitting manufacturers to continue to manufacture and market single-receiver portable, handheld DSC radios would therefore frustrate the purpose of the rule. Icom’s only reference to maritime safety is a single sentence making the unsubstantiated claim that “non-standard designs in the field at this time could lead to communications failure during emergencies.”¹⁸ Icom does not explain why that is so, and, in the absence of any record evidence suggesting that other marine radio manufacturers or maritime safety stakeholders share that concern, we do not believe that requiring Icom’s and other manufacturers’ handheld, portable DSC radios to have dual receivers beginning on March 25, 2015, would frustrate the purpose of Section 80.225(a)(5) or otherwise disserve the public interest.

7. Nor do we see any basis for finding that Icom’s waiver request satisfies the second prong of the waiver standard. Icom claims that requiring it to comply with Section 80.225(a)(5) would be unduly burdensome and that it has no reasonable alternative. But as part of the showing required under Section 1.925(b)(3)(ii), the party seeking a waiver must also demonstrate that the burden and lack of alternatives stem from unique or unusual factual circumstances. Icom has not argued that it is uniquely or unusually burdened by the need to comply with a dual-receiver requirement vis-à-vis other manufacturers. Like other manufacturers, Icom has been on notice of this requirement since 2006, but no other manufacturer has requested waiver relief of this sort,¹⁹ and Icom has not explained why it is excessively burdensome to add dual-receiver functionality to its handheld, portable DSC radios.

8. In addition, the Waiver Request does not provide any information to explain the nature and extent of the burden Icom says it will incur if forced to comply with Section 80.225(a)(5) by March 25, 2015. It provides no information on how its handheld, portable DSC radios might have to be re-engineered or revised once an IEC dual receiver standard is in place, or any estimate of how much it would cost.²⁰ While we understand that it may be difficult for Icom to quantify with precision all elements of the burden it seeks to avoid, we would expect to be given something more in justification for a waiver than a conclusory statement that compliance with the rule would be unduly burdensome, especially since the record offers no basis for finding that Icom would be burdened more than other manufacturers.²¹

9. *Conclusion.* Icom has failed to demonstrate that it should be granted a waiver of the Section 80.225(a)(5) requirement that, beginning March 25, 2015, handheld, portable Class D DSC radios may not be manufactured, imported, or sold unless they comply with IEC 62238, including the standard’s mandate for dual receivers. The primary purpose of the rule — to promote maritime safety — would not be frustrated by its application to Icom, and we are not persuaded that waiving the rule for Icom would serve the public interest. In addition, Icom has not explained why it is uniquely or unusually burdened by the need to comply with the rule, and has not provided any information that would permit us to assess the nature and extent of the claimed burden.

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.925 of the

¹⁷ See *Third Report and Order*, 21 FCC Rcd at 10298 n.121.

¹⁸ See Waiver Request at 3-4.

¹⁹ See *Raymarine*, 27 FCC Rcd at 15266 ¶ 7 (noting that no manufacturer other than Raymarine had requested similar waiver relief from the new standard for non-portable DSC equipment).

²⁰ Icom also has not attempted to explain why it would need two years after adoption of an IEC dual-receiver standard in order to come into compliance.

²¹ See *Raymarine*, 27 FCC Rcd at 15266 ¶ 8.

Commission's Rules, 47 C.F.R. § 1.925, that the Request for Waiver filed by Icom America, Inc. on February 19, 2015, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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Wireless Telecommunications Bureau