

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

In the Matter of)
INTERNATIONAL MUNICIPAL SIGNAL)
ASSOCIATION)
Implementation of Section 309(j) and 337 of the) WT Docket No. 99-87
Communications Act of 1934 as Amended)
Promotion of Spectrum Efficient Technologies on) RM-9332
Certain Part 90 Frequencies)
Request for Waiver of Section 90.203(j)(4)-(5) of)
the Commissions' Rules)

ORDER

Adopted: June 29, 2017

Released: June 30, 2017

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

1. We have before us the above-captioned request for waiver of section 90.203(j)(4)-(5) of the Commission's rules filed by the International Municipal Signal Association (IMSA), seeking to delay the implementation of section 90.203(j)(4)-(5) until at least January 1, 2020. For the reasons set forth below, we deny the request.

2. Background. In 1995, the Commission decided that, as of August 1, 1996, it would no longer certify equipment that could not operate on 12.5 kilohertz channels or with equivalent efficiency, and that as of January 1, 2005, it would no longer certify equipment that could not operate on 6.25 kilohertz channels or with equivalent efficiency.

3. In 2003, however, the Commission concluded that the pace of migration to 12.5 kilohertz technology had been slower than it had anticipated, and that the equipment approval process alone was not sufficient to bring about a timely transition to narrowband technology. The Commission therefore amended the rules to require licensees to migrate to 12.5 kilohertz technology or equipment that achieves equivalent efficiency by January 1, 2013. Later, the Commission stayed the requirement that private land mobile radio (PLMR) equipment be capable of operating on 6.25 kilohertz channels or with equivalent

1 47 CFR § 90.203(j)(4)-(5).

2 Request of the International Municipal Signal Association for Waiver (filed Aug. 19, 2016) (Waiver Request).

3 See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them; Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services, Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 10076, 10099, para. 38 (1995).

efficiency in order to obtain equipment authorization, pending the Commission's consideration of whether to impose a deadline for migration to 6.25 kilohertz technology.⁴

4. In 2007, the Commission declined to establish a fixed date for users to transition to 6.25 kilohertz technology, but reiterated that 12.5 kilohertz operation is only a transitional step in the eventual migration to 6.25 kilohertz technology.⁵ It therefore encouraged users to consider migrating directly to 6.25 kilohertz technology by January 1, 2013.⁶ It selected January 1, 2011, as the new date after which it would no longer certify equipment that could not operate on 6.25 kilohertz channels or with equivalent efficiency.⁷ In 2010, the Commission temporarily waived the 6.25 kilohertz deadline until January 1, 2013, to avoid any impediment to licensees' migration to 12.5 kilohertz technology by January 1, 2013.⁸

5. In 2013, the Wireless Telecommunications Bureau (WTB), Public Safety and Homeland Security Bureau (PSHSB), and Office of Engineering and Technology (OET) denied a request that the prohibition against approval of PLMR equipment that is not capable of 6.25 kilohertz operation be delayed indefinitely.⁹ The *2013 Order* concluded that it was unnecessary to delay the transition to 6.25 kilohertz technology until a single industry-wide 6.25 kilohertz standard emerged in the marketplace.¹⁰ It did, however, postpone the implementation of the 6.25 kilohertz requirement until January 1, 2015, to allow additional time for standards bodies to complete the ANSI 102 "Project 25 Phase II" standard.¹¹

6. The Commission subsequently eliminated the 6.25 kilohertz capability requirement for 700 MHz band Public Safety equipment,¹² concluding that the Regional Planning Committees (RPCs), which administer the 700 MHz narrowband interoperability channels, were in the best position to evaluate the need for 6.25 kilohertz technology.¹³ On January 1, 2015, the prohibition against certification of PLMR equipment that is not capable of operating on 6.25 kilohertz operation went into effect.

⁴ 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 Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order, 19 FCC Rcd 25045, 25063-64, paras. 44-47 (2004).

⁵ 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, 22 FCC Rcd 6083, 6088, paras. 10-11 (2007) (*Narrowbanding 3rd R&O*); 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, 18 FCC Rcd 3034, 3038, paras. 11-23 (2003).

⁶ See *Narrowbanding 3rd R&O*, 22 FCC Rcd at 6088-89, para. 11; 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*, Fourth Memorandum Opinion and Order, 23 FCC Rcd 8042, 8044-45, para. 8 (2008).

⁷ See *Narrowbanding 3rd R&O*, 22 FCC Rcd at 6090, para. 16.

⁸ 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*, Order, 25 FCC Rcd 8861, 8865-66, para. 11 (2010).

⁹ 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*, Order, 28 FCC Rcd 2811, 2814, para. 11 (WTB/PSHSB/OET 2013) (*2013 Order*).

¹⁰ *Id.* at 2813-14, para. 9.

¹¹ *Id.* at 2814, para. 10.

¹² See *Proposed Amendments to the Service Rules Governing Public Safety Narrowband Operations in the 769-775/799-805 MHz Bands*, Report and Order, 29 FCC Rcd 13283, 13289, paras. 9-11 (2014).

¹³ *Id.* at 13289, para. 11.

7. IMSA filed its waiver request in mid-2016. It argues that the 6.25 kilohertz capability requirement would significantly raise prices and reduce deployment, especially for volunteer firefighters and ski patrols.¹⁴ It states that, because Public Safety users are required to continue using radios with FM analog capabilities on mutual aid and interoperability channels,¹⁵ there is no operational need to mandate digital capabilities as well.¹⁶ Further, it contends the 6.25 kilohertz capability requirement could harm interoperability by allowing incompatible equipment to proliferate.¹⁷ Consequently, IMSA asserts that the implementation of section 90.203(j)(4)-(5) should be delayed until January 1, 2020, at which time the Commission should reassess the decision to impose the 6.25 kilohertz capability requirement.¹⁸ In a joint Public Notice, WTB, PSHSB, and OET sought comment on IMSA's request.¹⁹

8. *Discussion.* To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the 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.²⁰ We conclude, based on the record before us, that a waiver is not warranted.

9. The Commission has stated repeatedly that the migration to 12.5 kilohertz operation was only a transitional step in the eventual migration to 6.25 kilohertz technology, and that it intends, if necessary, to establish a deadline for mandatory migration to 6.25 kilohertz technology.²¹ We find that resuming the certification of PLMR equipment that is not capable of operating on 6.25 kilohertz channels or with equivalent efficiency would not serve the public interest. Such an action would increase the embedded base of equipment that is not 6.25 kilohertz-capable, and such equipment would eventually have to be replaced as part of the migration to 6.25 kilohertz technology, thus delaying the transition. We conclude, therefore, that delaying the 6.25 kilohertz capability requirement again would be contrary to the intent of the Commission in establishing the narrowbanding rules and would frustrate the purpose of the underlying rule.

10. Moreover, we are not persuaded by IMSA's specific arguments. That mandatory standards for 6.25 kilohertz technology still are not in place does not preclude continued implementation

¹⁴ See Waiver Request at 3-4.

¹⁵ See *Emission Mask Requirements for Digital Technologies on 800 MHz NPSPAC Channels; Analog FM Capability on Mutual Aid and Interoperability Channels*, Report and Order, 31 FCC Rcd 4250, 4272-76, paras. 56-65 (2016).

¹⁶ Waiver Request at 4-5.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 8-9.

¹⁹ See *Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology Seek Comment on Request Filed by the International Municipal Signal Association for Waiver of Section 90.203(j)(4)-(5) of the Commission's Rules*, Public Notice, 31 FCC Rcd 10768 (WTB/PSHSB/OET 2016) (*Public Notice*). Comments or reply comments were filed by Ritron, Inc.; the National Ski Patrol System, Inc. (Ski Patrol); Powerwerx; the Government Wireless Technology & Communications Association (GWTC); Icom America, Inc. (Icom); and IMSA. The National Public Safety Telecommunications Council filed *ex parte* comments.

²⁰ 47 CFR § 1.925(b)(3).

²¹ See note 5, *supra*.

of the 6.25 kilohertz certification requirement. As the *2013 Order* explained, the Commission never suggested that it foresaw or would require adoption of a single mandatory 6.25 kilohertz standard.²²

11. Contrary to IMSA's contention, the Commission's elimination of the 6.25 kilohertz capability requirement for the 700 MHz band Public Safety band is not a predicate for eliminating or delaying the transition to 6.25 kilohertz technology in the bands below 512 MHz. The Commission decided that the transition to 6.25 kilohertz technology for the 700 MHz Public Safety channels was best placed in the hands of the RPCs, which have superior knowledge of local spectrum requirements. No such consideration exists in the bands below 512 MHz, which, rather than being used by one class of users and administered regionally by a single RPC, are shared by multiple classes of users and coordinated by multiple entities. Similarly, anticipating the possible future conversion of the 700 MHz Public Safety band to broadband, the Commission elected not to impede such a conversion by mandating 6.25 kilohertz technology in the band. Here, too, IMSA has not convinced us that there is a parallel between the 700 MHz Public Safety channels, where the Commission expressly sought to leave RPCs with the option of considering broadband use, and channels in the bands below 512 MHz, where the Commission contemplates further narrowbanding.

12. Finally, we conclude that the record does not substantiate IMSA's assertion that continued implementation of the 6.25 kilohertz capability requirement for PLMR equipment will significantly raise prices and reduce deployment. In its waiver request IMSA did not quantify the requirement's effect on equipment costs or deployment. It also did not demonstrate that continued implementation of the 6.25 kilohertz capability requirement would be inequitable, unduly burdensome, or contrary to the public interest in view of the unique or unusual factual circumstances of the instant case. The *Public Notice* specifically sought comment on the cost and other issues.²³ The record includes some conflicting assertions, but there is no clear evidence supporting IMSA's assertions. Some commenters state that manufacturer investment and market competition have kept the price of 6.25 kilohertz-capable equipment comparable to that of similar equipment without 6.25 kilohertz capability.²⁴ Others assert that complying with the 6.25 kilohertz capability requirement adds more than a thousand dollars to the cost of a radio,²⁵ but they appear to be comparing low-end models with high-end models.²⁶ Based on the record before us, we conclude that IMSA has not presented any compelling facts or demonstrated that continued implementation of the 6.25 kilohertz capability requirement would be inequitable, unduly burdensome, or contrary to the public interest in the instant case. Moreover, a waiver request generally is not the appropriate vehicle for seeking a substantial change in the rules applicable to all licensees in a particular service; this sort of fundamental change is the province of rulemaking.²⁷

13. Accordingly, IT IS ORDERED pursuant to sections 4(i), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), and 303(r), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Request for Waiver filed by the International Signal Association on August 19, 2016, IS DENIED.

²² See *2013 Order*, 28 FCC Rcd at 2813-14, para. 9.

²³ See *Public Notice*, 31 FCC Rcd at 10769.

²⁴ See GWTC comments at 3; Icom comments at 4.

²⁵ See Powerwerx comments at 1; Ritron, Inc., comments at 3.

²⁶ See Ski Patrol comments at 2-3.

²⁷ See, e.g., *Clarity Media Systems, LLC*, Order, 28 FCC Rcd 9629, 9634, para. 14 (2013).

14. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

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