

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

In the Matter of)	
)	
Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended;)	WT Docket 99-87
)	
Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies)	RM-9332
)	

ORDER ON RECONSIDERATION

Adopted: November 29, 2012

Released: November 30, 2012

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

1. *Introduction.* We have before us the request of the Telecommunications Industry Association (TIA) for clarification and/or declaratory ruling¹ regarding the April 26, 2012 *Order* of the Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau and Office of Engineering and Technology (the Bureaus) in this proceeding.² On the Bureaus' own motion, the *Order* waived the Commission's January 1, 2013 deadline for private land mobile radio (PLMR) licensees in the 470-512 MHz band to migrate to narrowband technology and a related rule pertaining to manufacture and importation of PLMR equipment. TIA requests a ruling that the prohibition on the certification of new equipment capable of operating in wideband mode also is waived with respect to operation in this one band (the "T-Band").³ For the reasons set forth below, we grant the request to the extent indicated herein.

2. *Background.* In 1995, the Commission adopted rule changes to promote the efficient use by the PLMR service in the 150-174 MHz and 421-512 MHz bands, and facilitate the introduction of advanced technologies.⁴ To promote the transition to a more efficient narrowband channel plan, the Commission provided, *inter alia*, that "only increasingly efficient equipment" would be approved.⁵ The Commission did not set a date after which it would no longer approve equipment that could be operated in wideband (25 kilohertz) mode, or after which such equipment could no longer be manufactured or used.⁶

¹ Petition for Clarification and/or Declaratory Ruling (filed May 21, 2012) (Petition).

² See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Order*, WT Docket No. 99-87, 27 FCC Rcd 4213 (WTB/PSHSB/OET 2012) (*Order*).

³ See 47 C.F.R. § 90.203(j)(5).

⁴ 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).

⁵ *Id.* at 10081 ¶ 7.

⁶ *Id.* at 10100 ¶ 40. The Commission contemplated that, as systems reached the end of their service life and new radios were needed, users would migrate to narrower bandwidth multi-mode radios in order to avoid the adjacent-channel interference that could occur from systems using the adjacent narrowband channels.

3. As noted in the *Order*, in 2003 and 2004 the Commission amended the rules to require Industrial/Business and Public Safety Radio Pool licensees in the 150-174 MHz and 421-512 MHz bands to migrate to 12.5 kilohertz channel bandwidth or utilize a technology that achieves equivalent efficiency by January 1, 2013.⁷ The Commission also adopted interim deadlines to facilitate this transition to narrowband technology. Specifically, beginning January 1, 2011: (1) the manufacture, import, or certification of equipment capable of operating with only one voice path per 25 kilohertz of spectrum, *i.e.*, equipment that includes a 25 kilohertz mode, would be prohibited;⁸ (2) the Commission would no longer accept applications for new wideband 25 kilohertz operations, or modification applications that expand the authorized contour of existing 25 kilohertz stations;⁹ and (3) the Commission would no longer accept applications for certification of equipment that cannot operate in 6.25 kilohertz mode or with equivalent efficiency.¹⁰

4. In 2010, the Commission extended the January 1, 2011 deadline for the manufacture or import of wideband-capable equipment to match the January 1, 2013 deadline for licensees to terminate wideband operations, but specifically declined to extend the January 1, 2011 deadline for certification of new wideband-capable equipment.¹¹ It concluded that the public interest would not be served by certifying new types of equipment that would “expand the range of available 25 kHz-capable equipment as the 12.5 kHz migration deadline approaches.”¹²

5. On February 22, 2012, President Obama signed into law the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act),¹³ which, among other things, requires the Commission to conduct an incentive auction to recover a portion of the television broadcast spectrum.¹⁴ Part of that spectrum (UHF television channels 14-20) is also a part of the spectrum (470-512 MHz) in which these PLMR licensees operate. In addition, 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

⁷ See 47 C.F.R. § 90.209(b)(5); *see also* 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); 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). Specifically, the 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.

⁸ 47 C.F.R. § 90.203(j)(4) (certification), (10) (manufacture and import).

⁹ 47 C.F.R. § 90.209(b)(6).

¹⁰ 47 C.F.R. § 90.203(j)(5).

¹¹ *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 ¶¶ 8-9 (2010). The Commission also extended to January 1, 2013 the deadline for certifying equipment that is not capable of operating in 6.25 kilohertz mode, but specifically declined to extend the January 1, 2011 deadline for new or expanded 25 kilohertz operations. *See id.* at 8865 ¶¶ 10-11.

¹² *See id.* at 8864 ¶ 9.

¹³ Pub. L. No. 112-96, 126 Stat. 156 (2012).

¹⁴ *Id.*, § 6403.

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.”¹⁵ 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.¹⁶

6. In light of this legislation, the Bureaus released an *Order* on April 26, 2012 that waived the January 1, 2013 deadline for PLMR licensees in the 470-512 MHz band licensees to migrate to 12.5 kilohertz channel bandwidth or utilize a technology that achieves equivalent efficiency.¹⁷ The *Order* noted that the legislative mandate for the eventual relocation of public safety entities from the 470-512 MHz band raised issues about the disposition of the band generally, which created substantial uncertainty regarding whether application of the narrowbanding deadline in the T-Band would continue to serve its original purpose pending further action by the Commission.¹⁸ It concluded that, given this uncertainty, 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.¹⁹

7. The *Order* also waived the January 1, 2013 deadline for ending the manufacture or importation of equipment capable of operating with only one voice path per 25 kilohertz of spectrum in the T-band.²⁰ We noted that manufacturers could submit permissive change requests to permit the modification of existing wideband-capable equipment authorizations to enable wideband operation only in the 470-512 MHz band if the change is made through software.²¹ Our action was intended to avoid “prevent[ing] existing 470-512 MHz band systems from replacing or adding radios during the waiver period,” and thus “from keeping 25 kHz systems in full working order.”²² The *Order* did not, however, specifically address the prohibition on certification of *new* equipment capable of operating with only one voice path per 25 kilohertz of spectrum in the 470-512 MHz band.

8. On May 21, 2012, TIA filed its request for clarification and/or declaratory ruling. In TIA’s view, the *Order* does not appear to account for the possibility that wideband radios may not be available to T-Band licensees during this waiver period, that public safety entities may be in need of newly certified equipment during that period, but that our reference to “permissive changes” of the “current grant” appears to exclude the possibility of newly certified equipment. TIA requests a clarification or declaratory ruling that the prohibition on the inclusion of wideband capability in the 470-512 MHz band in equipment authorization applications filed on or after January 1, 2011 is also waived. Comment was sought on TIA’s request on June 13, 2012.²³ Five comments were received, all in support of the request.²⁴

¹⁵ *Id.*, § 6103(a).

¹⁶ *Id.*, § 6103(b), (c).

¹⁷ *See Order*, 27 FCC Rcd at 4215 ¶ 7.

¹⁸ *See id.* at 4214 ¶ 5. The *Order* noted that continuing to require narrowbanding could force many licensees in the 470-512 MHz band to invest in narrowband systems that may subsequently have to be relocated.

¹⁹ *See id.* at 4215 ¶ 6.

²⁰ *Id.* at 4215-16 ¶ 8.

²¹ *Id.* at 4216 n.19.

²² *Id.* at 4215-16 ¶ 8.

²³ *See* Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau and Office of Engineering and Technology Seek Comment on Telecommunications Industry Association Petition for Clarification and/or Declaratory Ruling Regarding Order Waiving the January 1, 2013 VHF-UHF Narrowbanding Deadline, *Public Notice*, WT Docket No. 99-87, 27 FCC Rcd 6238 (WTB/PSHSB/OET 2012).

9. On October 2, 2012, the Commission released a *Notice of Proposed Rulemaking* seeking comment on proposals to implement the Spectrum Act mandate to conduct an incentive auction of broadcast television spectrum, including UHF channels 14-20. While that *Notice* made no proposals regarding the reallocation and auction of the T-Band spectrum used by Public Safety eligibles.²⁵ The Commission noted that the T-Band would be addressed in a forthcoming *Public Notice* intended to advance the record on issues related to the technical, administrative, legal, and policy implications of the Spectrum Act for T-Band licensees.²⁶

10. *Discussion.* TIA argues that continuing to prohibit the certification of new equipment that is capable of wideband operation in the T-Band may prevent licensees from adding or replacing radios as equipment manufactured pursuant to older equipment authorizations ceases to be available, and leaves them unable to utilize new equipment with enhanced features.²⁷ While TIA did not caption its request as a petition for reconsideration, we will treat it as such because it seeks review of the *Order's* action waiving the January 1, 2013 deadline for PLMR licensees in the 470-512 MHz band licensees to migrate to narrowband technology and for cutting off the manufacture or importation of equipment capable of operating with only one voice path per 25 kilohertz of spectrum in the T-Band, but not the related prohibition on certification of new equipment capable of operating with only one voice path per 25 kilohertz of spectrum in the 470-512 MHz band.²⁸ For the reasons set forth below, we grant the petition for reconsideration.

11. After the Bureaus refrained from addressing the prohibition on certification of new equipment capable of operating with only one voice path per 25 kilohertz of spectrum in the 470-512 MHz band in the *Order*, the Commission determined in the *Notice of Proposed Rulemaking* with respect to incentive auctions to release a future *Public Notice* seeking comment on a range of issues regarding the T-Band spectrum. In light of the need to address and resolve these issues in future proceedings involving the T-Band, as announced by the Commission in that *Notice*, we now agree with TIA that a waiver of the prohibition on certification of new equipment capable of operating with only one voice path per 25 kilohertz of spectrum in the 470-512 MHz band is in the public interest. We conclude that the same reasons supporting the waiver of the January 1, 2013 deadline for manufacture or importation of equipment applies equally in the certification context. As we noted in the *Order*, the eventual relocation of public safety entities from this band now required by the Spectrum Act creates “substantial uncertainty regarding whether application of the narrowbanding deadline in the T-Band would continue to serve its original purpose.”²⁹ In the *Notice of Proposed Rulemaking*, the Commission established a process to address these matters but it is not clear at the present time when the issues will be resolved. Therefore, we now conclude that the public interest would be served by waiving the prohibition on new certifications so that PLMR licensees can utilize newly certified equipment if necessary for their operations. As with the waivers granted in the *Order*, we emphasize that this waiver is granted only with respect to the 470-

²⁴ See Comments of Association of Public-Safety Communications Officials-International, Inc., Harris Corporation, Land Mobile Communications Council, Motorola Solutions, Inc., and National Public Safety Telecommunications Council.

²⁵ See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Notice of Proposed Rulemaking*, GN Docket No. 12-268, FCC 12-118, ¶ 19 (rel. Oct. 2, 2012).

²⁶ *Id.*

²⁷ See Petition at 5.

²⁸ See, e.g., Implementation of Section 224 of the Act, *Report and Order and Order on Reconsideration*, WC Docket No. 07-245, 26 FCC Rcd 5240, 5338 n.670 (2011) (treating requests for clarification as petitions for reconsideration).

²⁹ *Order*, 27 FCC Rcd at 4214 ¶ 5.

512 MHz band addressed by the Spectrum Act relocation provision; certification of equipment capable of operating with only one voice path per 25 kilohertz of spectrum in the 150-174 MHz or 421-470 MHz bands continues to be prohibited.

12. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 302, 303(b), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302a, 303(b), 303(g), 303(r), and 405, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the Petition for Clarification and/or Declaratory Ruling filed on May 21, 2012 by the Telecommunications Industry Association IS GRANTED, and Section 90.203(j) of the Commission's Rules, 47 C.F.R. § 90.203(j), IS WAIVED, to the extent indicated above.

13. 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.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman
Chief
Wireless Telecommunications Bureau

David S. Turetsky
Chief
Public Safety and Homeland Security Bureau

Julius P. Knapp
Chief
Office of Engineering and Technology