

LAND MOBILE COMMUNICATIONS COUNCIL

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May 17, 2004

John B. Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C252
Washington D.C. 20554

Re: WT Docket No. 99-87

Dear Mr. Muleta:

The Land Mobile Communications Council ("LMCC") and its member organizations have been actively involved in the Federal Communications Commission ("FCC" or "Commission") proceedings involving the "refarming" of the Private Land Mobile Radio (PLMR) bands below 800 MHz from the outset.¹ The implementation of additional spectrum-efficient technologies in these bands presents significant issues for the PLMR industry. Nonetheless, LMCC and its members remain committed to working with the FCC in formulating rules that will achieve that important objective.

In the interim, however, LMCC urges the Commission to correct one aspect of its most recent decision regarding below 800 MHz refarming.² Specifically, the FCC should acknowledge by issuing an erratum that in adopting new Rule Section 90.209(b)(6), the 2nd R&O inadvertently established an irreconcilable inconsistency between that provision and the previously adopted spectrum efficiency equivalency standard set out in FCC Rule Sections 90.203(j)(3)-(5). The Commission should reaffirm the validity of those provisions and clarify that the deadlines for migration to "narrowband" systems will not apply to systems that meet those efficiency standards.

¹ See, e.g., *Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 10 FCC Rcd 10076 (1995).

² *Second Report and Order and Second Further Notice of Proposed Rule Making*, WT Docket No. 99-87, 28 CR 757 (2003) ("2nd R&O").

New Section 90.209(b)(6) prohibits the acceptance of applications for new or major modifications of systems with 25 kHz bandwidth. By its terms, the prohibition applies to all applications in the 150-174 MHz and 421-512 MHz bands. However, FCC Rule Sections 90.203(j)(3)-(5), respectively, state the following:

(3) Applications for Part 90 certification of transmitters designed to operate on frequencies in the 150-174 MHz and/or 421-512 MHz bands, received on or after February 14, 1997, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 12.5 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.³

(5) Applications for Part 90 certification of transmitters designed to operate on frequencies in the 150-174 MHz and/or 421-512 MHz bands, received on or after January 1, 2005, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 6.25 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.⁴

These rules were adopted almost ten years ago in the original refarming proceeding in recognition of the fact that certain advanced technologies could achieve comparable or even greater efficiencies with 25 kHz bandwidth channels than were expected from the general migration to narrowband technology.⁵ In particular, the Commission noted that paging and certain data systems exhibited very high levels of spectrum efficiency, but required wideband channels to do so.⁶

The recent proceeding that resulted in the 2nd R&O did not propose to modify or abandon those provisions and sought no comment on their continued applicability. However, new FCC Rule Section 90.209(b)(6) has the effect of invalidating them; it prohibits the submission of **all** applications for new or major modifications of 25 kHz bandwidth systems, even if the proposed equipment satisfies the previously approved spectrum efficiency equivalency standards. Since the invalidation of FCC Rule Sections 90.203(j)(3)-(5), whether implicitly or explicitly, without notice and comment would violate the Administrative

³ 47 C.F.R. § 90.203(j)(3).

⁴ 47 C.F.R. § 90.203(j)(5).

⁵ *Report and Order and Further Notice of Proposed Rule Making*, 10 FCC Red 10076 at ¶¶ 7, 97 (1995) ("Refarming R&O").

⁶ *Id.*

Procedure Act,⁷ it is apparent that the inconsistency was an inadvertent oversight that should be corrected by erratum.

The need for this correction has been noted already by a number of parties in this proceeding and no party has supported the implicit repeal of the spectrum efficiency equivalency standard. For example, the Petition for Reconsideration filed jointly by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), the International Municipal Signal Association ("IAFC/IMSA"), International Association of Chiefs of Police ("IACP"), Major Cities Chiefs' Association ("MCCA"), National Sheriffs' Association ("NSA"), Major County Sheriffs' Association ("SCSA"), and the National Public Safety Telecommunications Council ("NPSTC") stated the following:

TDMA and other multi-bandwidth mode equipment can provide important efficiencies for certain types of public safety radio systems. Mobile data systems also provide critical functionality to modern public safety communications operations, but generally require wideband (25 kHz) channels for current technologies. Such mobile data systems are spectrum-efficient as they provide equivalent throughput as "narrowband" voice channels. Thus, the Commission should reinstate rules that permit spectrum efficient operations on 25 kHz channels.⁸

Motorola echoed that position:

In the *Second Report and Order*, the Commission, either intentionally or inadvertently, eliminated the option of submitting equivalent efficiency designs after January 1, 2005....The PLMR industry heavily relied on the Commission's statement that it would allow alternative efficient technologies. Large investments are being made by multiple manufacturers to standardize a two-slot/12.5 kHz technology as the most appropriate approach for Project 25, Phase II....In order to prevent this waste of investment and efficiency, the Commission should reconsider its decision to require equipment to operate in discrete channels to meet per any future 6.25 kHz efficiency requirements.⁹

Motorola also noted the insurmountable problem the blanket prohibition would present for paging systems:

Without any direct discussion, the *Second Report and Order* modified [Section 90.35(c)(29)] to delete the provision that channels falling under

⁷ 5 U.S.C. § 553(b)(3). If no entity is permitted to file an application for a system that meets the efficiency equivalency standard, the ability to certify equipment that complies with those standards effectively is moot.

⁸ APCO et al Petition for Reconsideration at p. 9 (filed Aug. 18, 2003).

⁹ Motorola Reply Comments at pp. 8-9 (filed Oct. 6, 2003).

the scope of this rule will be assigned 25 kHz channel bandwidths. For commercial paging carriers – as well as private paging systems...this rule modification apparently overturns the policies adopted in the *Refarming* proceeding to allow paging operations to remain wideband.¹⁰

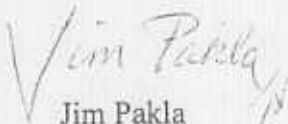
Similarly, Tait North America, Inc. stated the following:

There should be no timetable for prohibiting certification of equipment that includes a 25 kHz bandwidth mode (provided that the efficiency standards adopted in the *Refarming* proceeding are met.)¹¹

LMCC recognizes that the initial January 13, 2004 deadline for narrowband migration was stayed at the request of LMCC members and others, pending disposition of the Petitions for Reconsideration filed in response to the 2nd R&O.¹² However, LMCC urges the Commission not to wait until that dispositive order is adopted before correcting the error identified herein. The seemingly absolute prohibition against the submission of paging and data applications at some future date certain already has had a substantial chilling effect on prospective users of these highly efficient technologies. The very fact that the Commission has not taken any public steps to address and correct this inconsistency, an inconsistency brought to its attention more than six months ago, understandably has been interpreted by some parties as confirmation that the FCC intended this result and has abandoned the efficiency equivalency standards.

This issue is pressing and non-controversial. Its resolution should not and need not await Commission action on the other more complex, controversial matters raised on reconsideration in this proceeding. Therefore, LMCC requests that the FCC, on its own motion, issue an erratum to clarify that there will be no deadline for the acceptance of applications for 25 kHz bandwidth systems using equipment that satisfies the spectrum efficiency equivalency standards set out in FCC Rule Section 90.203(j)(3)-(5).

Sincerely,


Jim Pakla
President

¹⁰ Motorola Petition for Reconsideration and Clarification at p. 9 (filed Aug. 18, 2003).

¹¹ Tait North America, Inc. Petition for Reconsideration at p. 5 (filed Aug. 18, 2003).

¹² Order, WT Docket No. 99087, 31 CR 270 (rel. Dec. 3, 2003).