

**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 No. 99-87
)	
Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies)	RM-9332
)	

**THIRD MEMORANDUM OPINION AND ORDER,
THIRD FURTHER NOTICE OF PROPOSED RULE MAKING AND ORDER**

Adopted: December 20, 2004

Released: December 23, 2004

Comment Date: 60 days after Federal Register publication
Reply Comment Date: 90 days after Federal Register publication

By the Commission:

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I. INTRODUCTION

1. In this *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order* (“*Third MO&O*,” “*Third Further Notice*,” and “*Order*,” respectively), we address eighteen petitions for reconsideration of the rules adopted in the *Second Report and Order* in this proceeding to promote migration to narrowband (12.5 kHz) technology in the private land mobile radio (PLMR) services.¹ We also seek comment on a proposal to defer or eliminate the requirement in Section 90.203(j)(5) of our Rules that certain applications for equipment authorizations received on or after January 1, 2005 specify 6.25 kHz capability. In addition, we stay the January 1, 2005 date pending resolution of the issues raised in the *Third Further Notice*.

2. The major decisions in the *Third MO&O* are as follows:

- For licensees in the Industrial/Business Radio Pool operating in the 150-174 MHz and 421-512 MHz bands, we affirm the *Second Report and Order*’s January 1, 2013 deadline for migration to 12.5 kHz technology, or a technology that achieves the narrowband equivalent of one channel per 12.5 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data) if the bandwidth for transmissions specified in the modification application is greater than 12.5 kHz.
- For Public Safety Radio Pool licensees operating PLMR services in the same bands, we also establish a January 1, 2013 deadline for migration to 12.5 kHz technology, or a technology that achieves the narrowband equivalent of one channel per 12.5 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data) if the bandwidth for transmissions specified in the modification application is greater than 12.5 kHz.
- We revise the interim dates established in the *Second Report and Order* as follows:
 - Applications for new operations using 25 kHz channels will be accepted until January 1, 2011. After January 1, 2011, applications for new operations using a bandwidth greater than 12.5 kHz will be accepted only to the extent that the equipment meets the spectrum efficiency standard of one channel per 12.5 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data).
 - Applications for modification of operations that expand the authorized contour of an existing station using 25 kHz channels will be accepted until January 1, 2011. After January 1, 2011, applications for modification of operations that expand the authorized contour of an existing station will be accepted only to the extent that the equipment meets the spectrum efficiency standard of one channel per 12.5 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data) if the bandwidth for transmissions specified in the modification application is greater than 12.5 kHz.
 - Manufacture and importation of any 150-174 MHz and 421-512 MHz band

¹ 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 Rulemaking*, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034 (2003) (“*Second Report and Order*” and “*Second Further Notice*,” respectively). The *Second Report and Order and Further Notice* was published in the Federal Register on July 17, 2003. 68 Fed. Reg. 42296, 42337 (2003).

equipment operating on a channel bandwidth up to 25 kHz will be permitted until January 1, 2011. After January 1, 2011, manufacture and importation of any 150-174 MHz and 421-512 MHz band equipment operating on a channel bandwidth greater than 12.5 kHz will be accepted only to the extent that the equipment meets the spectrum efficiency standard of one channel per 12.5 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data).

- We revise our Rules to permit applications for certification of equipment received on or after January 1, 2005 operating with a 25 kHz bandwidth, to the extent that the equipment meets the spectrum efficiency standard of one channel per 6.25 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data). However, we stay the January 1, 2005 deadline with respect to certification of equipment in the *Order*, pending resolution of the issues raised in the *Third Further Notice*.
- We revise our Rules to exempt Part 90 paging-only frequencies from the narrowbanding requirements.

3. For Commission licensees operating in the Federal Government bands 150.05-150.8 MHz, 162.0125-173.2 MHz, and 173.4-174 MHz, we recognize that a separate ongoing proceeding – ET Docket No. 04-243 – is addressing whether different narrowbanding requirements are needed to account for the Federal Government’s own narrowbanding plans in those bands. Accordingly, we recognize that the decisions we adopt herein are subject to further modification with respect to those bands and defer decisions with respect to those bands where appropriate.

II. BACKGROUND

4. In the *Refarming* proceeding in 1995, the Commission adopted rule changes to promote the efficient use of the PLMR service and facilitate the introduction of advanced technologies.² In an effort to promote the transition to a more efficient narrowband channel plan, the Commission adopted certain market-based incentives in the PLMR service. The Commission stated that “only increasingly efficient equipment” would be type certified.³ Accordingly, since February 14, 1997, we have certified equipment for 25 kHz channels only if it was also capable of operating on 12.5 kHz or narrower channels, or with the equivalent efficiency.⁴ The *Refarming* rules also provided that equipment applications for equipment certification received after January 1, 2005 would be granted only if the equipment either is capable of operating on 6.25 kHz or narrower channels, or with the equivalent efficiency.⁵ The Commission did not set a date after which it would no longer approve equipment with a wideband mode, or after which such equipment could no longer be manufactured or used.⁶ It believed that no such mandate was needed

² See Replacement of Part 90 by 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 Rulemaking*, PR Docket No. 92-235, 10 FCC Rcd 10076, 10077 ¶ 1 (1995) (“*Refarming Report and Order*”).

³ *Id.* at 10081 ¶ 7.

⁴ *Id.*; 47 C.F.R. § 90.203(j)(2). See *Refarming Report and Order*, 10 FCC Rcd at 10099-100 ¶¶ 38-40.

⁵ See 47 C.F.R. § 90.203(j)(4)-(5) (2002).

⁶ See *Refarming Report and Order*, 10 FCC Rcd at 10100 ¶ 40.