



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WP Docket No. 07-100, FCC 15-28]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) grants an unopposed petition filed by the Public Safety Communications Council (PSCC) for partial reconsideration of the Fifth Report and Order in this proceeding. Specifically, for applicants seeking authority to operate centralized trunked stations on Public Safety Pool channels, we eliminate the requirement that the applicant demonstrate that the proposed station's service contour will not be overlapped by any incumbent station's interference contour. We also amend the rule changes adopted in the Fifth Report and Order regarding treatment of mobile stations to clarify how to protect 150-174 MHz band mobile stations that are associated with a base station. This proceeding is part of our continuing effort to provide clear and concise rules that facilitate new wireless technologies, devices and services, and are easy for the public to understand.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Rodney P. Conway, at

Rodney.Conway@FCC.gov, Wireless Telecommunications Bureau, (202) 418-2904, or TTY (202) 418-7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Second Order on Reconsideration in WP Docket No. 07-100; FCC 15-28, adopted on March 9, 2015, and released March 11, 2015. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by sending an e-mail to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Summary

1. A trunked radio system employs technology that can search two or more available channels and automatically assign a user an open channel. In the Fifth Report and Order, the Commission revised, clarified, and streamlined § 90.187 of its rules, which specifies the manner in which trunking may be accomplished in the 150-174 MHz and 421-512 MHz private land mobile radio bands. PSCC seeks reconsideration with respect to two of those rule changes.

2. Section 90.187(d)(3). As noted in the Fifth Report and Order, § 90.187 requires that a trunked system monitor the frequencies and employ equipment that prevents transmission on a frequency if a signal from another system is present on it, with certain exceptions. One of these exceptions is if the licensee obtains the written consent of all “affected licensees.” Whether an incumbent is an affected licensee depends on both the spectral proximity of the existing and proposed frequencies, and the physical proximity of the existing and proposed facilities. In the Fifth Report and Order, the Commission modified § 90.187 to require that the contour analysis used to determine physical proximity be performed by an applicant for a new centralized trunked system to demonstrate both that 1) the proposed system’s interference contour will not overlap any spectrally proximate incumbent system’s service

contour; and 2) its proposed service contour will not be overlapped by the interference contour of any incumbent system (a “reverse” contour analysis). The Commission adopted the reverse contour requirement because its benefits – to prevent the licensing of stations that would appear to have little function other than to enable the applicant to block the expansion of viable incumbent systems – outweighed the limited additional burden on frequency coordinators of performing a two-way analysis. It noted that applicants with legitimate reasons for seeking authorization for service contours overlapped by incumbents’ interference contours could seek case-by-case waivers.

3. PSCC states that there are situations in which it is appropriate to license low-power Public Safety stations within the interference contours of incumbent stations in order to fill a specific communications need, such as providing communications capacity at a prison or courthouse, and that such stations have no effect on incumbent licensees. PSCC believes that the coordination of such stations should be permitted based on the expertise of the Public Safety Pool frequency coordinators rather than requiring licensees to utilize the slower and more burdensome case-by-case waiver process. Further, PSCC asserts that while “a practice similar to ‘greenmail’” may occur on Industrial/Business Pool channels, which the reverse contour analysis might help to prevent, the issue does not arise on Public Safety Pool channels.

4. We agree with PSCC that the reverse contour requirement is not necessary for the Public Safety Pool channels, and should apply only to Industrial/Business Pool channels. No party has opposed PSCC’s request, and we find the risk of such potential “greenmail” activity in connection with public safety facilities to be unlikely and certainly outweighed by the cost of pursuing case-by-case waivers. Accordingly, we are amending the rules to eliminate the “affected licensees” consent requirement for Public Safety Pool applicants for stations with a proposed service contour overlapped by an incumbent system’s interference contour. Such

Public Safety Pool applicants will be permitted to prosecute their applications, which require coordination by a Public Safety Pool frequency coordinator, without obtaining the consent of “affected licensees” unless their proposed interference contour overlaps any spectrally proximate incumbent licensee’s service contour. We amend § 90.187(d)(3) to make clear that when a public safety applicant files an application in which its service contour is overlapped by the interference contour of an incumbent station, the applicant must accept any resultant interference.

5. Section 90.187(d)(1)(B). Formerly, § 90.187 was not entirely clear about how to treat mobile stations for the foregoing contour analysis. The Commission amended the rule in the Fifth Report and Order to provide that, for purposes of the contour analysis to determine whether a station is an affected licensee, a mobile-only system’s authorized operating area will be used as both its service contour and its interference contour. The Commission concluded that using the service area boundary for both the protected contour and the interference contour would allow establishment of new facilities while still providing an appropriate level of protection to the mobile operations.

6. PSCC concurs with the Commission’s decision to address the protection of mobile stations not associated with a base station by making the mobile-only authorized operating area represent both the interference and service contours. It notes, however, that the Commission did not adopt any provision regarding protection of mobile units that are associated with a base station, and suggests that associated mobile units be treated analogously to unassociated mobile units by using the associated base station’s service contour as both the associated mobile unit’s service contour and interference contour.

7. We agree that this omission should be addressed with respect to the 150-174 MHz band, where the base and mobile frequencies generally are not paired. As the Commission

concluded with respect to mobile units not associated with a base station, using the service area boundary for 150-174 MHz mobile units that are associated with a base station for both the protected contour and the interference contour will allow establishment of new facilities while still providing an appropriate level of protection to incumbent operations. We amend § 90.187(d)(1)(B) accordingly.

I. PROCEDURAL MATTERS

Paperwork Reduction Act

8. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

II. FINAL REGULATORY FLEXIBILITY ANALYSIS

9. As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the Fifth Report and Order. In view of the fact that we have adopted further rule amendments in the Second Order on Reconsideration, we have included this Supplemental Final Regulatory Flexibility Certification. This Certification conforms to the RFA. See 5 U.S.C. 604.

10. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.” See 5 U.S.C. 605(b). The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” See 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning

as the term “small business concern” under the Small Business Act. See 5 U.S.C. 601(3). A small business concern is one which (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration (SBA). See Small Business Act, 5 U.S.C. 632 (1996). The FRFA incorporated in the Fifth Report and Order described and estimated the number of small entity licensees and regulatees that may be affected by the rules changes adopted therein, described the projected reporting, recordkeeping, and other compliance requirements associated therewith, identified the steps taken to minimize significant economic impact on small entities and significant alternatives considered in connection therewith, and identified no federal rules that may duplicate, overlap, or conflict therewith. That FRFA is unchanged by this Second Order on Reconsideration except as described below.

11. The Second Order on Reconsideration makes technical modifications to our rule regarding the contour analysis for determining whether to permit a new centralized trunked station. These rule changes are not expected to have any significant cumulative effect on frequency coordination costs. Therefore, we certify that the requirements of the Second Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

12. The Commission will send a copy of the Second Order on Reconsideration, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A). In addition, the Second Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Second Order on Reconsideration and this certification (or summaries thereof) will also be published in the Federal Register. See 5 U.S.C. 604(b).

III. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED pursuant to sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, that the Petition for Reconsideration of the Fifth Report and Order filed by the Public Safety Communications Council on June 12, 2013, IS GRANTED to the extent set forth herein.

14. IT IS FURTHER ORDERED that part 90 of the Commission's rules IS AMENDED, effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

List of Subjects in 47 CFR Part 90

Communications equipment, radio, reporting and recordkeeping requirements.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

For the reasons discussed, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90 -- PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7) and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96 Stat. 156.

2. Section 90.187 is amended by revising paragraphs (d)(1)(ii)(A) and (d)(3) to read as follows:

§ 90.187 Trunking in the bands between 150 and 512 MHz.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) Licensees (and filers of previously filed pending applications) with a service contour (37 dBu for stations in the 150-174 MHz band, and 39 dBu for stations in the 421-512 MHz band) that is overlapped by the proposed centralized trunked station's interference contour (19 dBu for stations in the 150-174 MHz band, and 21 dBu for stations in the 421-512 MHz band). Contour calculations are required for base station facilities.

Contour calculations are required for associated mobile stations only in the 150-174 MHz band, with the associated base station's service contour used as both the mobile station's service contour and its interference contour.

* * * * *

(3) In addition, the service contour for proposed centralized trunked stations on Industrial/Business Pool frequencies shall not be overlapped by an incumbent licensee's interference contour. An application filed for Public Safety Pool frequencies, see § 90.20, for a proposed centralized trunked station in which the service contour of the proposed station is overlapped by the interference contour of the incumbent station(s) is allowed, but the applicant must accept any resultant interference.

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