

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

In the Matter of)
MARITEL, INC.)
Request for Waiver of Part 80 Regulations to)
Permit Use of 12.5 kHz Radio Equipment)
Operating in the 156-162 MHz Frequency Band)

ORDER

Adopted: April 27, 2001

Released: April 30, 2001

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On December 4, 2000, Maritel, Inc. (Maritel) filed a request for waiver (Waiver Request) of the Commission's Part 80 rules so that it may deploy radio equipment intended to operate on frequency assignments that are 12.5 kHz wide on frequencies currently specified in the Commission's VHF Public Coast (VPC) Radio Service rules and on frequencies that are 12.5 kHz offset from such frequencies. For the reasons discussed herein, we grant the Waiver Request subject to the conditions set forth below.

II. BACKGROUND

2. Maritel is the largest provider of VHF (156-162 MHz) public coast station services in the United States, and currently operates VHF public coast stations throughout most of the coastal United States and U.S. inland waterways. In addition, Maritel was the winning bidder for nine regional VPC licenses in the Commission's auction of such licenses, and has begun building a North American VPC network that Maritel says "will provide state-of-the-art, seamless maritime communications services in all U.S. coastal areas and major inland waterways."

3. Section 80.371(c)(1)(iii) of the Commission's Rules permits a VPC licensee to operate on 12.5 kHz offset frequencies in areas where the licensee is authorized on both frequencies adjacent to the offset frequency. The Commission adopted this rule to enable VPC licensees to use narrowband

1 Maritel, Inc. Request for Waiver (filed Dec. 4, 2000) (Waiver Request).

2 Id. at 2.

3 See FCC Announces the Conditional Grant of 26 VHF Public Coast Station Licenses, Public Notice, DA 99-195 (rel. May 21, 1999).

4 Waiver Request at 2.

5 47 C.F.R. § 80.371(c)(1)(iii). The rule also permits such offset channel operations in areas where the licensee on the other side of the offset frequency consents to the licensee's use of the adjacent offset frequency. Id.

technology on their spectrum.⁶ The Commission, however, did not adopt any specific technical rules to govern narrowband operation.

4. Maritel states that the absence of such technical regulations in Part 80 precludes equipment manufacturers from obtaining certification of narrowband transmitters, which effectively prevents narrowband operations in the VPC spectrum.⁷ Maritel therefore requests that we grant it a waiver of any Commission rule that may be construed to impede Maritel's ability to employ, and vendors' ability to secure certification for, equipment designed for narrowband operations in the 156-162 MHz band.⁸ Although Maritel notes that the Commission has taken steps to address this issue in a pending rulemaking proceeding,⁹ it argues that waiting for resolution of the rulemaking proceeding, rather than securing more timely relief through a waiver, would hinder its ability to meet its construction and service obligations.¹⁰ Maritel requests that any waiver be extended at least to certain equipment vendors which were listed by Maritel in Exhibit A to the Waiver Request.¹¹

5. On January 9, 2001, we issued a Public Notice inviting public comment on the Waiver Request.¹² We received comments from the United States Coast Guard (USCG), Ross Engineering Co. (Ross), a manufacturer of marine radio equipment,¹³ and the Association of American Railroads (AAR), an FCC-certified frequency coordinator for private land mobile radio service frequencies which also represents

⁶ See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket 92-257, 13 FCC Rcd 19853, 19874 ¶ 45 (1998) (*Public Coast Third Report and Order*).

⁷ Waiver Request at 3.

⁸ Waiver Request at 2 & n.5. Maritel specifically refers to 47 C.F.R. §§ 80.371(c), 80.205, and 80.211 as rules that may have to be waived.

⁹ *Id.* at 3 (citing Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 00-48, 15 FCC Rcd 5942 (2000)).

¹⁰ Waiver Request at 3 (citing 47 C.F.R. § 80.49).

¹¹ Waiver Request at 1 n.1. The listed vendors are Pony Electric Corporation; Cubic Communications, Inc.; Skanti A/A; Furuno USA, Inc.; Garmin International, Inc.; ICOM America, Inc.; Japan Radio Company, Ltd.; Motorola, Inc.; Midland Consumer Radio; Raytheon Marine Radio; Ross Engineering Company; SEA Inc. of Delaware; Shakespeare Company; SIMRAD, Inc.; Si TEX Marine Electronics, Inc.; Yaesu Musen USA, Inc.; and Uniden America Corporation. Maritel concedes that none of the specified vendors has implicitly or explicitly authorized or requested Maritel to seek this waiver on its behalf, but indicates that it "reasonably believes that each of the Vendors may be interested in developing 12.5 kHz radio equipment as contemplated [by the Waiver Request], and would benefit from issuance of a waiver." *Id.*

¹² Wireless Telecommunications Bureau Seeks Comment on Request by Maritel, Inc. for Waiver of Part 80 Regulations to Permit Use of 12.5 kHz Radio Equipment Operating in the 156-162 MHz Frequency Band, *Public Notice*, DA 01-38 (WTB PSPWD rel. Jan. 9, 2001). A pleading cycle was established requiring the filing of comments no later than February 6, 2001, and the filing of reply comments no later than February 20, 2001.

¹³ Although its pleading is styled an "Opposition" to the Waiver Request, Ross explains that it is urging the Commission to deny the Waiver Request "as written." Ross Comments at 2. In substance, it does not seek to preclude entirely the use of 12.5 kHz channels in the 156-162 MHz band, but only to ensure that such use is subject to specified limitations, discussed *infra*.

the railroad industry.¹⁴ Reply comments were received from Maritel and Simrad, Inc. (Simrad), one of the equipment manufacturers listed in Exhibit A to the Waiver Request.¹⁵

III. DISCUSSION

6. *Contentions of the Parties.* Section 1.925 of the Rules specifies that the Commission may grant a waiver upon a showing either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested 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.¹⁶ Maritel asserts that it has made a sufficient showing under the first prong of the waiver standard to warrant grant of the requested waiver.

7. Maritel claims that application of the specified rules in this case would frustrate a stated policy goal of the Commission, reflected in Section 80.371(c)(1)(iii), to promote the deployment of narrowband technology in the 156-162 MHz frequency band. It observes that the Commission, when it adopted the rule to permit VPC licensees to conduct narrowband operations, reasoned that VPC licensees would be hampered in their efforts to compete effectively with other commercial mobile radio service providers without these additional channel pairs.¹⁷ The Commission also stated that the lack of type accepted equipment did not provide a basis for not adopting the proposal.¹⁸ According to Maritel, it is thus clear that “the agency has already addressed this issue, and adopted a policy that narrowband technologies should be promoted, even in the absence of regulations permitting the use of such equipment. Without a waiver of the FCC’s rules, the policy adopted by the FCC in its maritime rule making proceeding would be frustrated.”¹⁹

8. Maritel further argues that grant of the requested waiver would serve the public interest by permitting the deployment of narrowband equipment that is more spectrally efficient than the equipment currently authorized under the rules. It notes, in this regard, that the Commission, in an effort to foster innovation, has previously permitted manufacturers to obtain equipment approval prior to the finalization of technical standards for the equipment in question.²⁰ Maritel adds that the introduction of narrowband

¹⁴ See 47 C.F.R. § 90.35.

¹⁵ In addition, we received late-filed reply comments from Datamarine General SEA Inc. (SEA), Letter from Buddy Morgan, Director of Marketing, to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission (dated Feb. 23, 2001), and from S.P. Radio A/S, Letter from Allan Lydersen to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission (dated Mar. 5, 2001). The late-filed reply comments repeat verbatim the contents of the Simrad reply.

¹⁶ 47 C.F.R. § 1.925(b)(3).

¹⁷ *Public Coast Third Report and Order*, 13 FCC Rcd at 19874-19875 ¶ 45.

¹⁸ *Id.*

¹⁹ Waiver Request at 4.

²⁰ Waiver Request at 5-6. Maritel cites as an example Part 68 Waiver Requests of ASUSTeK Computer, Inc., et. al., *Order*, 15 FCC Rcd 18100 (CCB 2000), in which the Common Carrier Bureau granted conditional waivers of Section 68.308(e)(1) of the Rules, 47 C.F.R. § 68.308(e)(1), to permit several manufacturers to secure Part 68 registration of Asymmetrical Digital Subscriber Line modems that exceeded the out-of-band signal power limitations of that section.

radio equipment operating on offset channels pursuant to the requested waiver will not harm third parties because Maritel will employ the equipment only where it is already permitted to do so by rule.²¹ Finally, Maritel expects other countries to permit 12.5-kHz narrowband operations on both offset and current channel centers in the 156-162 MHz band; thus, Maritel posits, grant of the requested waiver will permit compatibility of its VPC operations with equipment used on internationally-flagged vessels entering U.S. ports.²²

9. The USCG and Ross caution that operation on 12.5 kHz channels should be allowed only in accordance with note (e) to International Telecommunication Union (ITU) *Radio Regulations* Article 52, Appendix S18, as well as ITU Radiocommunication (ITU-R) Draft Recommendation M.1084-4 (ITU Radiocommunication Study Groups Document 8/13 (Rev 1), dated 6 November 2000), and ITU-R Recommendations M.493, M.825, and M.1371.²³ The USCG warns specifically that VHF maritime mobile radios authorized by the FCC to operate on 12.5 kHz channels may not be used in foreign waters or foreign ports without prior agreement between the United States and “administrations whose ship stations or services might be affected.”²⁴ The USCG also urges that operation on 12.5 kHz channels be limited to VPC channels, and that such operations be permitted only on a non-interference basis to other users, including those operating on channels adjacent to the VPC band and other incumbent VPC licensees.²⁵ Ross adds that requiring Maritel to comply with approved ITU-R maritime standards and the Commission’s rules should not impose an undue burden. It notes, for example, that Recommendation ITU-R M.1084 provides for the use of 12.5 kHz channels for both voice and data transmission in a manner that can “easily be implemented by Maritel and by manufacturers of marine VHF radios.”²⁶

10. Similarly, AAR points out that, although the 2000 World Radiocommunication Conference (WRC-2000) amended ITU *Radio Regulations* Article S52, App. S18 to allow certain international maritime VHF frequencies to be operated as simplex channels, rather than duplex-only channels,²⁷ the United States has committed not to enter into any agreements with other nations that would permit simplex operation on the channels listed in Appendix S18 that are allocated domestically for railroad use.²⁸ AAR urges that any waiver granted to Maritel not undermine this U.S. commitment to refrain from

²¹ Waiver Request at 6. Maritel adds that its “operation ... of narrowband equipment on existing channel centers, where Maritel is the only entity permitted to use those channels will certainly cause no harm to others; only Maritel will be affected by its use of narrowband equipment on channels for which it is the licensee.” *Id.* at 6 n.9. *See, e.g.,* Kenwood Communications Corp., *Order*, DA 98-355, ¶ 5 (WTB PSPWD rel. Feb. 23, 1998) (granting a waiver to permit type acceptance of non-conforming Automated Maritime Telecommunications System (AMTS) equipment in part because AMTS frequencies are licensed on an exclusive basis).

²² Waiver Request at 6-7 (citing Final Acts of the World Radiocommunication Conference (WRC-97), Geneva, 1997 (amending ITU Radio Regulations Art. S52, App. S18 (authorizing use of 12.5 kHz technology in the 156-162 MHz band))).

²³ USCG Comments at 1-2; Ross Comments at 1.

²⁴ USCG Comments at 2; *accord* Ross Comments at 2.

²⁵ USCG Comments at 2.

²⁶ Ross Comments at 2.

²⁷ Under a duplex-only limitation, one half of each assigned channel pair must be designated as the coast station frequency and the other as the ship station frequency.

²⁸ AAR Comments at 4-5. AAR cites the Final Report of WRC-2000 U.S. Delegation, July 8, 2000, which states in relevant part that “the railroads’ continued use of certain Appendix S18 channels in the U.S. (and Canada) is (continued....)

entering into any bilateral or multilateral agreements allowing maritime simplex use of those Appendix S18 channels that are allocated for railroad use domestically.²⁹

11. In its reply comments, Maritel agrees with the commenting parties that any equipment approved for use with 12.5 kHz channels must meet all relevant technical standards adopted by the ITU for such 12.5 kHz equipment.³⁰ Maritel also recognizes that, as pointed out by the commenters, there are existing Part 80 rules limiting the use of 12.5 kHz channels, and pledges to take measures to ensure that its transmitters are programmed to operate on offset channels only where it is already permitted to do so pursuant to Section 80.371(c)(1)(iii).³¹ Maritel also clarifies that the waiver it seeks is not intended to apply to all maritime channels in the 156-162 MHz band, but only to 156-162 MHz channels allocated for VPC operations.³² Finally, Maritel addresses the USCG's observation that the employment of 12.5-kHz narrowband equipment in the 156-162 MHz band may affect the use of VPC channels by foreign administrations, as well as the USCG's recommendation that the Commission take whatever actions are necessary to coordinate with other administrations regarding the use of 12.5 kHz channels with equipment approved in the United States. Maritel says it concurs with this request, but asks that whatever coordination process is required not delay a grant of the requested waiver relief.³³

12. On March 2, 2001, Maritel submitted an *ex parte* communication to clarify its reply comments and, in particular, to respond to the concerns raised by Ross.³⁴ Maritel notes that Ross identifies five specific Commission and ITU provisions that Ross believes Maritel should be required to comply with as conditions to grant of the requested waiver. Maritel then clarifies its intent to comply with each of these proposed conditions, in addition to the general condition requiring that equipment approved pursuant to the waiver comply with all relevant ITU technical standards for 12.5 kHz equipment, as follows. First, Maritel agrees that the waiver may be conditioned on a requirement that manufacturers use a channel numbering scheme that is compatible with Digital Selective Calling (DSC), Automatic Identification Systems (AIS), and the 25-kHz channel designations employed by the ITU. Second, Maritel agrees that the waiver may be conditioned on a requirement that manufacturers use a compatible linear FM voice modulation that can easily be implemented in marine radio equipment by means of an internal automatic switched attenuator, and that, for 12.5 kHz channels, the peak deviation of the DSC-modulated carrier must be reduced to 2.5 kHz from the 5 kHz value allowed for 25 kHz channels. Third, Maritel agrees that the waiver may be

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protected because the provision that allows maritime use in simplex mode does not take effect automatically. Simplex use of the duplex channels is permitted only on the condition that special bilateral or multilateral international agreements permit such use. In this regard, both the U.S. and Canada made it clear at the Conference that they will not permit maritime simplex use on the portion of the Appendix S18 duplex channels allocated for railroad use in the U.S. and Canada.”

²⁹ AAR Comments at 5.

³⁰ Maritel Reply Comments at 2.

³¹ *Id.* at 3.

³² *Id.*

³³ *Id.* at 3-4. Simrad, in its reply comments, expresses its strong support for Maritel's request. Simrad Reply Comments at 1. As previously noted, *see* n.18, *supra*, Simrad's statement of support for the Waiver Request is duplicated in the late-filed reply comments of SEA and S.P. Radio A/S.

³⁴ Letter from Russell H. Fox, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC, to Scot Stone, Esq., Deputy Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (dated Mar. 2, 2001).

conditioned on a requirement that manufacturers use a compatible DSC modulation that can be implemented in a manner similar to that for linear FM voice modulation, reducing the peak deviation of the DSC-modulated carrier to 2.5 kHz. Fourth, Maritel agrees that the waiver may be conditioned on a requirement that manufacturers comply with any applicable Commission requirements governing AIS operations. Fifth, Maritel reiterates that the waiver should apply only to 12.5 kHz equipment to be used within the VPC spectrum in the 156-162 MHz band, and not to all of the maritime channels in that band.³⁵ On March 6, 2001, Ross withdrew its opposition to the Waiver Request if the grant of the waiver is conditioned in accord with the Maritel *ex parte* letter.³⁶

13. *Decision.* We find that Maritel has demonstrated that grant of the requested waiver, subject to certain conditions, is warranted under the circumstances presented. The Commission has already determined that the public interest will be served by allowing a VPC licensee to use frequencies offset 12.5 kHz from the marine VHF band public correspondence channels where the licensee is authorized on both adjacent frequencies.³⁷ It has determined that permitting such use of interstitial 12.5 kHz channel assignments and 12.5 kHz bandwidth equipment will serve the goals of promoting spectrum efficiency and competition. This policy, which is reflected in Section 80.371(c)(1)(iii) of the Rules, would be frustrated if manufacturers are unable to market the associated equipment. In addition, we agree with Maritel's view, concurred in by Simrad and other commenting manufacturers, that permitting manufacturers to secure certification for 12.5-kHz VPC transmitters should not be deferred until the completion of any rulemaking proceeding addressing the issue. We are mindful of the concerns raised by the commenters, however. Maritel itself recognizes the validity of the commenters' concerns regarding compatibility with ITU standards. Indeed, Maritel urges that the Commission specify that any equipment certified for use with 12.5 kHz channels meet all relevant ITU requirements, and has agreed that grant of the requested waiver may be conditioned specifically on compliance with the provisions identified by Ross. We agree that compliance with ITU requirements is essential, and this waiver is accordingly conditioned on such compliance.

14. Accordingly, we waive the general technical requirements in Part 80 with respect to 12.5 kHz operation to the extent necessary to permit manufacturers and equipment vendors to secure approval of equipment to be operated pursuant to Section 80.371(c)(1)(iii).³⁸ Manufacturers seeking authorization of equipment under this waiver must demonstrate that the device for which approval is sought complies with all relevant international technical standards. This requires that any and all equipment that is approved under authority of this waiver comply with the Part 80-equivalent technical requirements in Recommendation ITU-R M.1084-4³⁹ and, where applicable, Recommendations ITU-R M.493-10, ITU-R

³⁵ *Id.* at 1-3.

³⁶ Letter from Mitchell Lazarus, Esq., Fletcher, Heald & Hildreth, P.L.C. to Magalie Roman Salas, Secretary, Federal Communications Commission (dated Mar. 6, 2001).

³⁷ See ¶¶ 3, 7 *supra*.

³⁸ This waiver is not limited to the manufacturers listed in Exhibit A to the Waiver Request. In addition, we clarify that the waiver applies to both coast station transmitters and ship transmitters.

³⁹ Note (e) to ITU Radio Regulations Art. S52, App. S18, provides: "Administrations having an urgent need to reduce local congestion may apply 12.5 kHz channel interleaving on a non-interference basis to 25 kHz channels, provided [that] Recommendation ITU-R M.1084-2 shall be taken into account when changing to 12.5 kHz channels...." ITU-R M.1084-4 clarifies and makes editorial corrections to ITU-R M.1084-2 and also corrects erroneous channel frequencies in the earlier drafts. We require compliance with ITU-R M.1084-4 because, as the (continued....)

M.825-3 and ITU-R M.1371. In addition, equipment approved pursuant to this waiver must comply with the five specific conditions described in paragraph 12, *supra*. Compliance with these requirements must be demonstrated by test data and supporting documentation as required under Subpart J of Part 2 of the Commission's Rules. Manufacturers must obtain a new FCC ID number for equipment authorized under the terms of this waiver; existing certified equipment may not be modified under the same FCC ID number to meet these requirements. Finally, we further condition this waiver on the outcome of any rulemaking proceeding in which the question of technical standards for 12.5 kHz operations on 156-162 MHz VPC channels is addressed.

15. We wish to emphasize the limited nature of this waiver. The relief granted herein is intended only to permit the manufacture and sale of equipment to be used for VPC narrowband communications. Nothing in this Order is intended to allow any greater use of 12.5 kHz technology in the 156-162 MHz band beyond what has already been authorized by the Commission. In addition, nothing in this Order is intended to impose any requirements on any vessel, U.S. or internationally-flagged, to use 12.5 kHz equipment compatible with Maritel's system. Nor does this Order allow Maritel to employ equipment in foreign waters or ports in a manner incompatible with international and foreign regulations.

IV. CONCLUSION

16. For the reasons discussed herein, we conclude that grant of Maritel's waiver request, with the conditions described herein, is warranted and furthers the public interest. We therefore grant Maritel's request to waive the rules to permit the certification of equipment capable of operating on 12.5 kHz offset channels in the VPC spectrum, as set forth above.

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the Request for Waiver of Maritel, Inc., filed December 4, 2000, is GRANTED, subject to the conditions set forth above.

18. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

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most recent manifestation of the ITU's intent in this area, we believe it to be more authoritative and correct than the earlier versions.