



PUBLIC NOTICE

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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON PETITION FOR WAIVER FILED BY THALES COMMUNICATIONS, INC.

PS Docket No. 10-233

Comment Date: December 13, 2010
Reply Comment Date: December 28, 2010

The Public Safety and Homeland Security Bureau seeks comment on the request for waiver filed on September 20, 2010, by Thales Communications Inc. (Thales). Thales seeks a waiver of Sections 2.106 and 90.531(b) of the Commission's rules to permit Thales to manufacture and market its "Liberty Multiband Land Mobile Radio" for use by 700 MHz narrowband public safety licensees operating in the 775-776/805-806 MHz Guard Band.¹

The 775-776/805-806 MHz band segment was originally part of the 700 MHz public safety spectrum designated for narrowband use. In the *700 MHz Second Report and Order*, the Commission reconfigured the 700 MHz public safety spectrum to create a broadband segment at 763-768/793-798 MHz, and consolidated 700 MHz narrowband channels at 769-775/799-805 MHz.² As a result of the reconfiguration, the 775-776/805-806 MHz band was redesignated as guard band spectrum.³ However, the Commission allowed certain incumbent narrowband licensees to continue operating legacy equipment

¹ Letter from Jeffery E. Rummel, Esq. and Jason Koslofsky, Esq., Attorneys for Thales Communications, Inc., to the Public Safety and Homeland Security Bureau (Sept. 20, 2010). (Thales Petition).

² Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd. 15289 (2007) (*700 MHz Second Report and Order*).

³ *Id.* at 15334-15335 ¶¶ 113-119.

on the pre-consolidation narrowband frequencies, including 775-776/805-806 MHz, pending their eventual relocation to the new consolidated narrowband segment.⁴

In its petition, Thales notes that licensees operating in the 775-776/805-806 MHz guard band are limited to using legacy equipment, and that equipment manufacturers are not able to certify new public safety equipment for use in this band.⁵ Thales contends that this prevents these licensees from “acquiring and deploying more effective, efficient, and appropriate multi-band equipment” while they remain in the 775-776/805-806 MHz guard band, which limits their ability to achieve interoperability.⁶ Thales contends that allowing these licensees access to multi-band radios, such as the Thales Liberty Radio, would result in significant benefits, including more flexible deployment options, enhanced spectrum utilization and efficiency, improved interoperability, and lower costs.⁷ Accordingly, Thales requests waiver of Sections 2.106 and 90.531(b) of the Commission’s rules, and such other relief as may be necessary, to:

- Permit temporary extension of the authorized Part 90 frequencies specified on the Thales Equipment Authorization to include 775-776/805-806 MHz.
- Permit the Thales Liberty Radio to be marketed to, purchased by, and operated by public safety narrowband licensees that are currently authorized to operate in the 775-776/805-806 MHz band.⁸

Section 1.925 states that to obtain a waiver of the Commission’s rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present 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,⁹ or the applicant has no reasonable alternative.¹⁰ Thales contends that it meets the waiver standard.

Thales states that granting the waiver “is in the public interest because of the substantial technical, operational and financial benefits that can be made available to the Waiver Licensees (and therefore the general public) vis-à-vis public safety interoperability, now and for the long-term.”¹¹ Additionally, Thales argues that granting the waiver would, “(i) more effectively promote the near and long-term development of a nationwide interoperable broadband network for public safety users; (ii) more successfully respond to ‘the continuing technological advances in the market for wireless services,

⁴ The Commission limited continued narrowband operations on the pre-consolidation frequencies to equipment in operation as of August 30, 2007. *Id.* at 15411 ¶¶ 336-337. The Commission has subsequently granted waivers to some licensees to allow limited deployment of additional narrowband equipment on pre-consolidation frequencies after August 30, 2007. *See, e.g.*, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Order*, 22 FCC Rcd 20290 (2007) (granting waiver to Commonwealth of Virginia).

⁵ Thales Petition at 4.

⁶ *Id.* at 8.

⁷ *Id.* at 11.

⁸ *Id.* at 8.

⁹ 47 C.F.R. § 1.925(b)(3)(i).

¹⁰ 47 C.F.R. § 1.925(b)(3)(ii).

¹¹ Thales Petition at 11.

and the rapidly increasing need of public safety users for broadband communications’; (iii) more directly and effectively address the ability of the Waiver Licensees to ‘protect the safety of life and property’ and avoid the ‘potential public harm’ that could result if the ability of the Waiver Licensees to respond to public safety emergency was compromised.”¹² Finally, Thales argues that “failure to grant the requested relief would be unduly burdensome to the Waiver Licensees, who have been provided with the interim flexibility to operate on 775-776/805-806 MHz, but who do not have access to the best available equipment for operation on those frequencies during their waiver periods, and thereafter on currently authorized frequencies.”¹³

We seek comment on the Thales Petition and encourage commenters to address any issues that they consider to be material to the Bureau’s consideration of this petition. We also seek comment on whether the waiver relief sought by Thales, if granted, should be extended to equipment offered by other equipment manufacturers.

Comments are due by December 13, 2010, and reply comments are due December 28, 2010. Comments may be submitted using (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.¹⁴ Comments can be filed through the Commission’s ECFS filing interface located at the following Internet address: <http://www.fcc.gov/cgb/ecfs/>. Comments can also be filed via the Federal eRulemaking Portal: <http://www.regulations.gov>.¹⁵ In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. **Please Note:** The Commission's former filing location at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 permanently closed on December 24, 2009.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the

¹² *Id.* at 12.

¹³ *Id.* at 13.

¹⁴ *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

¹⁵ Filers should follow the instructions provided on the Federal eRulemaking Portal website for submitting comments.

Consumer and Governmental Affairs Bureau at (202) 418-0530, (202) 418-0432 (TTY).

For further information, contact Michael Wilhelm, Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418-0870, or via e-mail to michael.wilhelm@fcc.gov.

By the Chief, Public Safety and Homeland Security Bureau.

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