

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

In the Matter of)
)
DELTA AIR LINES, INC.) WT Docket 99-87
)
Request for Waiver of Section 90.209(b) of the)
Commission's Rules)

ORDER

Adopted: May 18, 2012

Released: May 21, 2012

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. We have before us the request of Delta Air Lines, Inc. (Delta), for a temporary waiver until December 31, 2013, of the Commission's VHF/UHF narrowbanding deadline, which requires private land mobile radio (PLMR) licensees in the 150-174 MHz and 450-512 MHz bands to operate using channel bandwidth of no more than 12.5 kHz or equivalent efficiency by January 1, 2013. Delta seeks a 12-month extension of the deadline, until December 31, 2013, for approximately 200 PLMR stations. For the reasons set forth below, we grant the request.

2. Background. Delta provides air transportation service to more than 350 destinations in nearly 70 countries. It holds licenses for 351 PLMR stations that are subject to the narrowbanding mandate, and will need to replace or reprogram more than 7,100 repeaters, mobile and portable units, and consoles to meet the mandate. Most of the stations that were initially licensed since 2001 were authorized for narrowband emissions, and do not require a waiver of the deadline. In addition, Delta expects to complete narrowbanding for approximately 125 stations at some of its largest U.S. locations - comprising more than sixty percent of its fleet - by the end of 2012, and does not seek a waiver for those stations. It requests an extension of the narrowbanding deadline for the stations at 118 other airports.

1 See Request for Extension (filed Feb. 10, 2012) (Request). On February 23, 2012, comment was sought on the Request. See Wireless Telecommunications Bureau Seeks Comment on Delta Air Lines, Inc. Request for Waiver of the January 1, 2013 VHF-UHF Narrowbanding Deadline, Public Notice, WT Docket No. 99-87, 27 FCC Rcd 1993 (WTB MD 2012). Enterprise Wireless Alliance filed supporting comments on March 15, 2012.

2 47 C.F.R. § 90.209(b); see also 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, Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). On April 26, 2012, the Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology waived the January 1, 2013 narrowbanding deadline for 470-512 MHz band frequencies. See 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, Order, WT Docket No. 99-87, RM-9332, DA 12-642 (WTB/PSHSB/OET rel. Apr. 26, 2012).

3 A list of call signs for which Delta requests a waiver is attached to the Request.

4 Request at 2. Delta expects narrowbanding to be completed for its systems at airports in the following areas by December 31, 2012: Anchorage, Baltimore, Boston, Chicago, Denver, Fort Lauderdale, Honolulu, Indianapolis, Las Vegas, Los Angeles, Miami, Newark, New York, Philadelphia, Phoenix, Portland (Oregon), San Diego, San Francisco, Seattle, Tampa, and Washington, D.C. Id. at Exhibit 1 at 1-4.

5 Id. at Exhibit 1 at 4-14.

3. *Discussion.* Delta seeks relief pursuant to Section 1.925 of the Commission's rules, which provides 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 waiver would be in the public interest;⁶ 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.⁷ Applying this standard to narrowbanding, we have stated in the *Narrowbanding Waiver Guidance Notice*, jointly issued by the Wireless Telecommunications Bureau, the Public Safety and Homeland Security Bureau, and the Office of Engineering and Technology, that narrowbanding waiver requests "will be subject to a high level of scrutiny" under the waiver standard.⁸ We have also provided recommended guidance on the factors that licensees should address in their requests and have recommended that in addressing these factors, licensees should seek to demonstrate that "(i) they have worked diligently and in good faith to narrowband their systems expeditiously; (ii) their specific circumstances warrant a temporary extension of the deadline; and (iii) the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process."⁹

4. Based on the record before us, we conclude that Delta has presented sufficient facts to meet the high standard for grant of the requested waiver. Delta's radio system covers airports nationwide. The complexity of the system is increased by its lack of concentration in one geographic area, and the facilities' location in secure airport areas that require special clearance and escort for technical personnel.¹⁰ Delta has purchased thousands of narrowband-compliant radio units, contracted with vendors, and developed a schedule for completing its migration to narrowband technology.¹¹ Most of its fleet will be in compliance by the January 1, 2013 deadline. We conclude, under the circumstances presented, that strict enforcement of the narrowbanding deadline with respect to the remaining systems would be inequitable, unduly burdensome, and contrary to the public interest. In reaching this conclusion, we place significant weight on the showing that Delta has made with respect to the factors identified in the *Narrowbanding Waiver Guidance Notice*.

5. First, Delta has shown diligence in planning for and implementing its transition to narrowbanding. The system is large and complex, and at some airports the equipment must be replaced rather than reprogrammed.¹² During narrowbanding, Delta also plans to upgrade the systems at some airports to the next generation of very narrowband equipment (*i.e.*, 6.5 kHz bandwidth).¹³ Based on the

⁶ 47 C.F.R. § 1.925(b)(3)(i).

⁷ 47 C.F.R. § 1.925(b)(3)(ii).

⁸ Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology Provide Reminder of January 1, 2013 Deadline For Transition to Narrowband Operations in the 150-174 MHz and 421-512 MHz Bands and Guidance for Submission of Requests for Waiver and Other Matters, *Public Notice*, 26 FCC Rcd 9647 (2011) (*Narrowbanding Waiver Guidance Notice*).

⁹ *Id.* at 9649.

¹⁰ Request at 3-4.

¹¹ *Id.* at 3.

¹² *Id.* at 4.

¹³ *Id.* at 4-5.

size and complexity of the new system, we conclude that the one-year waiver period requested by Delta is no more than is reasonably necessary to complete narrowbanding.¹⁴

6. Second, the record indicates that grant of the waiver will not significantly harm neighboring systems as the Delta system has no interoperability or interdependency with other radio systems.¹⁵ Moreover, Delta has alerted each adjacent-channel licensee within proximity of the operations for which waiver is sought that it will continue wideband operation after the statutory deadline, provided contact information should there be any interference problems, and pledged to work with each impacted licensee to minimize interference.¹⁶

7. *Conclusion and Ordering Clauses.* Based on the foregoing, we conclude that grant of the requested waiver is warranted. Accordingly, we grant Delta a waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline until December 31, 2013 for the call signs set forth in the waiver request.

8. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3) of the Commission's rules, 47 C.F.R. § 1.925(b)(3), that the Request for Extension filed by Delta Air Lines, Inc. on February 10, 2012 IS GRANTED.

9. 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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁴ See *Narrowbanding Waiver Guidance Notice*, 26 FCC Rcd at 9649 (waiver applicant should show that "the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process").

¹⁵ See *id.* (waiver applicant should show "[p]lans to minimize the negative impact of extended wideband operations on co-channel and adjacent channel operations").

¹⁶ Request at 5.