

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

In the Matter of)
ASCEND PERFORMANCE MATERIALS LLC) WT Docket No. 99-87
Request for Waiver of Section 90.209(b) of the) File No. 0005646120
Commission's Rules)

ORDER

Adopted: August 28, 2013

Released: August 29, 2013

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

1. Introduction. We have before us the request of Ascend Performance Materials LLC (Ascend)1 for a permanent waiver of Section 90.209(b) of the Commission's Rules, which requires private land mobile radio (PLMR) licensees in the 150-174 MHz and 421-512 MHz bands to operate using channel bandwidth of no more than 12.5 kHz, or employ a technology that achieves the narrowband equivalent of at least one channel per 12.5 kHz of channel bandwidth for voice and transmission rates of at least 4800 bits per second per 6.25 kHz for data systems operating with bandwidths greater than 12.5 kHz.2 Ascend seeks the waiver for Station KD28206, Pensacola, Florida. For the reasons set forth below, we grant the request in part.

2. Background. Ascend's Pensacola facility produces nylon 6,6, a fiber used for carpets and clothing, and in polymer chip form by the automotive and electronics industries.3 The license for Station KD28206 authorizes the operation of up to fifty mobile units with two watts effective radiated power on twenty 25 kHz frequencies in the 450-470 MHz band. Ascend states that it uses the frequencies to operate approximately twelve radio-controlled Automated Guided Vehicles (AGVs) (wheel-based robotic transport vehicles that operate under computer control without the need for human drivers) at the plant. It modified its license to add narrowband emission designators in August 2012,4 but later requested a six-month extension of the January 1, 2013 narrowbanding deadline to obtain additional time to convert the system to narrowband operation because the proprietary software was incompatible with narrowband

1 See Request for Rule Waiver (filed Feb. 12, 2013) (Request). On June 10, 2013, comment was sought on the Request. See Wireless Telecommunications Bureau Seeks Comment on Request of Ascend Performance Materials for Waiver of Section 90.209(b) of the Commission's Rules to Permit Wideband Operation Indefinitely, Public Notice, WT Docket No. 99-87, 28 FCC Rcd 8347 (WTB MD 2013) (Public Notice). ExxonMobil Chemical Company - Pensacola Plant filed comments in support of the request and Ascend filed reply comments.

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, 27 FCC Rcd 4213, on recon., Order on Reconsideration, 27 FCC Rcd 14770 (WTB/PSHSB/OET 2012).

3 Request at 1.

4 See FCC File No. 0005357648.

channels.⁵ On December 28, 2012, the Wireless Telecommunications Bureau's Mobility Division granted Ascend an extension of the narrowbanding deadline until June 30, 2013.⁶

3. Subsequently, Ascend requested a permanent waiver of the narrowbanding deadline because it determined that its AGV system cannot reasonably be modified to comply with Section 90.209(b). Ascend states that modifying its system to meet the narrowband-equivalent data efficiency standard would cost as much as \$400,000 and take the better part of a year, without benefiting other users because the system would continue to use 25 kHz channels.⁷ It also states that its AGV operations do not require the narrowband-equivalent data rate of 19.2 kilobits per second over a 25 kHz channel.⁸ In addition, Ascend argues that grant of a waiver is unlikely to harm other users because the equipment operates indoors with low power.

4. *Discussion.* 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;⁹ 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.¹⁰ 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.¹¹

5. Based on the record before us, we conclude that Ascend has not presented sufficient facts to meet the high standard for grant of a permanent waiver. Consequently, we grant Ascend only an extension of its current waiver to allow it a reasonable amount of time to complete the narrowbanding process.

6. Ascend argues that the purpose of the narrowbanding rules would not be served by application to the present case because no co-channel users are affected by Ascend's wideband operation.¹² We disagree. The narrowbanding rules are intended to increase spectrum opportunities for

⁵ See FCC File No. 0005551244.

⁶ Ascend has been permitted to continue operating in wideband mode pursuant to that waiver during the pendency of the instant waiver request. See *Public Notice*, 28 FCC Rcd at 8348 n.6.

⁷ See Request at 2.

⁸ *Id.* Ascend states that its current equipment is capable of transmitting 2400 bits per second per 6.25 kHz. See *id.* at 1 n.3.

⁹ 47 C.F.R. § 1.925(b)(3)(i).

¹⁰ 47 C.F.R. § 1.925(b)(3)(ii).

¹¹ 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 (WTB/PSHSB/OET 2011). 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." *Id.* at 9649.

¹² See Request at 2.

additional users.¹³ This purpose would be frustrated by grant of a permanent waiver.¹⁴ Thus, a licensee's assertion that no existing users are affected by its wideband operation does not justify waiving the narrowbanding requirement.¹⁵ The only exception to the narrowbanding deadline for Part 90 stations that operate below a certain power level is for stations with an output power not exceeding 120 milliwatts.¹⁶

7. Ascend also argues that unique or unusual circumstances cause the narrowbanding requirement to be unduly burdensome in this instance.¹⁷ We are not persuaded by this claim. Ascend is not the only licensee using an AGV system. All of the others appear to have complied with the narrowbanding deadline (either by narrowbanding or implementing equipment that uses spectrum not subject to the narrowbanding requirement) or requested additional time to comply.¹⁸ Ascend has not demonstrated why it, unlike all other PLMR licensees in the 150-174 MHz and 421-470 MHz bands, should be granted a permanent waiver of the narrowbanding rules.¹⁹

8. *Conclusion and Ordering Clauses.* Ascend has not justified a permanent waiver of the Commission's narrowbanding rules. Based on the foregoing, we conclude that grant of the requested waiver is warranted only in part. Accordingly, we extend Ascend's waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline for Station KD28206 until June 30, 2014. If Ascend needs additional time beyond that, it must, in advance of the expiration of this extension, file a request for further extension that demonstrates that the additional amount of time is no more than is reasonably necessary.

9. 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 Waiver filed by Ascend Performance Materials LLC on February 12, 2013 IS GRANTED IN PART to the extent set forth above, and application File No. 0005646120 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

¹³ See, e.g., City of Philadelphia, *Order*, WT Docket No. 99-87, 27 FCC Rcd 16043, 16046 ¶ 13 (PSHSB PLD/WTB MD 2012) (citing Replacement of 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 Rule Making*, PR Docket No. 92-235, 10 FCC Rcd 10076, 10077 ¶ 2 (1995)).

¹⁴ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Order*, WT Docket No. 99-87, 28 FCC Rcd 2811, 2815 ¶ 14 (WTB/PSHSB/OET 2013) (denying a request for an indefinite waiver of the requirement that new equipment have 6.25 kHz voice capability).

¹⁵ See City of South Lake Tahoe, *Order*, WT Docket No. 99-87, 27 FCC Rcd 9213, 9213-15 ¶¶ 3-6 (PSHSB PLD 2012) (*South Lake Tahoe*).

¹⁶ 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 421-470 MHz Bands, *Public Notice*, 27 FCC Rcd 14896, 14898 (WTB/PSHSB/OET 2012) (citing 47 C.F.R. § 90.217).

¹⁷ See Request at 2.

¹⁸ See Letter dated June 19, 2013 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Kellogg USA Inc. (granting temporary extension of narrowbanding waiver for AGV system) (viewable in Universal Licensing System under application FCC File No. 0005815115).

¹⁹ See *South Lake Tahoe*, 27 FCC Rcd at 9214-15 ¶ 6 (rejecting a narrowbanding waiver request based on financial hardship, noting that other similarly situated licensees had complied with the requirement).

10. 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
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