



Federal Communications Commission
Washington, D.C. 20554

June 26, 2015

DA 15-754

Yukimasa Tomita
Executive Manager
Vertex Standard LMR, Inc.
4-6-8 Shibaura
Minato-ku, Tokyo 108-0023
Japan

Re: Request for Waiver of Vertex Standard LMR, Inc.

Dear Mr. Tomita:

This letter addresses the request you filed on behalf of Vertex Standard LMR, Inc. (Vertex) for a waiver of the requirement Section 90.203(j)(5) of the Commission's rules¹ that all Part 90 certification applications in specified VHF and UHF bands include a 6.25 kHz operating mode or equivalent efficiency.² Vertex seeks this waiver for equipment certification applications for two 5 watt 12.5 kHz UHF radios that are not capable of operating in a 6.25 kHz operating mode.³ For the reasons set forth below, we grant the request.

Background. Section 90.203(j)(5) of the Commission's Rules states that applications for Part 90 certification of transmitters designed to operate in certain VHF/UHF bands filed on or after January 1, 2011 must be capable of meeting a spectrum efficiency standard of one voice channel per 6.25 kHz of channel bandwidth or equivalent efficiency. In 2010, the Commission temporarily waived this requirement until January 1, 2013.⁴ In 2013, the Wireless Telecommunications Bureau, the Public Safety and Homeland Security Bureau, and the Office of Engineering and Technology (collectively the Bureaus) extended the waiver until January 1, 2015.⁵ The requirement that applications for certification of Part 90 private land mobile radio equipment in the 150-174 MHz and 421-512 MHz bands include a certification that the equipment can operate in a 6.25 kHz mode or with equivalent efficiency is now in effect.

Vertex states that it successfully completed and submitted applications for four out of six products in a new product line, without 6.25 kHz capability, prior to the January 1, 2015

¹ See 47 C.F.R. § 90.203(j)(5).

² See Request for Waiver of Vertex Standard LMR, Inc., filed Apr. 30, 2015 (Waiver Request); see also Request for Waiver of Vertex Standard LMR, Inc., filed Mar. 5, 2015.

³ FCC IDs AXI11274620 and AXI11284620.

⁴ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Order*, WT Docket No. 99-87, 25 FCC Rcd 8861, 8866 ¶ 11 (2010).

⁵ 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, 2814 ¶ 12 (WTB/PSHSB/OET 2013).

deadline.⁶ With respect to the other two models, it explains that it submitted equipment to the test facility early enough for an application to be submitted before the deadline, but the test facility unexpectedly requested additional material, which delayed the completion of the testing.⁷ Because of this delay, Vertex was unable to submit equipment approval applications for these two models before January 1, 2015. A waiver is therefore sought for the two remaining models in the product line without 6.25 kHz capability.

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,⁸ 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.⁹

We conclude that Vertex has presented sufficient facts to meet the high standard for grant of the requested waiver under the second prong of the waiver standard. Vertex has shown diligence in planning and has invested substantial resources in its new product line. If the waiver were denied, Vertex would continue to market its existing products without 6.25 kHz capability, but, according to Vertex, "rejecting the waiver request would deny users the benefit of using radios with improved performance and design. It would also require Vertex Standard to develop new devices to replace the VX-264-G6-5 and VX-261-G6-5 outside of the company's typical development cycles."¹⁰ Moreover, users seeking 6.25 kHz capability can obtain such equipment from Vertex and other manufacturers.¹¹ Accordingly, we grant Vertex Standard a waiver of the requirement that all Part 90 certification applications in specified UHF and VHF bands include a 6.25 kHz operating mode, or equivalent efficiency.

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)(ii) of the Commission's rules, 47 C.F.R. § 1.925(b)(3)(ii), that the Request for Waiver, filed on April 30, 2015 by Vertex Standard LMR, Inc. IS GRANTED.

⁶ See Waiver Request at 2.

⁷ *Id.*

⁸ 47 C.F.R. § 1.925(b)(3)(i).

⁹ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁰ Waiver Request at 3.

¹¹ See *id.*

This action is taken under delegated authority pursuant to Sections 0.131, 0.191, 0.331, and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.191, 0.331, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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