



Federal Communications Commission
Washington, D.C. 20554

January 8, 2016

DA 16-14

R. William Jamann, Radio Technician
Carpenter Technology Corp.
P.O. Box 14662
Reading, PA 19612-4662

Re: Request for Waiver of Part 90 Rules to Permit Continuous Carrier Operations, FCC File No. 0006480529

Dear Mr. Jamann:

This letter addresses the request you filed on behalf of Carpenter Technology Corp. (Carpenter) for waiver of section 90.35(c)(47) of the Commission's rules¹ to allow continuous carrier operation on certain frequencies at a steel manufacturing facility in Reading, Pennsylvania.² For the reasons discussed herein, we deny Carpenter's waiver request, and will process the application accordingly.

Carpenter seeks to operate in continuous carrier mode on frequencies 457.5250, 457.6000, and 457.6125 MHz. It states that it seeks to operate in continuous carrier mode in order to facilitate instant radio contact in the operation of its steel manufacturing facility, and notes that licensees could be authorized for continuous carrier operations on these frequencies until 1971.³ The application and waiver request were returned, and Carpenter was instructed to "provide a complete detailed explanation on why [it is] unable to use any frequencies where continuous carrier is already permitted."⁴ In response, Carpenter stated that it utilizes headsets that operate in continuous carrier mode in the 72-75 MHz band but would prefer to operate in the 450-470 MHz band, but it is not aware of any 450-470 MHz band channels where continuous carrier operation is permitted.⁵

To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case and that grant of the waiver would be in the public interest; or that, 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.⁶ We conclude that Carpenter has not met this standard.

In 1969, the Commission proposed to amend the rules to permit continuous carrier operations on twelve 450-470 MHz band frequencies, including 457.5250, 457.6000, and 457.6125 MHz.⁷ It noted that stations had been licensed to operate in continuous carrier mode on those frequencies under a

¹ 47 CFR § 90.35(c)(47).

² See FCC File No. 0006480529 (filed Sept. 29, 2014, amended Nov. 3, 2014).

³ See Sept. 29, 2014 Waiver Request at 1.

⁴ Notice of Return, Ref. No. 5882886 (Oct. 17, 2014).

⁵ See Nov. 3, 2014 Supplement to Waiver Request at 1.

⁶ See 47 CFR § 1.925(b)(3).

⁷ See *Amendment of Part 91 of the Commission's Rules to Provide for the Expanded Use of Signalling Devices on a Regular Basis*, Notice of Proposed Rule Making, FCC 69-915 (Aug. 25, 1969) (published at 34 Fed. Reg. 13762 (Aug. 28, 1969)).

developmental program initiated to determine the feasibility of such operations.⁸ After commenters expressed reservations about the effect of continuous carrier mode operation on other licensees, however, the Commission decided in 1971 to permit continuous carrier operations on only some of the proposed frequencies.⁹ Among the excluded frequencies were 457.5250, 457.6000, and 457.6125 MHz, but the Commission grandfathered stations already operating in continuous carrier mode on those frequencies pursuant to the developmental program.¹⁰

We note that the frequencies selected in the instant application have not been permitted to be authorized since 1971 for continuous carrier operations, and that Carpenter currently has the ability to have instant communications inside its facility. Notwithstanding the staff's request for an explanation of why it could not use frequencies where continuous carrier operations are permitted instead of seeking a waiver, Carpenter has not provided any such justification to support a waiver. Given this situation, Carpenter is essentially requesting a waiver of the Commission Rules as an operational convenience within its steel processing plant. We find that this waiver is inconsistent with the Commission's rules and would result in an increase in the potential for interference to current and future co-channel and adjacent-channel licensees on the requested frequencies. The fact that prior-authorized continuous carrier mode operation on these frequencies was grandfathered more than four decades ago is not a reason to grant Carpenter's request today. Moreover, Carpenter has not explained why it cannot use any of the 450-470 MHz band frequencies on which continuous carrier mode operation is permitted.¹¹ We conclude that grant of a waiver is not warranted under the circumstances presented and would unnecessarily undermine the Commission's rules.

Based on the record before us, we conclude that Carpenter has not met the requirements for waiver of the Commission's Rules and we deny Carpenter's request for waiver of Section 90.35(c)(47) to operate in continuous carrier mode. We therefore will dismiss the application with respect to frequencies 457.5250, 457.6000, and 457.6125 MHz.¹²

Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 CFR 1.925, the waiver request filed by Carpenter Technology Corp., on September 29, 2014 and amended November 3, 2014 IS HEREBY DENIED, and application FCC File No. 0006480529 SHALL BE DISMISSED IN PART as set forth herein AND OTHERWISE PROCESSED in accordance with the Commission's rules and procedures.

⁸ See *id.*, 34 Fed. Reg. at 13762.

⁹ See *Amendment of Part 91 of the Commission's Rules to Provide for the Expanded Use of Signalling Devices on a Regular Basis*, Report and Order, 28 FCC Rcd 484, 484-85 ¶ 3 (1971).

¹⁰ *Id.* at 485 para. 3.

¹¹ See 47 CFR § 90.35(c)(35).

¹² We will process the application with respect to frequencies 451.3375, 452.6625, and 457.6625 MHz. Carpenter did not request a waiver to permit continuous carrier operation on these frequencies, which we note is prohibited. See 47 CFR § 90.267(h)(5); see also *Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band*, Report and Order, 18 FCC Rcd 3948, 3965 para. 40 (2003) (noting that continuous carrier operation is prohibited on Group A low power frequencies).

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
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