

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

In the Matter of)
)
ICOM AMERICA INC.) WT Docket No. 17-122
)
Request for Waiver to Permit Manufacture,)
Importation, Sale, and Installation of Class E Digital)
Selective Calling Radio)

ORDER

Adopted: September 29, 2017

Released: October 2, 2017

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

1. Introduction. This Order addresses a request by Icom America Inc. (Icom) for a temporary waiver of sections 80.225(a)(4) and 80.1101(c)(4)(ii) of the Commission’s rules to permit the manufacture, importation, sale, and installation of its medium frequency/high frequency (MF/HF) Digital Selective Calling (DSC) radio Model IC-M802 (M802).¹ For the reasons set forth below, we grant the waiver request.

2. Background. MF/HF DSC radios, which operate in the maritime mobile portions of the 1.6-27.5 MHz band, are used by ship stations to communicate with other ship stations or coast stations for safety, navigation, and weather information. The Commission’s rules require DSC radios to comply with certain international technical standards. The M802 complies with the standard that was incorporated into the Commission’s rules when equipment certification was granted for it in 2002.² Over time, the rules were amended to incorporate subsequent revisions of this standard.³ In 2010, the Commission amended its rules to require compliance with technical standard ITU-R M.493-13 and, after a phase-out period, prohibited the manufacture, importation, sale, or installation of non-compliant equipment.⁴ The M802 does not comply with requirements in Appendix 4 of ITU-R M.493-13 regarding

¹ See Letter from Nick Pennance, Vice President, Icom America Inc., to Scot Stone, Wireless Telecommunications Bureau, Federal Communications Commission (Feb. 21, 2017) (Request); 47 C.F.R. §§ 80.225(a)(4), 80.1101(c)(4)(ii).

² See Grant of Equipment Authorization AFJIC-M802. At that time, the Commission’s rules incorporated technical standard CCIR Recommendation 493 for DSC equipment, CCIR Recommendation 493, “Digital Selective-calling System for use in the Maritime Mobile Service.” See 47 CFR § 80.225(a) (2002).

³ See Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications, Report and Order and Further Notice of Proposed Rulemaking, 17 FCC Rcd 6741, 6842 (2002) (incorporating ITU-R M.493-10); Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications, Memorandum Opinion and Order, Third Report and Order, and Third Further Notice of Proposed Rulemaking, 21 FCC Rcd 10282, 10298, para. 27 (2006) (incorporating ITU-R M.493-11).

⁴ See Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications, Fourth Report and Order and Second Memorandum Opinion and Order, 25 FCC Rcd 7781, 7806 (2010); ITU-R M.493-13, “Digital Selective Calling System for Use in the Maritime Service,” with Annexes 1, 2, 3, and 4 (10/2009) (ITU-R M.493-13), viewable at https://www.itu.int/dms_pubrec/itu-r/rec/m/R-REC-M.493-13-200910-S!!PDF-E.pdf. Manufacture, importation, sale, or installation of non-compliant equipment initially was prohibited as of March 25, 2011, but this date was extended to January 1, 2013. See Wireless Telecommunications Bureau (continued....)

automated procedures initiated by sending a non-distress DSC message, so Icom removed the model from the United States market.⁵

3. The M802 is a Class E DSC radio, which is intended to provide minimum functionality for MF/HF DSC distress, urgency, and safety communications as well as routine calling and reception, but does not comply fully with the requirements applicable to vessels that are required to carry an MF/HF DSC radio as part of the Global Maritime Distress and Safety System (GMDSS). GMDSS-compliant Class A equipment typically costs more than twice as much as Class E equipment, which is intended for use by vessels that are not subject to the GMDSS requirements.⁶

4. Icom states that typical M802 users are cruising vessels, *i.e.*, smaller ships used for recreation. It requests a temporary waiver to permit the manufacture, importation, sale, and installation of the M802 until 2020, by which time Icom expects to produce Class E DSC radios that meet the current standard.⁷ Icom asserts that the M802 was the only Class E DSC radio that general users could afford, and it argues that a waiver is in the public interest because it will enable cruising vessels to communicate and obtain safety and weather information better than non-DSC alternatives.⁸

5. The Wireless Telecommunications Bureau's Mobility Division sought comment on Icom's request on May 19, 2017.⁹ Over 200 comments were filed, all but one in support of the waiver request.

6. *Discussion.* Section 1.925 of the Commission's rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁰ We conclude that under the circumstances presented, a temporary waiver of sections 80.225(a)(4) and 80.1101(c)(4)(ii) is in the public interest.

7. Most of the commenters are individual mariners, who assert that there is currently no affordable alternative that provides the same safety benefits as the M802, on which they rely for regular communications, weather and safety information, and distress alerts.¹¹ They state that other countries let sale and installation of the M802 continue, with no adverse consequences arising from recreational vessels' use of a DSC radio that does not meet the new requirements in ITU-R M.493-13.¹² Many are

(Continued from previous page) _____
Clarifies and Temporarily Waives Requirements for Maritime Digital Selective Calling Equipment, Public Notice, 26 FCC Rcd 16782, 16783 (WTB MD 2011).

⁵ Request at 2; *see* ITU-R M.493-13, Appendix 4, para. 3.2.2.2.

⁶ *See, e.g.*, Joan Conover Comments at 1; Terry Sparks Comments at 1.

⁷ *See* Request at 2.

⁸ *See id.*

⁹ *See Wireless Telecommunications Bureau Seeks Comment on Icom America Inc. Request for Waiver to Permit Manufacture, Importation, Sale, and Installation of Class E Digital Selective Calling Radio*, Public Notice, 32 FCC Rcd 3844 (WTB MD 2017).

¹⁰ 47 CFR § 1.925(b)(3); *see also* *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹¹ *See, e.g.*, Ben Ellison Comments at 1; Glenn D. Gustafson Comments at 1.

¹² *See, e.g.*, Gene Gammon Comments at 2; Skip Gundlach Comments at 1.

concerned that the continued unavailability of an affordable MF/HF DSC radio for United States recreational vessels will lead to loss of life due to inferior communications during an emergency.¹³ The waiver request also is supported by the United States Sailing Association's Safety at Sea Subcommittee¹⁴ and the Radio Technical Commission for Maritime Services, which reports that the M802 is the only known HF DSC radio designed for vessels not subject to the GMDSS requirements.¹⁵ Even the sole objector acknowledges the safety benefits offered by the M802 and recognizes that there is no practical alternative for cruising vessels, but argues that Icom should be required to comply with ITU-R M.493-13 and opines that it should not take until 2020 to develop a compliant radio.¹⁶

8. Based on the record before us, we conclude that grant of the requested waiver is in the public interest. The record before us indicates that without the M802, there is no affordable MF/HF DSC radio for vessels not subject to the GMDSS requirements. Use of a DSC radio—even one that does not perform all of the parallel automated procedures required by ITU-R M.493-13—offers important advantages over non-DSC alternatives. For example, satellite radios communicate on a one-to-one basis, so distress calls will not be heard by surrounding vessels.¹⁷ Similarly, non-DSC distress calls likely will not be heard by DSC-equipped vessels, which are required to monitor only the DSC distress channel.¹⁸ Consequently, grant of a waiver will contribute to the safety of vessels in distress. Moreover, nothing in the record demonstrates that the requested waiver period is longer than reasonably necessary to bring a fully compliant radio to market. Consequently, we grant a temporary waiver of sections 80.225(a)(4) and 80.1101(c)(4)(ii) of the Commission's rules to permit the manufacture, importation, sale, and installation of the M802 until January 1, 2020.

9. *Conclusion and Ordering Clauses.* We conclude that Icom America Inc. has shown good cause for waiver of 80.225(a) and 80.1101(c)(4)(ii) of the Commission's rules to permit the manufacture, importation, sale, and installation of its M802 HF/MF DSC radio. We grant the waiver until January 1, 2020. No extensions of this temporary waiver will be granted.

10. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Request for Waiver filed by Icom America Inc. on February 21, 2017, IS GRANTED.

¹³ See, e.g., E. Elaine Cashar Comments at 1; J. Jay Mittner Comments at 1.

¹⁴ See Safety at Sea Subcommittee, United States Sailing Association Comments at 1.

¹⁵ See Radio Technical Commission for Maritime Services Reply Comments at 2.

¹⁶ See Nicolas S. Gikkas Comments at 1.

¹⁷ See, e.g., Request at 2; Laurence Shick Comments at 1.

¹⁸ See 47 CFR §§ 80.305(b), 80.310.

11. This action is taken under delegated authority pursuant to sections 0.131, and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau