

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

In the Matter of)
)
Amendment of Part 90 of the Commission's Rules) WP Docket No. 07-100
)

SECOND ORDER ON RECONSIDERATION

Adopted: March 9, 2015

Released: March 11, 2015

By the Commission:

I. INTRODUCTION

1. In this *Second Order on Reconsideration*, we grant the unopposed petition filed by the Public Safety Communications Council (PSCC) for partial reconsideration of the *Fifth Report and Order*¹ in this proceeding.² Specifically, for applications seeking authority to operate centralized trunked stations on Public Safety Pool channels, we eliminate the requirement that the applicant demonstrate – for purposes of determining whether any incumbent licensee's written consent is needed – that the proposed station's service contour will not be overlapped by any incumbent station's interference contour. We also amend the rule changes adopted in the *Fifth Report and Order* regarding treatment of mobile stations to clarify how to protect 150-174 MHz band mobile stations that are associated with a base station.

II. BACKGROUND AND DISCUSSION

2. A trunked radio system employs technology that can search two or more available channels and automatically assign a user an open channel.³ In the *Fifth Report and Order*, the Commission revised, clarified, and streamlined Section 90.187 of its rules,⁴ which specifies the manner in which trunking may be accomplished in the 150-174 MHz and 421-512 MHz private land mobile radio bands.⁵ PSCC seeks reconsideration with respect to two of those rule changes.

3. *Section 90.187(d)(3)*. As noted in the *Fifth Report and Order*,⁶ Section 90.187 requires that a trunked system monitor the frequencies and employ equipment that prevents transmission on a

¹ Amendment of Part 90 of the Commission's Rules, *Fifth Report and Order*, WP Docket No. 07-100, 28 FCC Rcd 5924 (2013) (*Fifth Report and Order*).

² Petition for Reconsideration of the Fifth Report and Order (filed June 12, 2013) (Petition). The Petition went on public notice on June 20, 2013. See Petition for Reconsideration of Action in Rulemaking Proceeding, *Public Notice*, Report No. 2984 (CGB rel. June 20, 2013). No comments were received.

³ 47 C.F.R. § 90.7. In a centralized trunked system, the base station controller provides dynamic channel assignments by automatically searching all channels within the system and assigning an open channel to a user; in a decentralized trunked system, the system monitors the assigned channels for activity both within and outside the trunked system, and transmits only when an open channel is found. See *Fifth Report and Order*, 28 FCC Rcd at 5926 ¶ 5.

⁴ 47 C.F.R. § 90.187.

⁵ See *Fifth Report and Order*, 28 FCC Rcd at 5926-29 ¶¶ 5-12.

⁶ See *id.* at 5926-27 ¶ 7.

frequency if a signal from another system is present on it, with certain exceptions. One of these exceptions is if the licensee obtains the written consent of all “affected licensees.”⁷ Whether an incumbent is an affected licensee depends on both the spectral proximity of the existing and proposed frequencies, and the physical proximity of the existing and proposed facilities. In the *Fifth Report and Order*, the Commission modified Section 90.187 to require that the contour analysis used to determine physical proximity be performed by an applicant for a new centralized trunked system to demonstrate both that 1) the proposed system’s interference contour will not overlap any spectrally proximate incumbent system’s service contour; and 2) its proposed service contour will not be overlapped by the interference contour of any incumbent system (a “reverse” contour analysis).⁸ The Commission adopted the reverse contour requirement because its benefits – to prevent the licensing of stations that would appear to have little function other than to enable the applicant to block the expansion of viable incumbent systems – outweighed the limited additional burden on frequency coordinators of performing a two-way analysis.⁹ It noted that applicants with legitimate reasons for seeking authorization for service contours overlapped by incumbents’ interference contours could seek case-by-case waivers.¹⁰

4. PSCC states that there are situations in which it is appropriate to license low-power Public Safety stations within the interference contours of incumbent stations in order to fill a specific communications need, such as providing communications capacity at a prison or courthouse, and that such stations have no effect on incumbent licensees.¹¹ PSCC believes that the coordination of such stations should be permitted based on the expertise of the Public Safety Pool frequency coordinators rather than requiring licensees to utilize the slower and more burdensome case-by-case waiver process.¹² Further, PSCC asserts that while “a practice similar to ‘greenmail’”¹³ may occur on Industrial/Business Pool channels, which the reverse contour analysis might help to prevent, the issue does not arise on Public Safety Pool channels.¹⁴

5. We agree with PSCC that the reverse contour requirement is not necessary for the Public Safety Pool channels, and should apply only to Industrial/Business Pool channels. No party has opposed PSCC’s request, and we find the risk of such potential “greenmail” activity in connection with public safety facilities to be unlikely and certainly outweighed by the cost of pursuing case-by-case waivers. Accordingly, we are amending the rules to eliminate the “affected licensees” consent requirement for Public Safety Pool applicants for stations with a proposed service contour overlapped by an incumbent system’s interference contour. Such Public Safety Pool applicants will be permitted to prosecute their applications, which require coordination by a Public Safety Pool frequency coordinator,¹⁵ without obtaining the consent of “affected licensees” unless their proposed interference contour overlaps any spectrally proximate incumbent licensee’s service contour. We amend Section 90.187(d)(3) to make clear

⁷ 47 C.F.R. § 90.187(b)(2) (2012). See also *Fifth Report and Order*, 28 FCC Rcd at 5938 App. B (new Section 90.187(d), including the same language).

⁸ See *Fifth Report and Order*, 28 FCC Rcd at 5928 ¶ 11.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ As PSCC explains, the practice similar to “greenmail” would occur when stations within the interference contour of incumbent stations might “have no useful communications purpose” but rather reflect “the hope of profiting . . . should the incumbent wish to modify its license at some point in the future.” Petition at 1-2.

¹⁴ See *id.* at 2.

¹⁵ See 47 C.F.R. § 90.175.

that when a public safety applicant files an application in which its service contour is overlapped by the interference contour of an incumbent station, the applicant must accept any resultant interference.

6. *Section 90.187(d)(1)(B)*. Formerly, Section 90.187 was not entirely clear about how to treat mobile stations for the foregoing contour analysis.¹⁶ The Commission amended the rule in the *Fifth Report and Order* to provide that, for purposes of the contour analysis to determine whether a station is an affected licensee, a mobile-only system's authorized operating area will be used as both its service contour and its interference contour.¹⁷ The Commission concluded that using the service area boundary for both the protected contour and the interference contour would allow establishment of new facilities while still providing an appropriate level of protection to the mobile operations.¹⁸

7. PSCC concurs with the Commission's decision to address the protection of mobile stations not associated with a base station by making the mobile-only authorized operating area represent both the interference and service contours.¹⁹ It notes, however, that the Commission did not adopt any provision regarding protection of mobile units that are associated with a base station, and suggests that associated mobile units be treated analogously to unassociated mobile units by using the associated base station's service contour as both the associated mobile unit's service contour and interference contour.²⁰

8. We agree that this omission should be addressed with respect to the 150-174 MHz band, where the base and mobile frequencies generally are not paired.²¹ As the Commission concluded with respect to mobile units not associated with a base station, using the service area boundary for 150-174 MHz mobile units that are associated with a base station for both the protected contour and the interference contour will allow establishment of new facilities while still providing an appropriate level of protection to incumbent operations. We amend Section 90.187(d)(1)(B) accordingly.

III. CONCLUSION AND PROCEDURAL MATTERS

9. For the foregoing reasons, we grant the PSCC petition, and amend Section 90.187 as discussed herein.

10. *Final Regulatory Flexibility Certification*. As required by the Regulatory Flexibility Act (RFA),²² a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Fifth Report and Order*.²³ In view of the fact that we have adopted further rule amendments in this *Second Order on Reconsideration*, we have included this Supplemental Final Regulatory Flexibility Certification. This Certification conforms to the RFA.²⁴

11. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will

¹⁶ See Ralph A. Haller, *Letter*, 23 FCC Rcd 4714, 4715-18 (WTB/PSHSB 2008).

¹⁷ See *Fifth Report and Order*, 28 FCC Rcd at 5929 ¶ 12.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 2-3.

²¹ As PSCC notes, this is not an issue in the 421-512 MHz band because base and mobile frequency pairings are dictated by rule, so protecting the base station contour automatically protects the mobile station contour. See 47 C.F.R. § 90.173(i); Petition at 2.

²² The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²³ See *Fifth Report and Order*, 28 FCC Rcd at 5934.

²⁴ See 5 U.S.C. § 604.

not have a significant economic impact on a substantial number of small entities.”²⁵ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁷ A small business concern is one which (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²⁸ The FRFA incorporated in the *Fifth Report and Order* described and estimated the number of small entity licensees and regulatees that may be affected by the rules changes adopted therein, described the projected reporting, recordkeeping, and other compliance requirements associated therewith, identified the steps taken to minimize significant economic impact on small entities and significant alternatives considered in connection therewith, and identified no federal rules that may duplicate, overlap, or conflict therewith. That FRFA is unchanged by this *Second Order on Reconsideration* except as described below.

12. This *Second Order on Reconsideration* makes technical modifications to our rule regarding the contour analysis for determining whether to permit a new centralized trunked station. These rule changes are not expected to have any significant cumulative effect on frequency coordination costs. Therefore, we certify that the requirements of this *Second Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

13. The Commission will send a copy of the *Second Order on Reconsideration*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, see U.S.C. § 801(a)(1)(A). In addition, the *Second Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Second Order on Reconsideration and this certification (or summaries thereof) will also be published in the Federal Register.²⁹

14. Paperwork Reduction Act Analysis. The *Second Order on Reconsideration* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4).

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.429 of the Commission’s Rules, 47 C.F.R. § 1.429, that the Petition for Reconsideration of the Fifth Report and Order filed by the Public Safety Communications Council on June 12, 2013, IS GRANTED to the extent set forth herein.

²⁵ 5 U.S.C. § 605(b).

²⁶ *Id.* § 601(6).

²⁷ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁸ Small Business Act, § 15 U.S.C. § 632.

²⁹ *See* 5 U.S.C. § 604(b).

16. IT IS FURTHER ORDERED that Part 90 of the Commission's Rules IS AMENDED as set forth in the attached Appendix, effective thirty days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Final Rules

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7) and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156.

2. Section 90.187 is amended by revising paragraphs (d)(1)(ii)(A) and (d)(3) to read as follows:

§ 90.187 Trunking in the bands between 150 and 512 MHz.

* * * * *

(d) * * *

(1) * * *

(ii) Contour overlap. (A) Licensees (and filers of previously filed pending applications) with a service contour (37 dBu for stations in the 150-174 MHz band, and 39 dBu for stations in the 421-512 MHz band) that is overlapped by the proposed centralized trunked station's interference contour (19 dBu for stations in the 150-174 MHz band, and 21 dBu for stations in the 421-512 MHz band). Contour calculations are required for base station facilities. Contour calculations are required for associated mobile stations only in the 150-174 MHz band, with the associated base station's service contour used as both the mobile station's service contour and its interference contour.

* * *

(3) In addition, the service contour for proposed centralized trunked stations on Industrial/Business Pool frequencies shall not be overlapped by an incumbent licensee's interference contour. An application filed for Public Safety Pool frequencies, see Section 90.20 of this Part, for a proposed centralized trunked station in which the service contour of the proposed station is overlapped by the interference contour of the incumbent station(s) is allowed, but the applicant must accept any resultant interference.

* * * * *