



This document is scheduled to be published in the Federal Register on 07/14/2014 and available online at <http://federalregister.gov/a/2014-16420>, and on [FDsys.gov](http://FDsys.gov)

**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 2 and 15**

**[ET Docket No. 03-201; FCC 14-80]**

**Unlicensed Devices and Equipment Approval**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document terminates the above captioned proceeding on unlicensed transmitter operations. Based on the record and considering that the Commission has not received any additional requests in recent years advocating the need for a spectrum etiquette requirement for unlicensed operations in the requested bands, the Commission concludes that adoption of such a requirement does not merit further evaluation at this time. In terminating this proceeding, the Commission also dismissed a pending petition for reconsideration.

**DATES:** Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Hugh Van Tuyl, Office of Engineering and Technology, 202-418-7506, [Hugh.VanTuyl@fcc.gov](mailto:Hugh.VanTuyl@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order and Second Memorandum Opinion and Order, ET Docket No. 03-201, FCC 1480, adopted June 9, 2014 and released June 10, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12<sup>th</sup> Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). People with Disabilities: To request materials in accessible formats for people

with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

### **Summary of Order and Second Memorandum Opinion and Order**

1. By this Order, the Commission terminates the above-captioned proceeding on unlicensed transmitter operations. The only substantive issues pending in this proceeding concern whether to adopt a specific “spectrum etiquette” requirement for unlicensed transmitters operating in the 902-928 MHz band, and whether there might be need for a similar requirement with respect to unlicensed operations in the 2.4 GHz and 5.8 GHz bands. Based on the record before us, and considering that the Commission has not received additional requests in recent years advocating the need for a spectrum etiquette requirement for unlicensed operations in these bands, the Commission concludes that adoption of such a requirement in these bands does not merit further evaluation at this time. In terminating this proceeding, the Commission also dismissed a pending petition for reconsideration.

2. Part 15 of the Commission’s rules governs the operation of unlicensed radiofrequency devices, including the technical requirements for their use. As a general condition of operation, part 15 devices may not cause harmful interference to authorized radio services and must accept any interference that they receive.

3. In 2003, the Commission initiated a Notice of Proposed Rulemaking in this proceeding to review and update certain sections of parts 2 and 15 of our rules pertaining to technical parameters and measurement procedures related to unlicensed device operations in the 902-928 MHz band, the 2.4 GHz band, and the 5.8 GHz band. The Commission also invited comment on whether it should consider any methods to ensure efficient spectrum usage by unlicensed devices, including the “spectrum etiquette” sharing conditions developed by the industry for the operation of unlicensed Personal Communications Service (PCS) devices

operating in the 1920-1930 MHz band. A spectrum etiquette establishes a set of steps and protocols that a device must follow before it may access the spectrum. Such an etiquette may require that a device monitor the spectrum in which it intends to operate and begin transmission only if no signal above a specified threshold is detected.

4. In July 2004, the Commission adopted a Report and Order, that modified several rules pertaining to these bands. The Commission, however, declined to impose any type of spectrum etiquette for any Part 15 bands. The Commission noted that most commenting parties had asserted that a spectrum etiquette requirement would tend to limit development of unlicensed operations. It also expressed concern that an etiquette requirement applying only to new devices in these heavily used unlicensed bands may not be useful in facilitating spectrum sharing if the large number of devices already authorized and used in the band were not required to follow the etiquette. The Commission also noted that the then-existing regulations, which did not require a spectrum etiquette, had resulted in very efficient use of unlicensed spectrum.

5. MO&O and Further Notice. In June 2007, the Commission issued its MO&O and Further Notice, which addressed Cellnet's petition and the spectrum etiquette issue. The Commission dismissed Cellnet's petition on the grounds that the petition and Cellnet's subsequent filings did not satisfy the Commission's rules for specific relief and timeliness; it noted that not until a 2006 ex parte presentation, filed over a year past the reconsideration period, did Cellnet describe a specific spectrum etiquette that it believed the Commission should require for digitally modulated spread spectrum transmitters operating in the 902-928 MHz band under §15.247 of the rules.

6. While the Commission focused the further notice on a spectrum etiquette that would apply only to the 902-928 MHz band, the Commission also inquired generally about whether there might be a similar need to adopt rules for unlicensed devices in the 2.4 GHz and 5.8 GHz

bands. The Commission stated, however, that industry standards were being developed to facilitate sharing in these bands and that it did not intend to disrupt this process.

### **Discussion**

7. The Commission is not persuaded of the need to adopt a spectrum etiquette requirement for unlicensed operations in the 902-928 MHz band. In addition to the record before us, subsequent developments concerning unlicensed operations in the 902-928 MHz band also counsel against adoption of a spectrum etiquette requirement.

8. Since June 2007, the Commission has approved more than 2,500 unlicensed devices operating in the 902-928 MHz band. This indicates that the band continues to be heavily used under the existing rules for unlicensed operations. The Commission observes that manufacturers have developed a wide variety of different types of products under the current part 15 rules. Consistent with the Commission's decision in 2004 not to adopt an etiquette requirement, it is not concerned that adoption of such a requirement could impede design flexibility and innovation of a wide variety of devices that the current rules enable. In declining to adopt a spectrum etiquette requirement, the Commission also notes that manufacturers and users of part 15 devices can and do take various steps when designing and deploying their equipment to promote the effective and efficient sharing between digitally modulated devices and other part 15 devices that operate in the 902-928 MHz band. For example, devices can tune to less congested frequencies or hop to a number of different frequencies to avoid interference. In addition, device operators can reduce the separation distance between the transmitter and receiver in areas where the 902-928 MHz spectrum is heavily used.

9. The Commission agrees with commenters who argued that the large number of existing devices in the 902-928 MHz band would limit the usefulness of a new etiquette since previously approved devices would not be required to comply with an etiquette. Also, no party described an etiquette that would be compatible with all types of devices that currently operate in

the band. Further, as a number of commenters noted, an etiquette could potentially stifle innovation or preclude the use of certain types of devices in the 902-928 MHz band.

10. The Commission focused the further notice on whether it should adopt a spectrum etiquette requirement for unlicensed operations in the 902-928 MHz band; only a few commenters commented on a spectrum etiquette requirement in either the 2.4 GHz or 5.8 GHz bands. The Commission agrees that there is no need for an etiquette in these bands.

11. The record before us does not establish the need for a spectrum etiquette requirement in the 902-928 MHz band. Nor is there any basis before us that establishes a need for adoption of a spectrum etiquette requirement for either the 2.4 GHz band or 5.8 GHz band. The Commission concludes that adoption of this type of requirement in these bands would not serve the public interest at this time.

## **SECOND MEMORANDUM OPINION AND ORDER**

12. The 2004 Report and Order in this proceeding made several changes to part 15 of the rules regarding unlicensed operations in the 902-928 MHz band, the 2.4 GHz band, and the 5.8 GHz band. In 2004, Warren C. Havens and Telesaurus Holdings GB LLC (Havens), which are licensees in the Multilateration Location and Monitoring Service (M-LMS) in portions of the 902-928 MHz band, filed a petition for reconsideration of that order. Havens requested that the Commission suspend the rule changes adopted for unlicensed devices for operation in the 902-928 MHz band until such time as the Commission commenced and completed a formal inquiry, including notice and comment, with regard to the potential effect of such changes to M-LMS licensees that operate in portions of the band. Havens claimed that the revised part 15 rules would lead to increased spectrum use of the 902-928 MHz band by unlicensed devices and thus would adversely affect M-LMS systems by changing the “regulatory coexistence” between part 15 and M-LMS operations. Havens asserted that the Commission should have made no changes

in the part 15 rules regarding with 902-928 MHz band without a rulemaking on part 90 M-LMS rules.

13. In the 2007 MO&O and Further Notice, the Commission dismissed the Havens petition, declining to suspend the part 15 rule changes. The Commission first noted that Havens did not raise any objections to any proposals for revising part 15 rules in the Notice of Proposed Rulemaking prior to the filing of the Havens petition. The Commission explained that, pursuant to §1.429(b) of its rules, a petition for reconsideration that relies on facts not previously presented to the Commission will be granted only if: (1) the facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission; (2) the facts relied upon were unknown to the petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of due diligence have learned of the facts in question prior to such opportunity; or (3) the Commission determines that consideration of the facts relied on is required in the public interest. The Commission concluded that Havens failed to address why it did not previously participate in this proceeding or claim that any of these three conditions were met. In addition, the Commission noted that §1.429(c) of the Commission rules require that a petition for reconsideration state with particularity the respects in which the petitioner believes the action taken should be changed. The Commission pointed out that Havens did not identify the particular rule changes that should be suspended, and instead provided only a mere statement of belief that the part 15 rule changes in this proceeding would lead to increased use of part 15 devices in the 902-928 MHz band and thus would result in adverse effects on M-LMS operations that also operate in the portions of the band. The Commission found that Havens had provided no evidence or analysis to support this assertion. The Commission also noted that Havens had raised essentially the same arguments in its petition for reconsideration in ET Docket No. 99-231 concerning changes to the part 15 rules

for spread spectrum devices, which the Commission had rejected in that proceeding.

Accordingly, the Commission dismissed the Havens petition.

14. The Commission also noted that a proceeding had been initiated in 2006 to reexamine the rules for the M-LMS operating in the 902-928 MHz band (WT Docket No. 06-49), and that proceeding had been prompted partly in response to a petition for rulemaking by Progeny LMS, LLC (Progeny), another M-LMS licensee. The Commission stated that the M-LMS proceeding was the appropriate forum for addressing concerns raised by Havens about the M-LMS rules, including the operational relationship between Part 90 M-LMS devices and part 15 unlicensed devices. The Commission also noted that Havens had already participated in the proceeding to consider Progeny's earlier petition for rulemaking.

15. In July 2007, on behalf of Telesaurus, Warren Havens filed a petition for reconsideration of the Commission's dismissal of the Havens petition for reconsideration in the MO&O and Further Notice. Havens asserts that the Commission's decision dismissing the previous Havens petition for reconsideration should be reversed and that the relief that Havens had requested in the previous petition challenging the 2004 Report and Order should now be granted on the basis of the new petition. Havens claims that the 2007 petition for reconsideration is based on "new facts." The arguments raised by Havens in the petition for reconsideration of the Commission's dismissal of the earlier petition for reconsideration raise no new relevant facts, and do not provide grounds for our reconsideration of the Commission's prior decision dismissing Havens earlier petition. The Commission dismisses the pending Havens petition as repetitious.

16. In dismissing this latest petition, the Commission relies on §1.429 of the Commission's rules, as had the earlier Commission when dismissing the previous Havens petition for reconsideration in this proceeding. To the extent a petitioner seeks reconsideration of final orders in a rulemaking proceeding, the petitioner may rely on new facts and arguments not

previously presented to the Commission. The Commission may grant such a petition only if: (1) the facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission; (2) the facts relied upon were unknown to the petitioner until after its last opportunity to present them to the Commission, and it could not through the exercise of due diligence have learned of the facts in question prior to such opportunity; or (3) the Commission determines that consideration of the facts relied on is required in the public interest. The Commission's rules also require that a petition for reconsideration state with particularity the respects in which the petitioner believes the action taken should be changed. Except in circumstances where the Commission has modified rules in response to a petition for reconsideration, a second petition for reconsideration may be dismissed as repetitious.

17. In the pending petition, Havens argues that the Commission erred in 2007 when dismissing the previous petition, and asserts alleged "new facts" as bases for its petition. In particular, Havens repeats arguments made in the earlier petition for reconsideration – namely that the Commission could not properly make any part 15 rule changes applicable to the 902-928 MHz band that were potentially adverse to M-LMS operations without a notice and comment proceeding on M-LMS. Havens again asserts that any rule part 15 rule changes are changes to the M-LMS rules. Havens also reasserts that there was no obligation for Havens to participate earlier in this part 15 proceeding. As for alleged "new facts," Havens first asserts that the Commission's initiation in 2006 of the proceeding seeking comment on possible changes to the M-LMS rules for operation in the 902-928 MHz band, which could affect part 15 operations in the band, demonstrates the validity of its argument in its petition that the M-LMS rules affect part 15 and vice versa. Havens argues that since this new proceeding occurred following the release of the 2004 Report and Order, this constitutes a new fact. Havens also asserts that the Commission ignored all of the arguments that Havens had raised in response to a 2002 petition by an M-LMS licensee to change rules in 902-928 MHz band, which ultimately led to the

Commission's initiation of the 2006 M-LMS rulemaking, and that this constitutes a new fact showing the Commission's prejudice towards Havens (and Telesaurus) and an abrogation of the Commission's duty to be impartial.

18. Havens has not demonstrated any basis for our reconsideration of the Commission's earlier dismissal. The Commission previously concluded that the initial Havens petition for reconsideration was procedurally defective and failed to establish a basis for relief. The so-called "new facts" alleged by Havens, and which are only unsupported assertions, do not constitute the kinds of facts contemplated under §1.429 that would provide a basis for granting a petition for reconsideration. Further, nothing prevented Havens from participating in the rulemaking that revised part 15 rules in this proceeding. Moreover, Havens did not identify any particular rule that should be changed, nor specify how he would propose revising any particular rule. In addition, the arguments raised in the pending Havens petition for reconsideration are repetitious. For all of these reasons, the Commission dismisses the petition.

19. Finally, as the Commission noted in the MO&O and Further Notice, Havens has had the opportunity to present his concerns relating to potential revisions to the M-LMS rules, including the operational relationship between M-LMS devices and part 15 unlicensed devices, in the M-LMS rulemaking (WT Docket No. 06-49). Havens has been an active participant in that rulemaking.

### **Conclusion**

20. The remaining issues raised in this proceeding, which concern whether the Commission should adopt a spectrum etiquette requirement for unlicensed transmitters that operate under §§15.247 and 15.249 of the rules in the 902-928 MHz band, or possibly also for the 2.4 GHz or 5.8 GHz bands, do not merit further consideration at this time. The Commission also dismisses the pending petition for reconsideration. With these actions, the Commission terminates this proceeding.

## **Ordering Clauses**

21. Pursuant to sections 4(i), 5(c), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c), and 405(a), and § 1.429 of the Commission's Rules, 47 CFR 1.429, that the Petition for Reconsideration filed by Telesaurus GB LLC on July 23, 2007 IS DISMISSED.

22. Pursuant to the authority contained in Sections 4(i) and 4(j) of the Communications Act, as amended, 47 U.S.C. 154(i) and (j), that the proceeding in ET Docket No. 03-201 is HEREBY TERMINATED.

23. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order and Second Memorandum Opinion and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

## **Report to Congress**

24. The Commission will not send a copy of this Second Memorandum Opinion and Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the Commission did not adopt any new rules here.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary.

[FR Doc. 2014-16420 Filed 07/11/2014 at 8:45 am; Publication Date: 07/14/2014]