



# PUBLIC NOTICE

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## ERRATUM

### **The Wireless Telecommunications Bureau Extends the Freeze on High Power Use of the 460-470 MHz Band Offset Channels until December 31, 2005**

This Public Notice corrects the Public Notice (DA 04-2071) released in the matter on July 8, 2004.

The Wireless Telecommunications Bureau (Bureau) announces that the freeze on the filing of applications for high power operations on 12.5 kHz offset channels in the private land mobile radio (PLMR) 460-470 MHz band will remain in effect until December 31, 2005.<sup>1</sup> The Bureau is extending the duration of the freeze to provide hospitals and other health care providers that operate medical telemetry equipment in the 460-470 MHz band adequate time to migrate to spectrum dedicated to the Wireless Medical Telemetry Service (“WMTS”), while providing PLMR users a date certain by which the freeze will end. The Bureau does not anticipate any further extensions of the December 31, 2005 deadline.

By way of background, the Commission, in 1995, adopted a new, more efficient channel plan for PLMR services in the 450-470 MHz band.<sup>2</sup> Under the channel plan adopted, channels in the 450-470 MHz band that were 12.5 kHz removed from regularly-assignable channels at that time (“12.5 kHz offset channels”) would be available for high power operations. Previously, medical telemetry systems used these “offsets” on a secondary, noninterference basis to primary adjacent channel PLMR operations. Recognizing that co-channel, high power operations could result in interference to medical telemetry operations, the Bureau froze the filing of applications for high power operations on offset channels in the 450-470 MHz band pending resolution of the medical telemetry issues.<sup>3</sup>

<sup>1</sup> Twenty-one channel pairs and four unpaired frequencies (“Group C”) in the 450-470 MHz band are designated for low power use on a licensed, frequency coordination exempt, itinerant basis. *See* 47 C.F.R. § 90.267(e). In addition to the freeze on applications for high-power offsets in the 460-470 MHz band, ten of the “Group C” channels are unavailable for itinerant licensing until the conclusion of the medical telemetry migration deadline. *See* 47 C.F.R. § 90.267(e)(3).

<sup>2</sup> *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Report and Order*, PR Docket No. 92-235, 10 FCC Rcd 10076 (1995).

<sup>3</sup> *See* Freeze on Filing of High Power Applications for 12.5 kHz Offset Channels in the 450-470 MHz Band, *Public Notice*, 10 FCC Rcd 9995 (WTB 1995). Later, the Commission instituted an exception to the freeze by allowing new high power systems to be licensed on any former 12.5 kHz offset channel not specifically designated for low power use if the license applications were accompanied by a statement from a frequency coordinator attesting that operation of the new high power system would not have an impact on any currently operating co-channel low power system. *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile

In June 2000, the Commission established the Wireless Medical Telemetry Service (WMTS),<sup>4</sup> an action aimed at ensuring that in-hospital medical telemetry devices can operate free of harmful interference. In establishing the WMTS, the Commission allotted a total of 13.5 megahertz of spectrum on a primary basis in three blocks (608-614 MHz, 1395-1400 MHz, and 1427-1429.5 MHz).<sup>5</sup> Also, the Commission determined that WMTS operations should be licensed by rule in lieu of individual licensing. Based on this decision, the Commission further decided that there was a need to establish some mechanism to track the usage of WMTS transmitters. In this regard, the Commission concluded that this information should be maintained in a database by one or more private sector frequency coordinators to be designated by the Bureau.<sup>6</sup> Prior to operation, health care providers must register all medical telemetry devices operating on WMTS spectrum.<sup>7</sup> In addition, the Commission encouraged hospitals to migrate their medical telemetry operations from the 460-470 MHz band to the new WMTS bands.<sup>8</sup> To accommodate this migration, the Commission stated its intention to lift the freeze on applications for high power use of offset channels in the 460-470 MHz band within three years of the effective date of the WMTS rules.<sup>9</sup>

On September 23, 2003, however, the American Hospital Association (AHA) reported that, based on its recent, informal polling of hospitals, there has been virtually no migration of medical telemetry systems to the WMTS frequencies.<sup>10</sup> AHA noted that high power use in the 460-470 MHz band has the potential to interfere with existing medical telemetry systems that have not moved to the WMTS

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Services, PR Docket No. 92-235, *Second Report and Order*, 12 FCC Rcd 14307, 14343 ¶ 67 (1997). The freeze on applications for offsets in the 450-460 MHz portion of the band was lifted in early 2001. Because most medical telemetry systems operated between 460-470 MHz, the Bureau maintained the 460-470 MHz freeze. *See Freeze on the Filing of High Power Applications for 12.5 kHz Offset Channels in the 450-460 MHz Band to be Lifted January 29, 2001, Public Notice*, 15 FCC Rcd 9996.

<sup>4</sup> Amendment of Parts 2 and 95 of the Commission's Rules to Create a Wireless Medical Telemetry Service, *Report and Order*, ET Docket No. 99-255, 15 FCC Rcd 11206 (2000) (*WMTS R&O*).

<sup>5</sup> *See* 47 C.F.R. § 95.630. At seven locations listed in 47 C.F.R. § 90.259(b)(4), WMTS may operate on a primary basis in the 1429-1431.5 MHz band (rather than in the 1427-1429.5 MHz band).

<sup>6</sup> On February 23, 2001, the Bureau released an *Order* designating the American Society for Health Care Engineering of the American Hospital Association (ASHE/AHA or ASHE) to serve as the frequency coordinator for WMTS. *See* Amendment of Parts 2 and 95 of the Commission's Rules to Create a Wireless Medical Telemetry Service, *Order*, ET Docket No. 99-255, 16 FCC Rcd 4543 (2001).

<sup>7</sup> *See* 47 C.F.R. § 95.1111.

<sup>8</sup> *WMTS R&O*, 15 FCC Rcd at 11225 ¶ 57 (Commission's goal was to provide spectrum where medical telemetry equipment can operate without interference, but also to encourage medical telemetry users to eventually migrate out of the current bands). "Despite the fact that medical telemetry has no legal protection from interference in [the current] bands, the fact remains that the Commission has had to take steps to protect medical telemetry from interference because it is used to protect safety of life. The steps the Commission has taken, such as the freeze in the 450-470 MHz band and the requirement for DTV stations to notify nearby health care facilities, affect other parties. We therefore wish to encourage medical telemetry users to migrate out of the current frequency bands and into the new frequency bands." *Id.*

<sup>9</sup> *Id.* at 11227 ¶ 65. The WMTS rules became effective on October 16, 2000. Thus, the freeze would have been subject to lifting on or before October 16, 2003.

<sup>10</sup> AHA Plan at 2.

frequencies.<sup>11</sup> AHA also recognized that the land mobile radio community is eager to obtain the full utilization of this band.<sup>12</sup> In this connection, AHA stated that “no one will benefit if widespread interference to medical telemetry services results from the premature use of this band by higher-powered land mobile systems.”<sup>13</sup> To address this matter, AHA asked that the freeze not be lifted and proposed a thirty-month plan for the transition of medical telemetry operations to the WMTS spectrum.<sup>14</sup> In a *Public Notice* released October 15, 2003, the Bureau announced it was extending the freeze for a period of up to 180 days and sought comment on the AHA proposal.<sup>15</sup> The Land Mobile Communications Council (LMCC), an umbrella organization representing the PLMR community that includes as members all Part 90 frequency coordinators, opposed the AHA proposal.<sup>16</sup>

The Bureau has been working with AHA and the American Society for Health Care Engineering (ASHE), representing health care provider interests, and LMCC, representing the interests of the PLMR community, to develop a plan to allow for the orderly transition of high power operations on 12.5 kHz offset channels in the PLMR 460-470 MHz band. The Bureau also has been coordinating with representatives of the U.S. Food and Drug Administration (FDA) on this matter to ensure that medical telemetry communications, particularly those of a critical nature, are not adversely affected during such transition. In this regard, the Bureau has extended the current freeze on previous occasions in an effort to develop a transition plan and process which equitably balanced the interests of the identified stakeholders and resulted in minimum disruption to current operations in the 460-470 MHz band.<sup>17</sup> After months of discussions coordinated with the Bureau, AHA and LMCC, by consensus, developed an approach whereby the current freeze would remain in effect through December 31, 2005.<sup>18</sup>

AHA and LMCC believe, on balance, that the public interest would be best served by maintaining the current freeze until December 31, 2005, rather than lifting it at some earlier time. This approach provides a date certain by which all medical telemetry operations in the 460-470 MHz band can either transition to the WMTS spectrum or obtain interference protection by becoming licensed on the same basis as other Part 90 operations. It also provides sufficient time to permit effective planning for an

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<sup>11</sup> *Id.* at 2-3.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 2.

<sup>14</sup> See Letter from Rick Pollack, Exec. Vice Pres., American Hospital Assoc., to John Muleta, Chief, Wireless Telecommunications Bureau, FCC, dated Sept. 23, 2003 (AHA Plan).

<sup>15</sup> Wireless Telecommunications Bureau Extends Freeze on High Power Use of 460-470 MHz Band Offset Channels and Seeks Comment on American Hospital Association’s Proposal for Migration of Medical Telemetry Equipment to Wireless Medical Telemetry Service, *Public Notice*, DA 03-3178, released October 15, 2003.

<sup>16</sup> On October 13, 2003, the Land Mobile Communications Council submitted a letter to the Bureau opposing the AHA Plan (via e-mail). We believe that it is in the public interest to submit this letter into the record as comments received in response to the October 15, 2003 Public Notice. See Letter dated Oct. 13, 2003 from Larry Miller, President, Land Mobile Communications Council, to John Muleta, Chief, Wireless Telecommunications Bureau, FCC.

<sup>17</sup> See The Wireless Telecommunications Bureau Extends the Freeze on High Power Use of the 460-470 MHz Band Offset Channels, *Public Notice*, DA 04-987 (WTB rel. Apr. 9, 2004); The Wireless Telecommunications Bureau Extends the Freeze on High Power Use of the 460-470 MHz Band Offset Channels, *Public Notice*, DA 04-1654 (WTB rel. June 8, 2004).

<sup>18</sup> See Letter from Mary Beth Savary Taylor, AHA, and Jim Pakla, LMCC, to D’wana Terry, Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (filed July 8, 2004).

orderly and efficient transition so as to avoid disruption to ongoing medical telemetry operations. In addition, it provides a mechanism to continue to protect medical telemetry operations from harmful interference pending their transition to WMTS spectrum or Part 90 licensing.

Given this extended transition, the parties have agreed to work with both the FCC and the FDA to provide impetus for the migration of hospitals from the 460 MHz band to the new WMTS bands. To further assist health care facilities still operating low-powered telemetry systems in the 460-470 MHz band in their transition to the WMTS spectrum or to fully licensed status, ASHE has created a registration process that will allow such hospitals and health care facilities to register information about their current use with ASHE. This registration program will allow AHA and ASHE to compile a more accurate database of the number, location and frequency being used by hospitals operating in the 460-470 MHz band, which will, in turn allow AHA, ASHE, the FDA and the Bureau to track the progress of the migration of medical telemetry devices out of the 460-470 MHz band, assist hospitals with problems in migration, and communicate with the affected hospitals regarding the regulatory impact of the lifting of the freeze on December 31, 2005. We take this opportunity to remind operators of WMTS equipment that to be licensed as required by the Commission's rules, they must register their equipment and frequencies with ASHE prior to operation. *See* Section 95.1111 of the Commission's Rules, 47 C.F.R. § 95.1111.

The decision to extend the freeze is procedural in nature and therefore not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. Moreover, there is good cause for not using notice and comment procedures in this case, or making the freeze extension effective 30 days after publication in the Federal Register. We find that such procedures would be impractical, unnecessary and contrary to the public interest as our compliance would undermine the public policy rationale of the freeze in the first place. This action is authorized under Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 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.

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By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.