

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

In the matter of
Amendment of Part 15 of the Commission's Rules
Regarding Spread Spectrum Devices
ET Docket No. 99-231
RM-10403

MEMORANDUM OPINION AND ORDER

Adopted: May 27, 2003

Released: May 30, 2003

By the Commission:

INTRODUCTION

1. By this action, the Commission denies the Petition for Reconsideration filed by Warren C. Havens and Telesaurus Holdings GB, LLC, d/b/a LMS Wireless ("Havens") of the Commission's Second Report and Order in this proceeding. We affirm our decision to permit new digital transmission technologies to operate in the 902 - 928 MHz (915 MHz) band under the same rules that govern the operation of direct sequence spread spectrum systems, and reject Havens' request that we delay the implementation of these rules.

BACKGROUND

2. In the Second Report and Order in ET Docket No. 99-231, the Commission revised Section 15.247 of its rules to allow new digital transmission technologies to operate under the same rules as direct sequence spread spectrum systems in the 915 MHz, 2.4 GHz, and 5.7 GHz bands. The Commission stated that these changes will facilitate the continued development and deployment of new wireless devices for businesses and consumers. The modified rules will allow more diverse products to occupy those bands, thereby increasing consumer choice. At the same time, the rules will provide flexibility for quickly introducing new non-interfering products without the need for rule makings to address each developing technology. The new rules became effective on July 25, 2002.

3. On July 25, 2002, Havens filed a petition for reconsideration asking the Commission to defer the rule changes noted above in the 915 MHz band, pending resolution of two rulemaking petitions:

1 Petition for Reconsideration filed by Warren C. Havens and Telesaurus Holdings GB, LLC; July 25, 2002.
2 Second Report and Order in ET Docket No. 99-231, 17 FCC Rcd 10755 (2002), adopted May 16, 2002 ("Second R&O").
3 67 Fed. Reg. 42730 (2002).

one filed by Progeny LMS LLC (“the Progeny petition”),⁴ and one that Havens intended to file at a later date. The Progeny petition seeks rule changes for the Location and Monitoring Service (“LMS”) in the 915 MHz band. Specifically, Progeny seeks elimination of restrictions barring a single licensee from holding all LMS licenses in a given area, elimination of the restriction on real-time interconnection, elimination of the restriction on the types of services LMS licensees may offer, and the substitution of technical limits, as necessary, for the current service limitations. Progeny also requests modification of the safe harbor provision of Section 90.361 of the rules that creates a presumption of non-interference from Part 15 and Amateur operations in the 902 – 928 MHz band.⁵ Havens asserts that the changes to the Part 15 rules adopted in the *Second Report and Order* that allow increased flexibility for unlicensed devices may lead to increased Part 15 use, which would jeopardize effective use of LMS in this spectrum.

4. Five parties filed comments opposing Havens’ request to delay the Part 15 rule changes for the 915 MHz band.⁶ Commenters generally state that Havens has not made a showing that the flexibility allowed for unlicensed devices under the new rules will have an adverse affect on Location and Monitoring Service device operation.⁷ Additionally, Intersil Corporation and Symbol Technologies, Inc. (“Intersil”) state that Havens has failed to establish that the rule changes adopted in the *Second Report and Order* are contrary to the public interest.⁸

DISCUSSION

5. We agree with the commenters that Havens has not shown sufficient cause for delaying the implementation date of the rules adopted in the *Second Report and Order*. The changes to the Part 15 rules that allow increased flexibility for manufacturers to improve product performance did not change the technical requirements, *i.e.*, maximum peak power and power spectral density, that we find adequate to protect other spectrum users from interference. An LMS receiver will experience no more interference from a Part 15 device operating under the rules adopted in the *Second Report and Order* than under the prior rules. Havens has made no showing that contradicts this conclusion, and a mere statement of belief that increased use may lead to increased interference is not sufficient justification for reconsideration.⁹ In the event that the Commission proposes to revise its rules in response to the Progeny petition, interested parties can address Part 15 and LMS issues in the context of that rulemaking proceeding.

6. Finally, we decline to delay implementation of rule changes on the mere speculation that a Petition for Rulemaking may be filed that may affect use of the band. We note that the rule changes adopted in the *Second Report and Order* became effective on July 25, 2002. Havens did not raise any objections to the proposals during the pendency of this proceeding and has not filed a Petition for Rulemaking concerning the 915 MHz band. In light of the above, we find that Havens has not presented

⁴ See Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Location and Monitoring Service Rules*, RM-10403; DA 02-817; April 10, 2002.

⁵ 47 C.F.R. 90.361.

⁶ Oppositions were filed by Agere Systems; License Exempt Alliance; WaveRider Communications, Inc.; and jointly by Intersil Corporation and Symbol Technologies, Inc. The IEEE 802.18 Radio Regulatory Technical Advisory Group filed reply comments in opposition of Havens.

⁷ See comments of Agere Systems and Intersil Corporation and Symbol Technologies, Inc. joint comments. See also reply filed by IEEE 802.18 Radio Regulatory Advisory Group.

⁸ Intersil at page 2.

⁹ See, *e.g.*, Regulatory Policy Regarding the Direct Broadcast Satellite Service, *Memorandum Opinion and Order*, Gen. Docket No. 80-603, 94 FCC 2d 741, 747-748 (1983).

sufficient justifications to warrant reconsideration of the rules adopted in the *Second Report and Order* in this proceeding.

ORDERING CLAUSES

7. Therefore, pursuant to Sections 4(i), 302, 303(e), 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302, 303(e), 303(f), 303(g), 303(r), and 405, IT IS ORDERED that the Petition for Reconsideration filed by Warren C. Havens and Telesaurus GB, LLC IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary