

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

In the Matter of
Samsung Telecommunications America, Inc. and
Samsung Electronics Co., Ltd.
Request for Temporary Relief Regarding 911 Call
Processing Modes
WT Docket No. 99-328

ORDER

Adopted: June 29, 2000

Released: June 30, 2000

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its Second Report and Order in the Wireless E911 Rulemaking, CC docket No. 94-102, the Commission adopted Section 22.921 of its rules, 47 C.F.R. § 22.921. To help improve 911 call completion, this rule requires that analog wireless handsets and multimode handsets manufactured after February 13, 2000, incorporate a special procedure for processing 911 calls that allows a caller when operating in analog mode, to complete 911 calls to either analog carrier in an area, regardless of the programming of the handset for non-911 calls. In the Second Report and Order, the Commission approved three specific 911 call processing methods.

2. On April 13, 2000, Samsung Telecommunications America, Inc. and Samsung Electronics Co., Ltd. (Samsung) filed with the Wireless Telecommunications Bureau (Bureau) a Request for Emergency Temporary Relief (Request) seeking a waiver of the analog 911 call completion methodology requirements of Section 22.921. Samsung specifically seeks authority to continue, until July 15, 2000, to manufacture and distribute in the United States certain digital handsets that do not incorporate one of the

1 Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Second Report and Order, 14 FCC Rcd 10954 (1999) (Second Report and Order).

2 47 C.F.R § 22.921. See also Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Third Memorandum Opinion and Order, 15 FCC Rcd 1144, 1146-47 (2000) (Third Memorandum Opinion and Order) at paras. 5-8.

3 Second Report and Order, 14 FCC Rcd at 10967-87. The approved methods include Automatic A/B Roaming with Intelligent Retry (Automatic A/B-IR), Adequate/Strongest Signal and Selective Retry. The Bureau subsequently approved two alternative 911 call completion methods. See 911 Call Processing Modes, WT Docket No. 99-328, Order, DA 00-253, Feb. 11, 2000, 2000 WL 145986 (Ericsson Order); 911 Call Processing Modes, WT Docket No. 99-328, Order, 15 FCC Rcd 1911 (2000) (Nokia Order).

911 call completion methodologies previously approved by the Commission.⁴ Samsung indicates that due to an error in interpreting the Commission's regulations, the company mistakenly believed that the February 13, 2000 deadline applied only to dual mode handsets *submitted for authorization* after that date rather than to all dual mode handsets *manufactured* after that date.⁵ Samsung further states that it became aware that its interpretation of the E911 requirements might have been mistaken in March, 2000,⁶ and that on March 31, 2000, Samsung's engineers confirmed that a software modification to handsets manufactured after February 13, 2000 would be necessary.⁷

3. Samsung indicates that it plans to correct this situation by incorporating the Automatic A/B-IR call completion methodology previously approved by the Commission into the affected handsets.⁸ Samsung seeks a waiver so that it may continue to manufacture handsets during the time necessary to modify and test handsets to comply with the rule, which in no event will be later than July 15, 2000, in order to meet contractual obligations to United States wireless service providers. Samsung further asserts that the handsets manufactured during the period covered by the waiver will be sold exclusively to carriers with digital preferred services, so that the analog back-up capability would be rarely used.⁹

4. The Bureau sought comment on the Samsung Request, and the Wireless Consumer's Alliance, Inc. (WCA) and the National Emergency Numbering Association (NENA) filed comments opposing the Request.¹⁰ WCA contends there are several reasons why a waiver should not be granted to Samsung. First, WCA asserts, Samsung knew, or should have known, that its handsets do not comply with Section 22.921 and that any interpretational questions should have been resolved by the Commission in the E911 *Third Memorandum Opinion and Order*, released January 13, 2000.¹¹ Further, WCA expresses concern that the number of non-compliant handsets that Samsung has sold, and will continue to sell if the requested waiver is granted, may be significant, and that Samsung is underestimating the time necessary to fully incorporate the Automatic A/B-IR call completion methodology in its handsets.¹² WCA also suggests that, at a minimum, Samsung be required to make available the trade names, makes, models, and serial numbers of the affected handsets so that consumers may identify and return non-compliant

⁴ Samsung Request at 22. Samsung indicates that the model numbers for the affected handsets are the SCH-411, SCH-2500, SCH-3500, SCH-8500, and SCH-850. Samsung Request at 2 n.2.

⁵ Samsung Request at 4-5.

⁶ Samsung Request at 5.

⁷ *Id.*

⁸ Samsung Request at 9, 18-19. With Automatic A/B-IR capability, handsets seek to complete a 911 call with the non-preferred cellular carrier if the preferred cellular carrier has not successfully delivered the call to the landline carrier within 17 seconds after the call is placed. *Second Report and Order*, 14 FCC Rcd at 10971-72.

⁹ Samsung Request at 10.

¹⁰ Public Notice, "Comment Sought on Request for Emergency Temporary Relief from Wireless 911 Call Processing Rules by Samsung," DA 00-882, released April 18, 2000.

¹¹ WCA Opposition at 2, 4 (stating that in the *Third Memorandum Opinion and Order*, the Commission rejected Ericsson's argument on reconsideration that Section 22.921 should only be applicable to new handsets submitted for approval after February 13, 2000).

¹² WCA Opposition at 5, 8-9.

phones, or alternatively that Samsung be required to recall all non-compliant handsets.¹³

5. Both WCA and NENA contend that the Commission's call completion requirements are intended to apply to dual-band handsets operating in analog mode.¹⁴ NENA also argues that to grant a waiver based on secondary use of the analog mode in digital phones would simply nullify the application of Section 22.921 to dual-mode phones.¹⁵

6. In Reply Comments, Samsung represents that it has developed the software modifications for its affected handsets necessary for compliance and that it has completed testing in Korea and at its U.S. headquarters.¹⁶ Samsung also represents that it has begun field testing the final version of the software,¹⁷ and is on schedule to manufacture handsets in accordance with Section 22.921 by July 15, 2000.

7. Samsung has recently provided information updating the status of its progress with regard to the affected handsets, indicating that it plans to discontinue two of the five affected handset models, the SCH-411 and the SCH-2500.¹⁸ Those models will not accept the new software used in other affected handset models that are continuing in production, and will be discontinued as of July 15, 2000.¹⁹ With respect to two of the three remaining models, Samsung has made modifications based on the technical comments of its carrier customers and is now awaiting final approval from these carriers.²⁰ Samsung expects carrier testing of the final model to begin sometime during the week of June 19, 2000. In addition, Samsung clarifies that although production of the affected handsets will cease as of July 15, 2000, due to the lag time between production in Korea and distribution in the United States, distribution of affected handsets will likely continue for a short period after July 15, 2000.²¹

II. DISCUSSION

8. As an initial matter, we are in accord with WCA's position that Samsung should have known that the requirements of Section 22.921 were applicable to all handsets manufactured after

¹³ WCA Opposition at 5, 9-10.

¹⁴ WCA Opposition at 1; NENA Opposition at 1-2.

¹⁵ NENA Opposition at 2.

¹⁶ Samsung Reply Comments at 3-4.

¹⁷ *Id.* at 3-4. Samsung also asserts that it is taking remedial actions. Subsequent to the filing of the Samsung Reply, WCA filed an ex parte letter, suggesting that the Commission immediately suspend type acceptance of Samsung non-complying handsets pending resolution of the matter. *See* Letter from C. Hilliard, WCA, to Magalie Roman Salas, Secretary, FCC, May 19, 2000.

¹⁸ *See* Letter from John S. Logan, Dow, Lohnes & Albertson, Counsel for Samsung, to Magalie Roman Salas, Secretary, FCC, June 21, 2000 (June 21, 2000 Samsung Letter) (para. 2); *see also* Letter from John S. Logan, Dow, Lohnes & Albertson, Counsel for Samsung, to Magalie Roman Salas, Secretary, FCC, June 23, 2000 (June 23, 2000 Samsung Letter) (identifying the models to be discontinued).

¹⁹ *See* June 21, 2000 Samsung Letter (para. 2); June 23, 2000 Samsung Letter, at 1-2.

²⁰ *See* June 21, 2000 Samsung Letter (para. 1).

²¹ *See* June 21, 2000 Samsung Letter, at p. 2 n.1.

February 13, 2000, especially in view of Ericsson's Petition for Reconsideration, which specifically asked the Commission to change its requirements so that they would apply only to new model handsets and not to all newly manufactured handsets, and the Commission's subsequent rejection of that argument in the E911 *Third Memorandum Opinion and Order*.²² We observe, however, that issues concerning Samsung's compliance with Section 22.921 in the manufacture of the affected handsets following the February 13, 2000 deadline are being addressed collaterally through a Consent Decree today adopted by the Commission's Enforcement Bureau (Consent Decree).²³

9. We find that grant of a limited waiver allowing continued production of the affected handsets for a restricted period until July 15, 2000 is justified, in this instance, to afford consumers greater access to the benefits of digital technology, which in many instances may include an increased likelihood of clear and meaningful communication with a Public Safety Answering Point in the event a calling party has to make an emergency call.²⁴ As we have previously expressed, we are concerned that the disruption of multi-mode handset production and competition while demand for handsets continues to grow strongly could adversely affect consumers.²⁵ The effects could consist of higher prices, confusion, and reduced availability of dual band, multimode handsets.²⁶ Thus, to enable Samsung to incorporate the required modifications into its multimode handsets in full compliance with 47 C.F.R. § 22.921, we find it to be in the public interest to grant Samsung's request for a limited extension of time.²⁷

10. Moreover, we conclude that Samsung proposes to take certain remedial actions that will serve to limit the potential for a detrimental impact on public safety from limited manufacture of those handsets. For example, in its Request, Samsung has already made public the model numbers for the affected handsets, as WCA recommends, which will help service providers and consumers identify potentially non-compliant handsets.²⁸ Samsung also asserts that it will upgrade every multimode handset capable of receiving the new software that is sent back for repairs, regardless of the date of manufacture of the phone.²⁹ Samsung has recently clarified that two models, SCH-411 and SCH-2500, of the affected handsets will not accept the new software used in the other Samsung models that it will continue to produce. Samsung, however, indicates that it has only been producing very limited quantities of these models since late 1999, that its carrier customers have not generated new purchase orders, and that it will

²² See *Third Memorandum Opinion and Order*, 15 FCC Rcd at 1147 (paras. 7-8).

²³ In the Matter of Samsung Telecommunications America, Inc. and Samsung Electronics Co., Ltd., Order, DA 00-1468, (Enf. Bureau), released June 30, 2000.

²⁴ See generally *Nokia Order*, 15 FCC Rcd at 1914 (para. 10).

²⁵ *Ericsson Order* at para. 7; 911 Call Processing Modes, WT Docket No. 99-328, Order, 15 FCC Rcd 3075, 3076 (2000) (*Motorola Order*) at para. 4.

²⁶ *Id.*

²⁷ We are not persuaded by Samsung's arguments that because the affected handsets will be marketed only to carriers with digital-preferred service offerings, consumer using these handsets will be virtually unaffected by a lack of compliance with Section 22.921 because the analog back-up capability would so rarely be used. The Commission purposely extended the application of the 911 call completion rules to multimode handsets operating in analog mode, in view of the current realities of the wireless marketplace, in which subscribers to digital services may often find themselves in areas where only analog service is available.

²⁸ Samsung Request at 2 n.2; Samsung Reply at 3 n.2.

²⁹ Samsung Request at 20.

discontinue production of these handsets entirely as of July 15, 2000.³⁰

11. In addition, Samsung has indicated that it will begin production of modified units of the affected handsets on a carrier-by-carrier and model-by-model basis prior to July 15, 2000, as carrier-specific testing is completed.³¹ In other words, as soon as testing of an upgraded handset has been completed with a particular service provider, Samsung will provide only compliant handsets to that service provider, regardless of whether testing has been completed with other service providers. This schedule for phasing-in the necessary upgrades will further limit the circulation of handsets that do not comply with Section 22.921 requirements.

12. With regard to future production of handsets, Samsung indicates that it plans to establish a compliance resource at its U.S. headquarters in Richardson, Texas that will be responsible for promoting Samsung compliance with Commission regulations.³² We are hopeful that establishment of such a resource will, as Samsung suggests, foreclose any possibility of a similar misinterpretation of the Commission's rules in the future.

13. In addition, we note that in the collateral Consent Decree, Samsung has made certain corollary commitments that will also serve to limit the detrimental impact of the requested waiver. For example, Samsung commits that all models of the affected handsets manufactured after July 15, 2000 shall incorporate software using a Commission-approved call completion methodology.³³ Samsung further commits to upgrade any Samsung multimode handset, regardless of the date of the manufacture, that is returned to Samsung for repairs unrelated to E911 call completion that will require software upgrades, provided such upgrade is feasible and the new software has been approved by the end-user's carrier.³⁴ Moreover, Samsung pledges to contact each of its service provider customers within 30 days of the effective date of the Consent Decree to inform them of Samsung's plan to upgrade handsets requiring software repair with the latest software version approved by that service provider.³⁵

14. We are not persuaded by WCA's contention that we should not grant the waiver because

³⁰ June 21, 2000 Samsung Letter (para. 2); June 23, 2000 Samsung Letter. Furthermore, Samsung has informed the Commission that if Samsung were to receive new orders for either the SCH-411 or the SCH-2500 model, Samsung would develop and incorporate new software that would render the model compliant with the Commission's 911 call completion requirements. Once a carrier chose to distribute an upgraded model of the SCH-411 or the SCH-2500, any older units of those models sent to Samsung from that carrier's customers for software-related repairs would then be upgraded under the same terms as the other models of the affected handsets. *See also* Consent Decree at para. 12.

³¹ *See* Samsung Request at 20. *See also* Samsung Reply at 4 (indicating that as of May 5, 2000, software development and laboratory testing had been completed, and Samsung had begun its own laboratory testing).

³² Samsung Request at 20-21.

³³ Consent Decree at para. 11.

³⁴ Consent Decree at para. 12. Samsung further commits that it will not manufacture, after July 15, 2000, models, SCH-411 and SCH-2500, unless and until it has incorporated either Commission-approved software or an alternate method authorized or approved by the Commission. If such approved software or method is developed, Samsung will also upgrade with such software, after carrier testing and approval, the old models of those units sent to Samsung from its customer carriers' subscribers for software-related repairs. *See* June 23, 2000 Samsung Letter at 2.

³⁵ Consent Decree at para. 12.

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Samsung will need substantial additional time in order to implement the necessary software change. In view of Samsung's representations regarding its progress in implementing the necessary software upgrades, we find that the company's own testing, the testing by its carrier customers, and the carriers' approval of the software upgrades appear to be on schedule to meet the requested July 15, 2000 deadline.³⁶

15. Thus, to enable Samsung to incorporate modifications into its handsets that will render them fully compliant with 47 C.F.R. § 22.921, we believe that it is in the public interest to grant Samsung's request for a limited extension of time to continue manufacture of the affected handsets until July 15, 2000, conditioned upon Samsung's compliance with the remedial measures outlined in this order.

16. Accordingly, IT IS ORDERED that Samsung's Request for Emergency Relief IS GRANTED to the extent indicated in this Order.

17. IT IS FURTHER ORDERED that Samsung's request for waiver of Section 22.921 of the Commission's Rules, until July 15, 2000 IS GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau

³⁶ Samsung Reply Comments at 3-4; June 21, 2000 Samsung Letter (para. 1); June 23, 2000 Samsung Letter.