

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

In the Matter of	)	
	)	
Datawell BV and Marine Instruments S.A.	)	WT Docket No. 15-197
	)	
Requests for Waivers to Permit Certification and	)	
Use of High Frequency Radio Buoys	)	

ORDER

Adopted: February 26, 2016

Released: February 29, 2016

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us two unrelated requests for waivers to permit the certification and use of high frequency radio buoys,¹ one filed by Coastal Obs Tech Services LLC on behalf of Datawell BV (Datawell)² and the other filed by Marine Instruments S.A. (Marine Instruments).³ As set forth below, we grant both requests.⁴

2. *Background.* Datawell's Waverider radio buoys are used by oceanographic and meteorological agencies worldwide to collect information regarding wave motion.⁵ Section 90.248 of the Commission's rules provides that the frequency bands 40.66-40.70 MHz and 216-220 MHz may be used on a secondary basis for telemetry of scientific data from ocean buoys,⁶ but the Waverider operates on frequencies in the 29 MHz band.⁷ Consequently, Datawell requests a waiver of section 90.248.

3. The Marine Instruments M2P, M3P, and MBP radio buoys transmit the geographic coordinates of gear used in high seas fishing operations in order to facilitate safe and efficient gear recovery, and reduce navigational risk and ghost fishing.⁸ Marine Instruments states that the buoys are

¹ A radio buoy is a marine buoy equipped with a transmitter, used for various purposes such as providing navigational data, marking the location of equipment, or collecting scientific data.

² Letter from Mark Bushnell, Coastal Obs Tech Services LLC to Federal Communications Commission (filed Apr. 2, 2015) (on file under WT Docket No. 15-197) (Datawell Request).

³ Letter from Gregory Hammann, Director Strategic Business Development, Marine Instruments to Federal Communications Commission (filed July 1, 2015) (on file under WT Docket No. 15-197) (Marine Instruments Request).

⁴ No commenters responded to the *Public Notice* seeking comment on the requests. See *Wireless Telecommunication Bureau Seeks Comment on Requests of Datawell BV and Marine Instruments S.A. for Waivers to Permit Certification and Use of High Frequency Radio Buoys*, Public Notice, 30 FCC Rcd 8422 (WTB MD 2015).

⁵ Datawell Request at 1.

⁶ 47 CFR 90.248(a); see also 47 CFR § 2.106 note US210.

⁷ Specifically, 29.71, 29.73, 29.75, 29.77, and 29.79 MHz.

⁸ See Marine Instruments Request at 1. "Ghost fishing" refers to lost, abandoned, or discarded fishing gear that continues to catch fish.

approved for use by European vessels.⁹ The radio buoys operate on frequencies in the 26 MHz band.¹⁰ Sections 80.371(b)(2) and 80.373(c) of the Commission's rules authorize use of the 2000-27500 kHz bands for public and private coast stations, and for ship-to-ship and ship-to-coast business and operational communications.¹¹ Because the radio buoys are not authorized to operate in this band, Marine Instruments requests a waiver.

4. *Discussion.* Section 1.925 of the Commission's rules provides that we may grant a waiver if (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹² For the reasons set forth below, we conclude that grant of the requested waivers is warranted under the first prong of the waiver standard.

5. Datawell. Datawell seeks a waiver to permit operation of radio buoys on 29 MHz frequencies assigned to the Part 90 Industrial/Business Pool.¹³ We do not anticipate interference to land mobile licensees for a number of reasons. The Waverider power output is very low.¹⁴ Moreover, there are a limited number of land mobile licenses on these frequencies, and there is typically a large distance between a land mobile licensee and a radio buoy operating on the ocean surface. We also note that the devices collect important oceanographic and meteorological information. We therefore grant a waiver of section 90.248 to permit use of frequencies 29.71, 29.73, 29.75, 29.77, and 29.79 MHz on a secondary basis for telemetry of scientific data from ocean buoys.

6. Datawell must obtain equipment authorization for the Waverider radio buoys. A copy of this Order shall be submitted with any equipment authorization application. All technical requirements of Part 90.248 must be met, except that the device may operate on frequencies 29.71, 29.73, 29.75, 29.77, and 29.79 MHz rather than the frequency bands 40.66-40.70 MHz and 216-220 MHz. Anyone wishing to operate this device is required to obtain a license. A copy of this *Order* shall be included with the license application. No operation is permitted prior to license grant, and no applications will be granted until Datawell obtains equipment authorization.

⁹ See *id.* at 2.

¹⁰ Specifically, 26.145, 26.150, 26.155, 26.160, 26.165, 26.170, and 26.175 MHz.

¹¹ 47 CFR §§ 80.371(b)(2), 80.373(c). Remote pickup broadcast stations and low power auxiliary stations also operate in this band on a secondary basis. See 47 CFR §§ 74.402(a), 74.802(a); see also 47 CFR § 2.106 note US25.

¹² 47 CFR § 1.925(b)(3). See also *WAIT Radio v FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹³ See 47 CFR § 90.35(b)(3).

¹⁴ The Waverider has an output power of 0.08 watts +/- 20 percent. See http://new.mhl.nsw.gov.au/data/realtime/wave/docs/datawell_brochure_wrf_2006-10-11.pdf; see also Datawell Waverider Reference Manual, viewable at https://cdip.ucsd.edu/documents/index/gauge_docs/mk3.pdf.

7. Marine Instruments. Marine Instruments seeks a waiver to permit operation of radio buoys on 26 MHz frequencies allocated for maritime mobile operations. Because the devices transmit only intermittently,¹⁵ we see minimal potential for interference to maritime communications.¹⁶ These devices assist fishermen in locating their gear and provide an important safety factor if the gear needs to be retrieved quickly to escape bad weather.¹⁷ Allowing fishing vessels to locate their fishing lines and nets more quickly saves them fuel and time and reduces the likelihood that fishing lines and nets will be lost.¹⁸ We therefore grant a waiver of section 80.373(c) to permit use of frequencies 26.145, 26.150, 26.155, 26.160, 26.165, 26.170, and 26.175 MHz to transmit position and related information pertaining to equipment used in fishing operations.

8. Marine Instruments must obtain equipment authorization for the M2P, M3P, and MBP radio buoys. A copy of this *Order* shall be submitted with any equipment authorization application. Output power is limited to 6 watts. Duty cycle is limited to a 3.9-second transmission every 5 to 15 minutes. The technical requirements in part 80 of the rules must be met.¹⁹ Use is permitted only by fishing vessels with a ship station license issued under section 80.13(b) or 80.55 of the Commission's rules.²⁰ No operation is permitted until Maritime Instruments obtains equipment authorization.

9. *Conclusion and Ordering Clauses.* We conclude that Datawell and Marine Instruments have shown good cause for waiver of Parts 90 and Part 80 of the Commission's rules, respectively. Our grant of the waiver requests is without prejudice to any Enforcement Bureau action concerning operation of the Datawell or Maritime Instruments devices prior to proper authorization.

10. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and section 1.925 of the Commission's Rules, 47 CFR 1.925, that the Request for Waiver of Part 90 of the Commission's Rules, filed by Coastal Obs Tech Services LLC on behalf of Datawell BV on April 2, 2015, and the Request for Waiver of Part 80 filed by Marine Instruments S.A. on July 1, 2015 ARE GRANTED.

¹⁵ Marine Instruments states that transmissions are 3.9 seconds in duration and occur every five, ten, or fifteen minutes, depending on how it is configured by the user. See Maritime Instruments Request at 2.

¹⁶ As with the Waverider radio buoys, we believe that there is little potential for interference to land stations because the Maritime Instruments radio buoys typically operate in the open sea, far from land.

¹⁷ See *Amendment of Parts 1, 2, 15, 25, 27, 74, 78, 80, 87, 90, 97, and 101 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2007) (WRC-07), Other Allocation Issues, and Related Rule Updates*, Report and Order, Order, and Notice of Proposed Rulemaking, 30 FCC Rcd 4183, 4200 ¶ 38 (2015) (*WRC-07 Report and Order*).

¹⁸ *Id.* at 4202 ¶ 43.

¹⁹ See 47 CFR Part 80 Subpart E – General Technical Standards

²⁰ 47 CFR 80.13(b), 80.55. No separate license is required for the radio buoys. Cf. *WRC-07 Report and Order*, 30 FCC Rcd at 4202 ¶ 43.

11. This action 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.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau