

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

In the Matter of )
CITY OF SUFFOLK ) FCC File Nos. A012768-A012775
Request for Waiver and ) A016193-A016197
Applications for Authorization ) A016199
to Operate Operational Fixed Stations ) D132625
On Frequency 155.760 MHz )

ORDER

Adopted: January 4, 2000

Released: January 6, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. Introduction. The City of Suffolk (Suffolk or the City) has filed a waiver request, and the above-captioned associated applications, to permit it to use frequency 155.760 MHz for fixed services. For the reasons discussed herein, we deny the request and dismiss the applications.

2. Background. Our licensing records indicate that on June 21, 1982, Suffolk received authorization to utilize frequency 155.760 MHz, and that Suffolk renewed this authorization on April 28, 1987, March 3, 1992, and March 20, 1997. Pursuant to the Commission's rules, frequency 155.760 MHz is designated for base or mobile, but not fixed, use. It now appears, however, that Suffolk has used this frequency for operational fixed operations. On November 6, 1997, Suffolk requested a waiver of Section 90.20(c)(3) of the Commission's Rules to allow it to use frequency 155.760 MHz for operational fixed operations. Suffolk indicated that it had utilized the frequency in this fashion to govern its sanitary sewer pump station telemetry system since the construction of the city's water plant in 1982, and stated that it had been advised by the frequency coordinator for the Public Safety Pool, Associated Public-Safety Communications Offices, Inc. (APCO), "to request a waiver to continue to operate at this frequency, due to limited available frequencies." In support of its request, Suffolk stressed the importance of the alarm system to its operations and the protection that the alarm system provides to minimize the environmental impacts due to inadvertent sewer pump station failures.

3. On December 18, 1997, APCO filed a letter in support of Suffolk's request. APCO stated that Suffolk's original 1982 application "was not a clear representation of their system."

1See Application Return Notices for the Private Land Mobile Radio Services, FCC File Numbers A016193-A016199 (July 14, 1998) (July Return Notices).

247 C.F.R. § 90.20(c)(3).

3Letter, dated November 6, 1997, from Albert S. Moor II, P.E., Director of Public Utilities, City of Suffolk to FCC.

4Id.

5Id.

6Letter, dated December 18, 1997, from David R. Warner, APCO Virginia to FCC.

also stated that while Suffolk had not altered its basic system, as time has progressed, “the availability of allotted spectrum for FXO [fixed operational] operations in the Tidewater area of Virginia is [no longer] suitable for the City of Suffolk’s required area of operation.”<sup>8</sup> APCO further stated that Suffolk’s system had not caused any known interference to other public safety users.<sup>9</sup>

4. On January 12, 1998 and March 24, 1998, Suffolk filed the above-captioned applications seeking authorization to operate additional operational fixed stations on frequency 155.760 MHz.<sup>10</sup> The Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) returned the March Applications on July 14, 1998, because they lacked evidence of frequency coordination.<sup>11</sup> The Branch further stated that the March Applications also needed to be amended because they sought authorization to operate operational fixed stations on frequency 155.760 MHz, a frequency designated for base/mobile operation.<sup>12</sup> The Branch acknowledged that Suffolk and APCO had submitted a waiver request to permit fixed use, but stated that it was not inclined to grant this request because APCO and Suffolk did not provide adequate justification for such a waiver.<sup>13</sup> The Branch recommended that Suffolk correctly license its system by selecting another frequency for its operational fixed telemetry operation that did not require a waiver.<sup>14</sup>

5. On September 14, 1998, APCO resubmitted the March Applications with the appropriate frequency coordination numbers, and urged the Branch to grant the requested waiver because, given the wide coverage area currently required for the telemetry system and the projected growth of Suffolk’s pumping station facilities, “no other single frequency assignment was deemed appropriate, existent or practical at this time.”<sup>15</sup> Suffolk also submitted a letter, in which it noted that it had operated its telemetry system on frequency 155.760 MHz for over sixteen years and depended on continued use of this system to ensure the continual operation of its growing sanitary sewer and community well systems.<sup>16</sup> Suffolk

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<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*See* Applications for Mobile Radio Service Authorization, FCC File Numbers A012768-A012775 (filed January 12, 1998) (January Applications) and Applications for Mobile Radio Service Authorization, FCC File Numbers A016193-A016199 (filed March 24, 1998) (March Applications) (FCC File Number A016198 was subsequently redesignated FCC File Number D132625). On April 1, 1998, the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) returned the January Applications without taking action on them, pursuant to a request from Suffolk to withdraw the applications. *See* Facsimile transmission, dated January 13, 1998, from Rachel Mortimer, APCO Virginia to Kathy McLucas, FCC. Suffolk resubmitted the January Applications on April 20, 1998, and included a note stating that it intended for its November 6, 1997, request for waiver to apply to the resubmitted January Applications.

<sup>11</sup>*See* July Return Notices.

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

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

<sup>14</sup>*Id.*

<sup>15</sup>Letter, dated September 10, 1998, from David R. Warner, APCO Virginia to Mike Regiec, FCC.

<sup>16</sup>Letter, dated September 8, 1998, from Albert S. Moor II, P.E. and Director of Public Utilities, City of Suffolk, to David Warner, APCO Virginia. Suffolk stated that the Branch’s decision jeopardized the water supplies

also reiterated its claim that it had never experienced an impact to or from other operations in its utilization of this frequency.<sup>17</sup>

6. *Discussion.* Section 1.925(b)(3) of the Commission's Rules provides that the Commission may grant a waiver of a rule upon a showing that (i) the underlying purpose of the rule would not be served by application in the instant case and that a grant would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternatives.<sup>18</sup> We find that Suffolk has not met either standard.

7. Suffolk has not argued that the underlying purpose of the rule designating frequency 155.760 MHz for base or mobile use would not be served by denying a request to use the frequency for fixed operations. In addition, we do not believe that Suffolk's operation for over seventeen years not in compliance with the terms of its authorization is a unique circumstance justifying the requested rule waiver. On the record before us, we conclude that such an action would not serve the public interest. Moreover, we note that the Commission has designated several frequencies in the 154.4625–154.47875 MHz and 173.20375–173.39625 MHz bands for fixed operational operations, and Suffolk has not clearly explained why it cannot operate its telemetry system on any of these frequencies.<sup>19</sup>

8. In the event that Suffolk is currently operating in violation of its authorization, we instruct it to cease such operations immediately, and to only use the subject frequency for base or mobile use. In addition, we reserve our discretion to take appropriate action to address this violation in a separate proceeding. To the extent that Suffolk needs to use the frequency for fixed operations while it finds another frequency to conduct such operations, it should consider pursuing special temporary authority to cover such interim operations.<sup>20</sup>

9. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act, as amended, 47 U.S.C §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R § 1.925, the waiver request filed by the City of Suffolk on November 6, 1997, IS DENIED, and applications FCC File Nos. A012768-A012775, filed January 12, 1998 and applications FCC File Nos. A016193-A016197, A016199, and D132625, filed March 24, 1998, ARE DISMISSED.

10. 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

D'wana R. Terry

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of over one million customers in Suffolk and other communities whose drinking water supplies originate or are stored in reservoirs within the City.

<sup>17</sup>*Id.*

<sup>18</sup>47 C.F.R. § 1.925(b)(3).

<sup>19</sup>*See* 47 C.F.R. § 90.20.

<sup>20</sup>*See* 47 C.F.R. § 1.931.

Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau