

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

In re Application of)	
)	
COUNTY OF SACRAMENTO, CALIFORNIA)	
)	File No. 103979
Request for Waiver to Obtain a License for a)	
Frequency Allocated for Exclusive Paging)	
Operations (929.0125 MHz))	

ORDER ON RECONSIDERATION

Adopted: July 7, 2000

Released: July 11, 2000

Before the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a request from the County of Sacramento, California (Sacramento)¹ for reconsideration of our denial² of its request for a waiver of the Commission's Rules and dismissing its associated license application pursuant to Section 337 of the Communications Act of 1934 (Act), as amended,³ and Section 1.925 of the Commission's Rules.⁴ Upon reconsideration of the arguments and the record presented, we now find that Sacramento has properly invoked the provisions of Section 337(c) of the Act and that it meets the statutory criteria for granting a waiver of the Commission's Rules. Specifically, we find that: (a) no spectrum other than the unassigned Part 90 frequency at issue is immediately available to satisfy Sacramento's requested public safety service use; (b) the requested use will not cause harmful interference to other spectrum users; (c) the proposed use is consistent with other public safety allocations in the area; (d) the frequencies in question were allocated for their present Part 90 use not less than two years ago; and (e) granting this application is consistent with the public interest. Therefore, we grant Sacramento's *Petition* and accordingly grant a waiver of the current suspension on the acceptance of applications (freeze) on frequency 929.0125 MHz pursuant to Section 337(c) of the Act.

II. BACKGROUND

2. The frequencies at issue in this matter are allocated for the use of paging operations on an

¹ County of Sacramento, California Petition for Reconsideration (filed Jan. 20, 2000) (*Petition*).

² County of Sacramento, California, *Order*, DA 99-2959 (WTB rel. Dec. 21, 1999) (*Order*).

³ See 47 U.S.C. § 337; see also Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 252 (1997), § 3004 (Balanced Budget Act).

⁴ 47 C.F.R. § 1.925.

exclusive basis.⁵ On February 8, 1996, the Commission proposed a transition from site-by-site licensing to geographic area licensing for all exclusive, non-nationwide paging services,⁶ and to adopt competitive bidding rules for the geographic area licenses.⁷ A goal of the proceeding was to ensure that the rules for paging services were consistent with those governing competing new services so that the marketplace dictated competitive success.⁸

3. Due to the fundamental changes proposed in the *Notice*, the Commission suspended the acceptance of new applications for paging channels as of February 8, 1996.⁹ In February 1997, the Commission released the *Paging Second Report and Order* in which it adopted final rules effecting a transition to geographic area licensing for exclusive, non-nationwide paging channels in the 929-930 MHz band and competitive bidding procedures for selecting among mutually exclusive applications for exclusive, non-nationwide geographic area licenses for paging services.¹⁰ In order to facilitate this transition to geographic area licensing, the Commission also decided that all pending mutually exclusive paging applications and all paging applications filed after July 31, 1996 would be dismissed.¹¹

4. On December 1, 1997, Sacramento requested a waiver of the freeze on exclusive channels in the 929-930 MHz band in order to obtain frequency 929.0125 MHz in the Sacramento County area.¹² In support of its request, Sacramento indicated that it was preparing an application for a 900 MHz local alert paging system for public safety on an exclusive channel when the Commission suspended the acceptance of applications for those frequencies.¹³ On December 18, 1998, after the passage of the Balanced Budget Act of 1997, Sacramento filed a second waiver request as part of its pending application to obtain the same frequency pursuant to Section 337 of the Act. Sacramento proposed to use the frequency on a shared basis with the closest user, Stanford University Hospital, in a portion of its coverage area.¹⁴ The proposed

⁵ See 47 C.F.R. § 90.493.

⁶ See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Notice of Proposed Rulemaking*, 11 FCC Rcd 3108, 3113 ¶ 21 (1996) (*Notice*).

⁷ *Id.* at 3123 ¶¶ 71-72.

⁸ *Id.* at 3109 ¶ 2.

⁹ *Id.* at 3136-37 ¶¶ 139-143.

¹⁰ Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732, 2739-40 ¶ 6 (1997) (*Paging Second Report and Order*), *recon.*, 14 FCC Rcd 10030 (1999).

¹¹ *Id.* at 2739-40 ¶ 6.

¹² See Letter from Ronald M. Allison, Telecommunications Engineering Manager, County of Sacramento, to the Federal Communications Commission (Dec. 1, 1997) (*1997 Waiver Request*).

¹³ See *id.* at 1.

¹⁴ See Letter from Ronald M. Allison, Telecommunications Engineering Manager, County of Sacramento, to the Federal Communications Commission (Dec. 16, 1998) (*1998 Waiver Request*) at 2. Sacramento submitted a letter of concurrence from Stanford University Hospital with the *1997 Waiver Request*. The *1998 Waiver Request* was placed on public notice on April 1, 1999. See Wireless Telecommunications Bureau Seeks Comment on a Request for Waiver by Sacramento County, California, to Obtain a License for Frequency (continued....)

system would be used to alert fire units, ambulances, and rescue and other emergency public safety personnel in the Sacramento and Yolo Counties.¹⁵

5. Several public safety entities filed comments in support of the *Waiver Request*.¹⁶ However, Arch Communications Group, Inc. (Arch) and Nationwide Paging, Inc. (Nationwide), commercial providers of paging services, opposed the *1998 Waiver Request* on the basis that it did not comply with Section 337(c).¹⁷ Arch asserted that granting the waiver request would be contrary to the public interest and unfair to the commercial providers who had their applications dismissed pursuant to the *Paging Second Report and Order*.¹⁸

6. On December 21, 1999, we denied Sacramento's *1998 Waiver Request* and dismissed the associated application.¹⁹ We found that Sacramento's request did not satisfy all of the statutory criteria for grant of a waiver under Section 337(c)(1) of the Act.²⁰ Specifically, we determined that Sacramento failed to adequately show, as required by Section 337(c)(1)(A), that there is no other spectrum allocated to public safety services immediately available to satisfy the requested public safety service use.²¹ We stated that Sacramento's showing that there was no public safety spectrum available to it in the 800 MHz band was insufficient because the statute requires a showing that no frequencies allocated for public safety use in any band are unassigned in the applicant's area.²² We also determined that Sacramento had not satisfied the waiver criteria of Section 1.925 of the Commission's Rules.²³ We held that granting the waiver would lessen the amount of scarce spectrum available, thus frustrating the purpose of the freeze, and that Sacramento had not demonstrated unique circumstances since the large demand for frequencies in the band at issue demonstrates a commonality among the many entities competing for those frequencies.²⁴

(Continued from previous page) _____

Allocated for Exclusive Paging Operations (929.0125 MHz), *Public Notice*, DA 99-641 (rel. April 1, 1999). We received nine comments and four reply comments.

¹⁵ See *1997 Waiver Request* at 1.

¹⁶ See Sacramento County Fire Chiefs Association Comments, Elk Grove Community Services District Comments, Herald Fire Protection District Comments, City of West Sacramento Comments, Sacramento Regional Fire/EMS Communications Center Comments, Galt Fire Protection District Comments, City of Sacramento Comments.

¹⁷ See Arch Comments at 3; Nationwide Comments at 2. JSM Tele-Page, Inc. also filed comments. It did not take a position on the merits of the *1998 Waiver Request* but merely urged the Commission to make a prompt decision.

¹⁸ Arch Comments at 4.

¹⁹ *Order*, ¶ 16.

²⁰ *Id.*, ¶ 11.

²¹ *Id.*, ¶¶ 9-11.

²² *Id.*, ¶ 10.

²³ *Id.*, ¶¶ 12-15.

²⁴ *Id.*, ¶¶ 14-15.

7. On January 20, 2000, Sacramento filed its *Petition*. Sacramento states that in addition to the lack of any available frequencies in the 800 MHz band, there are no other VHF-High and UHF public safety channels available for use under primary status in the area in which it provides public safety services.²⁵ It also states that no commercial vendors meet Sacramento's unique requirements, which include satisfaction of National Fire Protection Association (NFPA) standards and message delivery of less than ten seconds.²⁶ Sacramento emphasizes that a grant of its waiver request will promote spectrum efficiency because it will then be able to relinquish use of three other channels.²⁷ In addition, Sacramento supplemented its petition for reconsideration with a letter from a Commission-certified frequency coordinator for public safety spectrum, the Association of Public-Safety Communications Officials International, Inc. (APCO), which concluded that there are no other public safety frequencies in any band available to Sacramento.²⁸ We did not receive any pleadings opposing Sacramento's *Petition*.

8. On March 6, 2000, the Commission completed its initial auction of geographic area paging licenses in the 929-930 and 931 MHz bands. No bids were placed on frequency 929.0125 MHz in the Sacramento Major Economic Area.²⁹

III. DISCUSSION

9. Section 337 of the Act provides public safety entities with a statutory means of obtaining a waiver of the Commission's Rules to the extent necessary to permit use of unassigned frequencies for the provision of public safety services.³⁰ Subsection (c)(1) of Section 337 provides as follows:

(c) Licensing of Unused Frequencies for Public Safety Services.--

(1) Use of unused channels for public safety services.--Upon application by an entity seeking to provide public safety services, the Commission shall waive any requirement of this Act or its regulations implementing this Act (other than its regulations regarding harmful interference) to the extent necessary to permit the use of unassigned frequencies for the provision of public safety services by such entity. An application shall be granted under this subsection if the Commission finds that--

(A) no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use;

(B) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations;

²⁵ *Petition* at 3.

²⁶ *Id.* See Letter from Daniel R. Weiss, Access Paging Company Inc., to Ronald Allison, County of Sacramento, (Jan. 5, 2000).

²⁷ *Id.* at 7. Sacramento states that it plans to relinquish channels 154.190 MHz, 453/458.925 MHz and 929.0375 MHz upon grant of the waiver request.

²⁸ Letter from Art McDole, Association of Public-Safety Communications Officers, Inc., to Kathleen O'Brien-Ham, Deputy Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Dec. 27, 1999) (APCO Letter).

²⁹ 929 and 931 MHz Paging Auction Closes: Winning Bidders of 985 Licenses Announced, *Public Notice*, DA 00-508 (rel. March 6, 2000).

³⁰ See 47 U.S.C. § 337; see also Balanced Budget Act, § 3004.

- (C) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made;
- (D) the unassigned frequency was allocated for its present use not less than 2 years prior to the date on which the application is granted; and
- (E) granting such application is consistent with the public interest.³¹

10. When considering requests under Section 337 of the Act, we first must determine whether the applicant is "an entity seeking to provide public safety services."³² We found in the *Order* that the purpose of the service proposed by Sacramento is to protect the safety of life, health, or property, as required by Section 337(f).³³ Thus, we continue to believe that Sacramento has met the threshold requirement.

11. As we stated in the *Order*, the statute requires a showing that no frequencies allocated for public safety use in any band are unassigned in the applicant's area.³⁴ We concluded then that Sacramento's showing was insufficient on this matter. We note, however, that Sacramento has submitted additional information with its *Petition* to meet the standard as set out in the *Order*. Section 1.106(c) of the Commission's Rules provides that new facts may be presented in a petition for reconsideration only if the facts relate to events that occurred or circumstances that changed since the last opportunity to present such matters; the facts were not known to the petitioner, and could not reasonably have been learned prior to such opportunity; or the public interest requires consideration of the facts.³⁵ Because the waiver will eliminate many of the problems within Sacramento's current radio system and thus improve its response time to emergency situations, we believe that the public interest will be served by consideration of the new information presented by Sacramento. Specifically, we believe that transmission delays of up to ten minutes in the current system can place public safety at risk. This waiver will enable Sacramento to approach the NFPA 1221 recommended response time of delivering messages to public safety personnel within ten seconds.³⁶

12. We have reviewed the information presented by Sacramento. Sacramento reports that APCO found that there are virtually no usable High Band VHF or UHF frequencies available to

³¹ 47 U.S.C. § 337(c)(1); Balanced Budget Act, § 3004.

³² 47 U.S.C. § 337(f) defines the term "public safety services" as "services —
(A) the sole or principal purpose of which is to protect the safety of life, health, or property;
(B) that are provided—
(i) by State or local government entities; or
(ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and
(C) that are not made commercially available to the public by the provider."

47 U.S.C. § 337(f)(1).

³³ *Order*, ¶ 5.

³⁴ *Id.*, ¶ 10.

³⁵ 47 C.F.R. § 1.106(c).

³⁶ *Petition* at 2.

Sacramento for public safety use.³⁷ APCO notes that previous attempts by other public safety entities to license frequencies in the Industrial Pool have been denied.³⁸ Based upon searches conducted by APCO and the county's engineering consultant company,³⁹ Sacramento argues that all Part 90 VHF and UHF channels, including the offset frequencies, in Sacramento and its surrounding counties are licensed, occupied or otherwise unavailable.⁴⁰

13. The cumulative circumstances described in the record lead us to conclude that all relevant public safety frequencies in the Sacramento County area are assigned or otherwise occupied and preclude the operation proposed by Sacramento. APCO notes that Sacramento was required to give up their existing VHF and UHF channels to comply with the Region VI Plan and that these frequencies were immediately licensed to other public safety agencies in the area.⁴¹ Sacramento also cannot use a commercial provider because no available commercial service meets the NFPA 1221 standards which address liability and safety rating concerns.⁴² The inability of a commercial provider to assure consistent and immediate notification, and the lack of a manufacturer of pagers that function in any of the 800 MHz bands limits Sacramento's options to the 929.0125 MHz frequency.⁴³ Along with the large volume of emergency calls to which Sacramento must respond each year,⁴⁴ we note the additional factor of interagency interoperability when Sacramento operates as a member of the Federal Emergency Management Agency's Urban Search and Rescue Task Force (FEMA-US&R).⁴⁵ After examining the record, we conclude that Sacramento has shown that no other public safety spectrum is immediately available in the area in which it provides public safety services.

14. We now turn to whether Sacramento meets the remaining statutory criteria for grant of a waiver under Section 337(c)(1) of the Act. The plain language of subsection (c) provides that a waiver request under this section is required only upon a finding that all five conditions are met regarding the spectrum specifically sought by an applicant.⁴⁶ If any one of the five conditions is not met, the subject

³⁷ APCO Letter at 1-2.

³⁸ *Id.* at 2.

³⁹ *See Petition* (Attachment I).

⁴⁰ *Id.*

⁴¹ APCO Letter at 1.

⁴² *Petition* at 1-2.

⁴³ *See* Letter from Cheryl Harrer, APCO AFC Deputy Director, to Michael Rosenthal, Commercial Wireless Division, FCC (Sept. 18, 1998).

⁴⁴ *See* Letter from Rick Martinez, Sacramento County Fire Chiefs Association, to Kathleen O'Brien-Ham, Deputy Chief, Wireless Telecommunications Bureau, FCC (Jan. 18, 2000), stating that the Sacramento area fire agencies respond to over 100,000 fires and EMS emergencies each year.

⁴⁵ *See* Letter from Mark Ghilarducci, Federal Coordinating Officer, FEMA, to Kathleen O'Brien-Ham, Deputy Chief, Wireless Telecommunications Bureau, FCC (Jan. 11, 2000).

⁴⁶ *See* 47 U.S.C. § 337(c)(1).

waiver will not be granted.⁴⁷ As discussed in further detail below, we find that Sacramento has met all of the other statutory criteria.

15. *The requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations.* Sacramento notes that with the exception of Stanford University, its requested frequency is free from any other existing users throughout the proposed area of operation and the adjacent area.⁴⁸ In this regard, Sacramento submitted a letter of concurrence from Stanford University Hospital with its *1997 Waiver Request*.⁴⁹ We conclude, therefore, that Sacramento has made a sufficient showing that use of the frequencies in question is technically feasible and would not interfere with existing licensees.

16. *The use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made.* Sacramento notes that public safety entities in the Sacramento area have historically relied upon paging channels on commercial or public safety frequencies for their radio communications needs.⁵⁰ In meeting the public safety needs of the community, Sacramento currently shares 929.0375 MHz with eleven other licensees, resulting in congestion during times of emergency and further supporting its need for an exclusive channel for its multi-county public safety alerting system.⁵¹ Thus, we find that Sacramento's use of the subject frequency would be wholly consistent with the Commission's prior public safety allocations in this geographic area.⁵²

17. *The unassigned frequencies were allocated for their present use not less than two years prior to the date on which the application will be granted.* The Commission allocated frequency 929.0125 MHz as an exclusive frequency for private paging systems on November 17, 1993.⁵³ Thus, the frequency at issue was allocated for its present use more than two years ago.

18. *Granting the application is consistent with the public interest.* Sacramento's proposed use of the Part 90 frequency would allow interoperability between police, fire and emergency medical personnel in the field.⁵⁴ The frequency will also alleviate serious congestion in the geographic area on Sacramento's current frequency (929.0375 MHz) and reduce the delay in transmission time of emergency

⁴⁷ Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd 5206, 5234 ¶ 56 (1999); South Bay Regional Public Communications Authority, *Memorandum Opinion and Order*, 13 FCC Rcd 23781, 23796 ¶ 33 (1998) (*South Bay*).

⁴⁸ *Petition* at 4.

⁴⁹ *See Petition* (Attachment IV).

⁵⁰ *Petition* at 4.

⁵¹ *See id.*

⁵² *See, e.g., County of San Mateo, California, Memorandum Opinion and Order*, DA 99-2521, ¶ 12 (WTB rel. Nov. 12, 1999).

⁵³ Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-35, *Report and Order*, 8 FCC Rcd 8318 (1993).

⁵⁴ *See Petition* at 4.

alerts.⁵⁵ Grant of this waiver also would relieve local congestion on other systems because Sacramento represents that it will be able to relinquish some of its other public safety frequencies if its request is granted.⁵⁶ Therefore, we believe that granting Sacramento's request provides an effective and practical means to establish communications links in day-to-day operations and during emergencies. Moreover, as discussed above, the geographic area license[s] for the frequency that Sacramento seeks has [have] been subject to competitive bidding and has [have] not received any bids.⁵⁷ Under these circumstances, we believe the public interest in making frequency 929.0125 MHz available for Sacramento's public safety needs outweighs the public interest in preserving the *status quo* pending geographic area licensing. Thus, we find that Sacramento has adequately demonstrated that the grant of its Section 337(c) request is consistent with the public interest.⁵⁸

IV. CONCLUSION

19. For the foregoing reasons, we conclude that Sacramento's request pursuant to Section 337 of the Act meets the necessary criteria for waiver of our Rules. Therefore, we grant the Petition for Reconsideration, and grant the waiver request to permit Sacramento to use the subject Part 90 frequency (929.0125 MHz) for the provision of public safety services. In requesting use of this exclusive frequency, Sacramento has obtained permission to share the frequency from the existing co-channel licensee, Stanford University Hospital. In addition, the frozen Part 90 frequency that Sacramento requests has been made available at auction, and no bids were received. We make specific reference of these facts to caution future public safety entities seeking similar waivers that this grant is specific to the factual circumstances of the instant situation. Because we are granting the waiver requested pursuant to Section 337 of the Act, we will not address the merits of the waiver request under the Section 1.925 criteria.⁵⁹

V. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 337(c), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by the County of Sacramento, California on January 20, 2000, **IS GRANTED** and the waiver request filed on December 16, 1998, **IS GRANTED**.

21. **IT IS FURTHER ORDERED**, that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, Sacramento County's waiver request filed on December 1, 1997 is **DISMISSED AS MOOT**.

22. **IT IS FURTHER ORDERED** that the associated application, FCC File No. 103979, filed March 9, 1998, shall be reinstated and referred to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for processing consistent with this *Order on Reconsideration*.

⁵⁵ See *id.* at 6.

⁵⁶ See *id.* at 7.

⁵⁷ See ¶8, *supra*.

⁵⁸ See, e.g., City of Pomona, California, *Order*, DA 00-161, ¶ 12 (WTB rel. Feb. 1, 2000); *San Mateo* at ¶ 15.

⁵⁹ See *South Bay*, 13 FCC Rcd at 23781 ¶ 42.

23. This action is taken pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen O'Brien Ham
Deputy Chief, Wireless Telecommunications Bureau