

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

In the Matter of )
MUNICIPALITY OF SAN JUAN )
Request for Waiver of Section 90.203 of the )
Commission's Rules )

ORDER

Adopted: September 19, 2001

Released: September 28, 2001

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

1. Introduction. On March 28, 2001, the Municipality of San Juan, Puerto Rico (San Juan) filed a request for waiver of Section 90.203 of the Commission Rules, 47 C.F.R. § 90.203.1 San Juan requests waiver of Section 90.203 so it can continue operating Station WPPX830, San Juan, Puerto Rico, with transmitters that are not certified by the Commission, until it can acquire new transmitters that comply with the Commission's Rules.2 For the reasons set forth herein, we grant the request, and waive Section 90.203 until June 1, 2002.

2. Background. On March 6, 2000, San Juan was authorized to operate Station WPPX830 pursuant to Section 90.20 of the Commission's Rules.3 Station WPPX830 is used by the San Juan Police Department for local and Commonwealth law enforcement and assisting and coordinating with health care agencies during emergencies.4

3. Section 90.203 of the Commission's Rules provides, inter alia, that each transmitter utilized for operation under Part 90 of the Commission's Rules must be certified for use by the FCC.5 In operating Station WPPX830, the San Juan Police Department uses Motorola PRO 5150 transmitters that it purchased from Fifties Communications, Inc. (Fifties).6 In the purchase agreement, Fifties agreed to provide San Juan with 145 transmitters that were approved and certified by the Commission.7 On October 27, 2000, the Enforcement Bureau of the Commission conducted an investigation of the offices of the San

1 Municipality of San Juan, Petition for Waiver, filed March 28, 2001 (Waiver Request).

2 See id. at 5.

3 See 47 C.F.R. § 90.20.

4 Waiver Request at 2.

5 See 47 C.F.R. § 90.203.

6 Waiver Request at 2.

7 Id. The "Special Conditions" of the agreement contained the following language: "The bidder has to comply at all times with the Laws, Ordinances and Municipal Rules and the Laws and Rules of the state and the Federal Agencies which in any way affect or are related to the bid submitted or to the execution of the contract." Id.

Juan Police Commissioner.<sup>8</sup> In connection with the investigation, the Enforcement Bureau found that the Motorola PRO 5150 transmitters used by the San Juan Police Department were not certified for use by the FCC.<sup>9</sup> On November 1, 2000, San Juan received notice of the violation.<sup>10</sup>

4. On March 28, 2001, San Juan filed the subject request for waiver. It seeks a waiver of Section 90.203(a) for a period of twelve months, to allow it to continue using the Motorola PRO 5150 transmitters until it replaces the uncertified units with radios that meet FCC standards.<sup>11</sup>

5. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either (a) that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and grant of the requested waiver would be in the public interest; or (b) that, in view of the of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>12</sup> We conclude that San Juan has demonstrated that due to unique circumstances, a strict application of Section 90.203 of the Commission's Rules in this instance would be contrary to the public interest.

6. In support of its request for waiver of Section 90.203 of the Commission's Rules, San Juan states that its police officers rely on the Motorola PRO 5150 transmitters in enforcing local and Commonwealth laws and in assisting and coordinating with health care agencies during emergencies.<sup>13</sup> San Juan contends that use of the transmitters is essential to its police force and therefore argues that application of Section 90.203 of the Commission's Rules in this matter could have a substantial adverse effect on public safety communications.<sup>14</sup> San Juan states that while it has requested that Fifties replace the subject transmitters with FCC-certified transmitters and Fifties has agreed to do so, Fifties has not yet provided any FCC-certified replacement equipment.<sup>15</sup> San Juan further states that, due to current budget constraints, it has been unable to replace the transmitters on its own.<sup>16</sup> Therefore, it has requested a temporary, twelve-month waiver of Section 90.203, and represents that it will purchase FCC-certified transmitters when funds become available in the next budget cycle.<sup>17</sup>

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<sup>8</sup> *See id.*

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

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4-5

<sup>12</sup> 47 C.F.R. § 1.925(b)(3).

<sup>13</sup> *See* Waiver Request at 4.

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* at 4.

<sup>17</sup> *Id.* at 4-5. San Juan states that the necessary funding has been set aside in the next budget. *Id.* at 5.

7. We find that San Juan has demonstrated that a limited, temporary waiver of Section 90.203 of the Commission's Rules is warranted. Given that the San Juan Police Department relies on the Motorola PRO 5150 transmitters to perform its public safety responsibilities, we do not believe that strict application of Section 90.203 of the Commission's Rules here would serve the public interest. Furthermore, based on its representations in this proceeding, San Juan intends to replace the Motorola PRO 5150 transmitters with transmitters that have been approved by the Commission as soon as possible but, due to its current budget constraints, San Juan cannot replace them until the funds are available in the 2002 budget. However, we believe that San Juan should be able to replace the Motorola PRO 5150 transmitters with FCC-certified transmitters in less than one year. The necessary funds should be available to San Juan by early 2002. Therefore, we conclude that waiver of Section 90.203 of the Commission's Rules, effective until June 1, 2002, is warranted under the circumstances presented, and will provide San Juan sufficient opportunity to acquire FCC-certified transmitters. Accordingly, we grant San Juan's request for waiver of Section 90.203 of the Commission's Rules, effective until June 1, 2002.

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver of Section 90.203 of the Commission's Rules filed by the Municipality of San Juan on March 28, 2001 IS GRANTED, effective until June 1, 2002.

9. 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

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