

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

In the Matter of Application of)
KENT COUNTY, MICHIGAN) FCC File No. 0001438570
Request for Waiver To Allow The Use Of)
20 kHz Bandwidth Adjacent to Public Safety)
Interoperability Channels)

ORDER

Adopted: June 7, 2004

Released: June 9, 2004

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

1. Introduction. We have before us the above-captioned application filed by Kent County, Michigan ("Kent County"). Kent County requests a waiver of Section 90.20(d)(81) of the Commission's Rules to allow operation with a 16 kHz authorized bandwidth on frequencies adjacent to a channel designated for public safety interoperability communications. For the reasons discussed herein, we deny Kent County's waiver request and dismiss its application.

2. Background. Kent County's Aeronautics Division operates conventional Public Safety Pool Station KVJ450, Grand Rapids, Michigan. The system is used to coordinate personnel. Prior to 2002, the station was authorized to operate from the Aeronautics Division headquarters on frequency pairs 453/458.225 MHz and 453/458.300 MHz with an authorized bandwidth of 16 kHz. On October 24, 2002, Kent County filed an application to modify its license for Station KVJ450 to delete frequency pair 453/458.225 MHz from the Aeronautics Division headquarters transmitter, and to authorize operations at Gerald R. Ford International Airport (the airport) on frequency pair 453/458.225 MHz with an authorized bandwidth of 11.25 kHz. That application was granted on January 16, 2003.

3. On June 3, 2003, Kent County filed an application to modify the license to increase the authorized bandwidth for frequency pair 453/458.225 MHz at the airport from 11.25 kHz to 16 kHz. That application was dismissed on August 20, 2003 because Section 90.20(d)(81) of the Commission's Rules limits operation on frequency pair 453/458.225 MHz to an authorized bandwidth of 11.25 kHz. On September 3, 2003, Kent County filed another application to modify the license to increase the authorized bandwidth for frequency pair 453/458.225 MHz at the airport from 11.25 kHz to 16 kHz. On

1 47 C.F.R. § 90.20(d)(81).

2 See attachment to FCC File No. 0001438570 (Waiver Requests).

3 FCC File No. 0001068837.

4 FCC File No. 0001333199.

5 Dismissal Letter Ref. No. 2286280.

6 FCC File No. 0001438570.

September 8, 2003, it amended the application to request a waiver of Section 90.20(d)(81) of the Commission's Rules. In the waiver request, Kent County indicates that it needs to modify the bandwidth so that the operations at the airport will be compatible with the operations at the Aeronautics Division headquarters.⁷ It states that it does not have the funding to change the equipment at the Aeronautics Division headquarters to operate with a 12.5 kHz bandwidth.⁸

4. Section 90.20(d)(81) limits the bandwidth on frequency pair 453/458.225 MHz to a maximum of 11.25 kHz because these frequencies are immediately adjacent to channels designated for public safety interoperability communications.⁹ The adjacent channels became available primarily for public safety interoperability communications on December 7, 2000.¹⁰

5. *Discussion.* The Commission will grant a waiver of its rules if it is shown that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹¹ Based on the record before us, we believe that Kent County has not made the requisite showing for grant of a waiver.

6. We conclude that the underlying purpose of Section 90.20(d)(81) of the Commission's Rules would be frustrated and would not be served if this rule were waived under the circumstances presented. The purpose of Section 90.20(d)(81) is to limit the bandwidth of new stations on channels adjacent to the public safety interoperability channels to 11.25 kHz while permitting existing licensees to operate with a wider bandwidth on a co-primary basis until January 1, 2005.¹² Unlike in cases where we have granted requests for waiver of Section 90.20(d)(81), Kent County is not currently authorized to operate on frequency pair 453/458.225 MHz with a bandwidth greater than 11.25 kHz.¹³ Thus, granting the requested waiver could impede the Commission's interoperability goals by authorizing operations that newly overlap a public safety interoperability channel. Kent County has not demonstrated that its proposed operations would not interfere with interoperability communications.¹⁴ In addition, Kent County has not explained why it cannot use another 450 MHz band frequency at the airport that is not

⁷ Waiver Request at 1.

⁸ *Id.*

⁹ 47 C.F.R. § 90.20(d)(81). Section 90.20(d)(81) provides that: "After December 7, 2000, new stations will only be licensed with an authorized bandwidth not to exceed 11.25 kHz. Licensees authorized prior to December 7, 2000 may continue to use bandwidths wider than 11.25 kHz on a co-primary basis until January 1, 2005."

¹⁰ See 47 C.F.R. § 90.20(d)(80). The four UHF interoperability channel pairs are: 453/458.2125 MHz, 453/458.4625 MHz, 453/458.7125 MHz, and 453/458.8625 MHz.

¹¹ See 47 C.F.R. § 1.925(b)(3).

¹² After that date, all stations, whether new or existing, operating on channels adjacent to the interoperability channels have a choice to either: (a) operate with an 11.25 kHz authorized bandwidth in order to retain co-primary status, or (b) operate with bandwidths wider than 11.25 kHz and become secondary to adjacent channel interoperability operations. Secondary operations may not cause interference to primary interoperability use. 47 C.F.R. § 90.7.

¹³ See Gaston County, North Carolina, *Order*, 19 FCC Rcd 408, 409 ¶ 7 (WTB PSCID 2004); Kern County, California, *Order*, 18 FCC Rcd 26685, 26687 ¶ 7 (WTB PSCID 2003) (*Kern County*).

¹⁴ *Cf. Kern County*, 18 FCC Rcd at 26687 ¶ 7 ("The American Association of State Highway and Transportation Officials (AASHTO) notes that there are virtually no users in California currently using the interoperability channels for the purpose of public safety interoperability.")

subject to the bandwidth limitation in Section 90.20(d)(81).

7. Accordingly, 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, the waiver request filed by the Kent County, Michigan with respect to application FCC File Number 0001438570 IS DENIED.

8. IT IS FURTHER ORDERED, pursuant and Section 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(a), that application FCC File No. 0001438570 SHALL BE DISMISSED.

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

D'wana R. Terry
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau