

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

In the Matter of Application of )
)
DUKES COUNTY, MASSACHUSETTS ) FCC File No. 0000819118
)
For Waiver of Section 90.20(d)(47) to Use VHF )
Frequency 166.250 MHz Outside the Regulatory )
Maximum of 150 miles From New York, N.Y. )

MEMORANDUM OPINION AND ORDER

Adopted: January 7, 2004

Released: January 8, 2004

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

1. Introduction. We have before us a request for waiver of Section 90.20(d)(47) of the Commission's Rules filed by the County of Dukes County, Massachusetts, Office of the Sheriff (Dukes), on June 12, 2002 (Dukes Waiver Request). Dukes seeks the waiver in order to utilize frequency 166.250 MHz for public safety operations 175 miles from New York City. For the reasons discussed below, we grant the Dukes Waiver Request. Furthermore, on our own motion, we grant Dukes a waiver of Section 2.106, note US11, of the Commission's Rules so that it may utilize frequency 166.250 MHz for public safety operations.

2. Background. Frequency 166.250 MHz is allocated to Federal Government (Government) use on a primary basis. Additionally, non-Federal Government (non-Government) operations on this frequency are authorized on a secondary, non-interference basis to Government operations. Specifically, non-Government remote pickup broadcast base and land mobile stations are authorized at points more than 150 miles of New York City, and non-Government base, fixed and land mobile stations in the Public Safety Radio Services are authorized at points within 150 miles of New York City.

3. Dukes is responsible for providing emergency communication services to all local police, fire and EMS, with all dispatch services emanating from the Dukes County Sheriff's Communication Center at Martha's Vineyard Airport in Martha's Vineyard, Massachusetts, approximately 173 miles from New York City. Dukes asserts that in an effort to overcome the problem of radio "dead spots" created by

1 47 C.F.R. § 90.20(d)(47).

2 See Request for Waiver of Section 90.20(d)(47) of the Commission's Rules filed by the Commonwealth of Massachusetts, County of Dukes County, Office of the Sheriff, dated January 18, 2002 (Dukes Waiver Request).

3 Id.

4 Table of Frequency Allocations, 47 C.F.R. § 2.106 note US11.

5 See 47 C.F.R. § 2.106 note US11; 47 C.F.R. § 90.20(d)(47).

6 See Table of Frequency Allocations, 47 C.F.R. § 2.106, note US11.

7 Id.

8 Dukes Waiver Request at 1.

the hilly terrain on the west side of the island, it constructed an antenna tower on the highest hill in the area, and is in the process of installing antennas.<sup>9</sup> However, Dukes asserts that it is experiencing frequency congestion that could be overcome by use of frequency 166.250 MHz.<sup>10</sup> Thus, Dukes requests a waiver of Section 90.20(d)(47).

4. In conjunction with its waiver request, Dukes has filed a memorandum from the International Municipal Signal Association (IMSA), an FCC-certified frequency coordinator for the Public Safety Pool, supporting Dukes' request.<sup>11</sup> IMSA states that allowing Dukes to use frequency 166.250 MHz is "an ideal solution to the difficult problem of finding a suitably clear Public Safety channel for an island with huge seasonal population differentials and thus communications needs."<sup>12</sup> IMSA further indicates that "[e]xtensive searching revealed that the extreme congestion in the VHF bands and the susceptibility of Martha's Vineyard to radio interference from Cape Cod, Rhode Island, Connecticut and Long Island, NY based stations preclude...frequency coordination for a Fire or EMS channel, and for inter-service frequencies from other public safety [frequency coordinators]."<sup>13</sup> IMSA also submitted an amendment to its memorandum, including an attachment setting forth the public safety frequencies, and demonstrating that none of these frequencies are available or technically feasible.<sup>14</sup> Furthermore, given its location (four miles off the southern coast of Massachusetts) and proposed power level (10 watts total power output for the base station), granting the captioned application "would cause no greater impact on [remote pickup broadcast licensees]" as compared to the impact from higher power public safety licensees within 150 miles of New York City.<sup>15</sup> In this connection, on October 8, 2003, Dukes filed letters of concurrence from Hall Communications, Inc. and Sandab Communication, LTD, co-channel licensees operating on frequency 166.250 MHz in New Bedford, Massachusetts, and Barnstable, Massachusetts, respectively, acceding to Dukes' proposed operations.<sup>16</sup>

5. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate that a grant of the waiver would be in the public interest and the underlying purpose of the rule(s) would be frustrated or not served by application to the present case.<sup>17</sup> Alternatively, a petitioner must show that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or that the applicant has no reasonable alternative.<sup>18</sup> Based on the record in this proceeding, we find that the request for waiver of Section 90.20(d)(47) of the Commission's Rules is warranted because Dukes has demonstrated that it is faced with unique factual

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

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

<sup>11</sup> See Memorandum from International Municipal Signal Association (IMSA) to FCC, dated March 19, 2002 (IMSA Memo, March, 2002).

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

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

<sup>14</sup> See Attachment to Amended Memorandum from IMSA to FCC, dated June 12, 2002 (IMSA Memo, June, 2002).

<sup>15</sup> See Dukes Waiver Request at 2.

<sup>16</sup> See Letters of Concurrence from Hall Communications, Inc. (Hall), and Sandab Communication, LTD (Sandab), dated September 25, 2003. The Commission's licensing records reflect that there are two other broadcast auxiliary licensees within the vicinity of Dukes' proposed base station. Hall's station, KB55817, is located 36 kilometers (22.4 miles) from Dukes' proposed station, and Sandab's station, KQA841, is located 48 kilometers (29.8 miles) away.

<sup>17</sup> 47 C.F.R. § 1.925.

<sup>18</sup> *Id.*

circumstances such that application of the rule would be contrary to the public interest, and Dukes has no reasonable alternative.

6. We find that Dukes' geographical area of operation presents unique factual circumstances. In this regard, we acknowledge Dukes' representation that it is attempting to remedy the problem of radio dead spots due to the hilly terrain in certain areas of Martha's Vineyard. Additionally, we credit IMSA's contention that the huge seasonal population differentials have resulted in unique communications needs. Furthermore, the susceptibility of Martha's Vineyard to radio interference from four different areas—namely, Cape Cod, Rhode Island, Connecticut and Long Island, N.Y.—also place Martha's Vineyard in a unique situation. We also are persuaded that granting the requested waiver is in the public interest because it would significantly enhance Dukes' coverage, system reliability, and ability to dispatch emergency communications in the Martha's Vineyard area, thereby promoting effective public safety communications.

7. In addition, we find that Dukes has no reasonable alternative. In this regard, we note IMSA's assertion, supported by an extensive search of the Public Safety Pool VHF frequencies, that extreme congestion in the VHF bands and the susceptibility of Martha's Vineyard to radio interference from surrounding areas precluded frequency coordination of a Fire or EMS channel and for inter-service frequencies from other public safety services to meet the identified communications need. We further note that IMSA has provided an annotated printout of public safety channels from Local Government, Fire, Police, Highway Maintenance, Emergency Medical, Special Emergency and Forestry Conservation Radio Services that have been examined and determined to be unavailable or technically infeasible.<sup>19</sup> Therefore, we grant Dukes' request for a waiver of Section 90.20(d)(47) of the Commission's Rules.

8. In a related matter, we note that in addition to obtaining a waiver of Section 90.20(d)(47), Dukes must also obtain a waiver of note US11 to the Table of Frequency Allocations in Section 2.106 of the Commission's Rules to operate on 166.250 MHz. As discussed above, like Section 90.20(d)(47), note US11 restricts assignment of 166.250 MHz for public safety operations to within 150 miles of New York City. Although a waiver of note US11 is likewise required, Dukes has not requested a waiver thereof. Therefore, on our own motion, we grant Dukes a waiver of note US11, for reasons discussed above.<sup>20</sup>

9. As noted above, non-Government use of 166.250 MHz is secondary to Government use. As such, this waiver is issued subject to the condition that harmful interference will not be caused to Federal government stations. Dukes is hereby advised that Federal government stations may be transitioning to narrowband operations and most are required to do so by January 1, 2005, *i.e.*, operating 12.5 kHz bandwidth equipment--in some cases using center frequencies "offset" 12.5 kHz from Dukes' center frequency(s). Federal government stations are licensed by the National Telecommunications and Information Administration (NTIA). Information on the Federal government's transition to narrowband operations is available on NTIA's Office of Spectrum Management home page at: <http://www.ntia.doc.gov/osmhome/osmhome.html>. Non-Federal licensees should also note that operation of "25 kHz equipment" increases the likelihood of causing interference to Federal government stations. If

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<sup>19</sup> See Amended Memorandum from IMSA to FCC, dated June 12, 2002.

<sup>20</sup> We note that the National Telecommunications and Information Administration's (NTIA) Interdepartment Radio Advisory Committee (IRAC) has reviewed Dukes' request to operate on 166.250 MHz and has consented to such use. The IRAC is composed of representatives appointed by twenty-three member federal departments and agencies. A representative appointed by the Commission to serve in that capacity effects liaison between the IRAC and the FCC. The IRAC serves in an advisory capacity pertaining to the allocation, management, and use of the radio spectrum. The IRAC advises the Assistant Secretary for Communications and Information, U.S. Department of Commerce, and reports to the Deputy Associate Administrator, Office of Spectrum Management.

interference is caused, non-Federal users must cease operating and modify operations so as not to cause harmful interference to Federal government stations.

10. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.3 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.3, 1.925, the Request for Waiver filed by the County of Dukes County, Massachusetts, on January 18, 2002, IS GRANTED, as set forth above.

11. 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 the Licensing and Technical Analysis Branch SHALL PROCESS FCC File No. 0000819118 in accordance with the Commission's Rules and this *Memorandum Opinion and Order*. Any grant of the captioned application SHALL BE CONDITIONED as set forth in paragraph 9, above.

12. 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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