

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

In the Matter of Application of)
MONROE COUNTY) FCC File Nos. 0001380877, 0001380878
For Trunked Radio System License and Request)
for Waiver of Section 90.631 of the Commission's)
Rules for Trunked Systems Loading Requirements)

ORDER

Adopted: October 13, 2004

Released: October 18, 2004

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

1. Introduction. In this Order, we address the above-captioned applications and request for waiver filed by Monroe County, Florida. Monroe County seeks a waiver of the loading requirements of Section 90.631 of the Commission's Rules for its 821-824/866-869 MHz National Public Safety Planning Advisory Committee (800 MHz NPSPAC) trunked radio system. For the reasons set forth below, we grant the waiver request.

2. Background. Monroe County proposes to operate a trunked wide-area system on twenty-six 800 MHz NPSPAC channels at seven sites. It states that seven sites are needed to provide the required level of radio coverage throughout the county, which includes the Florida Keys and is over 120 miles long. It states that twenty-six channels are needed so that all radios in the system can operate countywide, and to prevent overload in some areas. Monroe County states that the system initially will use approximately 1,700 mobile units, with the number of users increasing to 2,300 in three to five years, and possibly rising to 2,600 in an additional two years, depending on growth rates.

3. Under Section 90.631 of the Commission's Rules, non-SMR (Specialized Mobile Radio) trunked 800 MHz systems will be authorized on the basis of a loading criteria of one hundred mobile stations per channel. Because loading on the proposed system is not anticipated to meet the requirements

1 Letter from Pallans Associates to Federal Communications Commission, attached to FCC File Nos. 0001380877, 0001380878 (filed July 14, 2003) (Waiver Request).

2 47 C.F.R. § 90.631.

3 Waiver Request at 2.

4 Id. at 1.

5 Id. at 2. Nine of the channels will be used at two different sites. Id.

6 Id. at 1.

7 47 C.F.R. § 90.631(a). Each applicant must certify that a minimum of seventy mobiles for each channel authorized will be placed into operation within five years of the initial license grant. 47 C.F.R. § 90.631(b). If at the end of five years the system is not loaded to the prescribed levels, authorization for channels not loaded to seventy mobile stations cancels automatically at a rate that allows the licensee to retain one channel for every one hundred mobiles loaded, plus one additional channel. Id.

of Section 90.621, Monroe County requests a waiver. The NPSAC Florida Region Committee concurs with Monroe County's waiver request.⁸

4. *Discussion.* We may grant a request for waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the 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.⁹ Under the circumstances presented, we conclude that grant of the waiver request is warranted.

5. We conclude that application of the rule would not serve the rule's underlying purpose. All twenty-six of the contemplated channels are in the NPSAC band. Under the Florida Region Plan, the contemplated channels cannot be used by any other entity within the protected service area of the proposed sites.¹⁰ In addition, Monroe County's proposed operations will not cause interference to any other user.¹¹ Therefore, there is no impact on spectrum management, because no other user, now or in the future, will be impacted. Consequently, the underlying purpose of the loading requirement—to make underutilized channels available for other licensees—would not be advanced by application of the rule under these circumstances. We also note that the unusual geography of Monroe County requires greater spectrum resources, and that there does not appear to be any reasonable alternative to the proposed system that would provide the same effective, economical and spectrally efficient operation for Monroe County's public safety agencies.¹² Finally, we conclude that grant of a waiver would be in the public interest, because it will provide secure, reliable radio communications for the County's public safety agencies.

6. For the reasons discussed above, we grant Monroe County's request for waiver of Section 90.631. In view of the unique geographical circumstances of Monroe County, application of the rules would be unduly burdensome to the County economically, as well as contrary to the public interest because it would inhibit the efficient use of the County's public safety communications system. Moreover, the unique geography of Monroe County presents it with no alternative but to request the number of channels applied for in order to effectively operate its trunked radio system.

7. For the aforementioned reasons, IT IS ORDERED 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 request for waiver filed by Monroe County on July 14, 2003 is GRANTED, and applications FCC File Nos. 0001380877-78 SHALL BE PROCESSED consistent with this *Order*.

8. 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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⁸ Letter dated May 30, 2003 from Mark D. Pallans, Chairman, Florida Region Committee to Federal Communications Commission (Concurrence).

⁹ 47 C.F.R. § 1.925(b)(3).

¹⁰ Waiver Request at 2.

¹¹ Concurrence at 1

¹² Waiver Request at 1.

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