

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

In the Matter of Application of)	
)	
AMERICAN MEDICAL RESPONSE OF)	FCC File No. 0001051919
INLAND EMPIRE, INC.)	
)	
For a Private Land Mobile Radio Station License)	
in the 450-470 MHz Band at Riverside,)	
California, and Requests for Waiver of Sections)	
90.20(d)(27) and (57) of the Commission's Rules)	

ORDER

Adopted: April 9, 2004

Released: April 16, 2004

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

1. *Introduction.* In this *Order*, we address the above-captioned application and requests for waiver (Request I, Request II),¹ submitted by American Medical Response of Inland Empire, Inc. (AMRIE or Applicant) seeking a new license for frequencies in the 400 MHz band for the purpose of transmitting emergency medical radio communications. In this connection, AMRIE seeks waivers of Sections 90.20(d)(27) and 90.20(d)(57) of the Commission's Rules.² For the reasons set forth below, we grant the requests.

2. *Background.* Section 90.20(d)(27) of the Commission's Rules requires that certain frequencies be assigned with an authorized bandwidth not to exceed 11.25 kHz. Private Land Mobile Radio (PLMR) licensees of these frequencies had previously been permitted to operate with 25 kHz bandwidths. AMRIE had been one of these licensees,³ and had inadvertently failed to renew its authorization for Station WPKH540. If renewal had been timely requested and subsequently granted, the station's 25 kHz channelization would have been grandfathered and a request for waiver of Section 90.20(d)(27) would have been unnecessary.⁴ In view of its license expiration, AMRIE now seeks re-authorization of its emergency medical radio service (EMRS) facilities on thirty-two frequencies between 462.9375 and 468.1875 MHz.⁵ Twenty of the thirty-two frequencies are subject to the 11.25 kHz

¹ The waiver requests were submitted as attachments to the application. See Request for Waiver of Section 90.20(d)(27) of the Commission's Rules (Request I); see also Request for Waiver of Section 90.20(d)(57) of the Commission's Rules (Request II), FCC File No. 0001051919 (filed Oct. 10, 2002, amended Jan. 22, 2003).

² 47 C.F.R. §§ 90.20(d)(27), 90.20(d)(57).

³ Station WPKH540 was originally licensed in February of 1997 to Laidlaw Medical Transportation, Inc. (LMTI) for operation of ambulance services in Riverside, California. Both LMTI and AMRIE are wholly owned subsidiaries of Laidlaw Transit, Inc. (LTI) and, as such, are affiliates of each other. Request I at 1.

⁴ Request I at 1. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services, *Second Memorandum Opinion and Order*, 14 FCC Rcd 8642, 8665 ¶ 47 (1999) (known as the *Refarming Proceeding*).

⁵ Request I at 1.

channelization limitation of Section 90.20(d)(27), while the others are not.⁶ According to AMRIE, these frequencies are used to provide critical coronary observation radio (COR) services between ambulances and hospital emergency rooms.⁷ The mobile channels are licensed to entities operating ambulances such as LMTI and AMRIE, while the fixed transmitters are licensed to the County of Riverside.⁸ AMRIE states that its equipment and the equipment used by the numerous hospitals in the proposed station's service area are channelized at 25 kHz.⁹ AMRIE submits that conversion or replacement of AMRIE's current facilities to 11.25 kHz channelization would severely limit the usability and undercut the accuracy of the emergency medical data transmitted.¹⁰

3. Because AMRIE is requesting a new station license, its proposed use of frequencies 462/467.9375 MHz requires a waiver of Section 90.20(d)(57) of the Commission's Rules. Section 90.20(d)(57) provides that any frequency with this limitation is available for systems first licensed prior to August 18, 1995. This rule further provides that no new systems using the subject frequencies would be authorized after August 18, 1995, but prior authorized systems using these channels were permitted to be modified, expanded and renewed.

4. *Discussion.* We may grant a request for rule 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 circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or AMRIE has no reasonable alternative.¹¹ Under the circumstances presented, we are persuaded by AMRIE's contention that grant of Requests I and II to permit grant of the captioned application will not frustrate the underlying purposes of Sections 90.20(d)(27) and (d)(57) of the Rules, and will be in the public interest.

5. AMRIE seeks to use its new radio facilities as it used the facilities of former Station WPKH540, *i.e.*, to provide COR communications. COR systems are used to transmit electrocardiogram (EKG) medical data regarding a patient's heart rate to a hospital emergency room. COR systems also enable the physicians in the emergency room to transmit medical instructions, by voice, to the paramedics in the ambulance. AMRIE asserts that using 11.25 kHz mobile radio equipment to communicate with hospitals operating with 25 KHz equipment could limit the usability and result in missed or inaccurate communications.¹² For instance, such communications problems could result in incorrect information about a patient's heart rate pattern being provided to the hospital and lead to improper instructions from hospital to ambulance and/or improper preparation at the hospital for an arriving patient. Such a result would increase the risk of misunderstanding those instructions and, thus, could result in serious consequences for the patient.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.925(b)(3).

¹² Request I at 1.

6. With respect to Request I, we find that AMRIE has demonstrated that a waiver of Section 90.20(d)(27) would ensure the continued accuracy of its EMRS transmissions. Conversion of the subject facilities to 11.25 kHz channelization or replacement with new 11.25 kHz equipment when associated hospitals are operating with 25 KHz equipment could significantly undermine the usability of the emergency medical communications system.¹³ Considering the critical and essential nature of the communications, any deficiency in their transmissions could have grave consequences.¹⁴ There is merit to AMRIE's assertion that currently there is no reasonable alternative to operating the subject facilities at 25 kHz channel bandwidths considering that the hospital emergency rooms with whom they communicate operate at 25 kHz bandwidth.¹⁵ In view of the above, we agree with AMRIE that application of the 11.25 kHz channelization requirements in this case would be contrary to the public interest.¹⁶

7. We also conclude that granting waiver of Section 90.20(d)(27) in this case would not frustrate the underlying purpose of the rule, which is to prevent adjacent channel interference.¹⁷ In adopting a licensing approach providing for narrowband channels in spectrum below 800 MHz, the Commission imposed some restrictions on the maximum bandwidth that could be used on certain channels.¹⁸ This action was taken in part to reduce instances of adjacent channel interference.¹⁹ The Commission also provided that users then licensed for 25 kHz operation on any of the low power offset channels would continue to be licensed for such operation until they decide to transition to narrowband equipment.²⁰ That was the course of conduct taken by AMRIE until it inadvertently failed to renew its license. AMRIE indicated that its facilities had operated for years without causing interference to other users and that it would likely continue to operate in the same manner if re-licensed.²¹ There is no

¹³ See *The New York Hospital – Cornell Medical Center, Order*, 13 FCC Rcd 5301, 5305 ¶ 9 (WTB 1998) (*NYH*).

¹⁴ See *Children's Medical Center, Order*, 14 FCC Rcd 4115, 4119 ¶ 9 (WTB PSPWD 1999).

¹⁵ Request I at 1. See *Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc.*, 13 FCC Rcd 5294, 5299 ¶ 9 (WTB 1998) (*Kaiser*). AMRIE also submits that the cost of converting its equipment to 11.25 kHz would be very burdensome. AMRIE uses 150 mobiles in its system and the cost for new 11.25 kHz radios would be \$2500 per unit or approximately \$150,000. See *Kaiser*, 13 FCC Rcd at 5299 ¶ 9.

¹⁶ Request I at 2. The Commission has an obligation to seek out the public interest in particular matters and individualized situations. See *WAIT Radio v. FCC*, 418 F. 2d 1153, 1157 (D.C. Cir. 1969). See also *City of Denton*, 15 FCC Rcd 23643, 23646 ¶ 8 (WTB 2000) (*Denton*).

¹⁷ See *Duke Energy Corporation*, 18 FCC Rcd 1245, 1247 ¶ 7 (WTB PSPWD 2003), *Application of City of Miami Beach, Florida*, 18 FCC Rcd 2589, 2591 ¶ 8 (WTB PSPWD 2003) (*Miami Beach*), *Denton*, 15 FCC Rcd at 23646 ¶ 7.

¹⁸ See *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services, Report and Order*, 10 FCC Rcd 10076, 10094-95 ¶ 27 (1999) (part of the *Refarming* proceeding). The *Report and Order* amended Part 90 of the Commission's Rules to, among other things, increase channel efficiency by splitting existing channels between 150 and 512 MHz, provide users technical flexibility to convert to narrowband technology, and introduce new power/antenna height limitations that would permit advanced technologies and reduce interference.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Request I at 3.

indication otherwise. We find it decisionally significant that granting the subject request for waiver of Section 90.20(d)(27) in this instance would not change the licensing landscape from what it has been. We believe that granting a waiver under these circumstances is consistent with precedent.²²

8. With respect to Request II, AMRIE demonstrates that the use of frequencies 462/467.9375 MHz serves to ensure that AMRIE's COR system can continue to operate efficiently and expeditiously. These channels are an important component of AMRIE's emergency medical radio system.²³ Considering the critical and essential nature of communications between ambulances and hospitals, we believe that any deficiency in AMRIE's communications system should be avoided if possible.²⁴ A waiver grant would permit AMRIE to continue operating its EMRS facilities without any diminution in service to the community and, thus, is in the public interest.²⁵ As AMRIE indicates, while its application in form is a request for a new authorization, in practical terms, it is seeking reauthorization of pre-existing operations, which is permitted by Section 90.20(d)(57) of the Rules.

9. Additionally, we conclude that granting waiver of Section 90.20(d)(57) would not frustrate the underlying purpose of the rule.²⁶ This provision was intended to preserve the use of the affected frequencies for existing users during and after the transition to the frequency pools established in the *Refarming* proceeding while reducing the risk of interference from new users of offset channels.²⁷ AMRIE had been an existing user and conducted operations on frequencies 462/467.9375 MHz to transmit emergency medical radio communications. Except for an inadvertent failure to renew, AMRIE would still be licensed to use these channels. Although not permitting new use of the subject channels, the rule specifically permits stations previously operating on these frequencies to modify and renew their licenses. Therefore, it is evident that the Commission envisioned accommodating continued operations on frequencies 462/467.9375 MHz. Further, AMRIE indicates that its use of the subject frequencies has not caused and would not cause, interference to other users.²⁸ In view of the foregoing, we conclude that under the circumstances presented, grant of the request for waiver of Section 90.20(d)(57) is consistent with precedent.²⁹

10. For the reasons stated herein, we find that AMRIE has demonstrated that grant of the requested waivers is warranted under the circumstances presented. This *Order* grants AMRIE's Requests

²² See e.g., *State of Florida*, 16 FCC Rcd 2174, 2178, 2179 ¶¶ 10, 13 (WTB 2001), *American Medical Response, Inc.*, 15 FCC Rcd 25587, 25590-91 ¶¶ 9-10 (WTB PSPWD 2000), *Lojack Corporation*, 15 FCC Rcd 18939, 18940-41 ¶¶ 5, 18942 ¶¶ 8, *NYH*, 13 FCC Rcd at 5304 ¶ 7, 5305 ¶ 9

²³ AMRIE requests that if the waiver of Section 90.20(d)(57) is deemed unwarranted, the Commission nevertheless grant the application for the remainder of the requested channels. Request II at n. 2.

²⁴ See *Alexian Brothers Hospital*, 14 FCC Rcd 6339, 6343-44 ¶ 11 (WTB PSPWD 1999).

²⁵ See *Alvarado Hospital Medical Center et al.*, 14 FCC Rcd 4143, 4147 ¶ 10 (WTB PSPWD 1999).

²⁶ See *Miami Beach*, 18 FCC Rcd at 2591 ¶ 8, *Denton*, 15 FCC Rcd at 23646 ¶ 7.

²⁷ *Id.*

²⁸ Request II at 1.

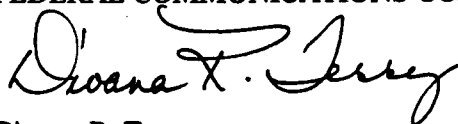
²⁹ See *Bishop Clarkson Memorial Hospital et al.*, 14 FCC Rcd 6405, 6410 ¶ 13 (WTB PSPWD 1999).

and permits the processing of the subject application for license.³⁰ This action serves the public interest because a change in bandwidth of the twenty subject channels and/or migration from frequency pair 462/467.9375 MHz would pose unnecessary risks to essential medical communications without significant concomitant public interest benefits.³¹

11. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.925, the Requests for Rule Waiver filed by American Medical Response of Inland Empire, Inc. on Jan. 22, 2003, ARE GRANTED, and application FCC File No. 0001051919 SHALL BE REFERRED to the Public Safety and Critical Infrastructure Division, Licensing Operations, for processing consistent with this Order.

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
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

³⁰ While we grant AMRIE the requested relief, we nonetheless note that such action is conditioned on the outcome of the ongoing Balanced Budget Act proceeding. See In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, WT Docket No. 99-87.

³¹ See *North Broward Medical Center et al.*, 14 FCC Rcd 2303, 2308 ¶ 12 (WTB PSPWD 1999).