

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

In the Matter of Application of	)	
	)	
CITY OF DOWNEY, CALIFORNIA	)	File No. 0001540550
	)	
To Modify License for Public Safety Station	)	
WIM839, Downey, California	)	

**ORDER**

**Adopted: May 10, 2006**

**Released: May 12, 2006**

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

1. *Introduction.* We have before us an application<sup>1</sup> and a waiver request<sup>2</sup> filed by the City of Downey, California (Downey) to modify its license for Public Safety Pool, Conventional Station WIM839, Downey, California. Downey seeks a waiver of Section 90.311 of the Commission's Rules in order to operate a base station on frequency 474.0250 MHz, on which Downey is presently authorized to operate mobile units.<sup>3</sup> Downey contemplates that its fire dispatch personnel may need to use the frequency as a fire ground channel to contact fire fighters on rare occasions.<sup>4</sup> For the reasons stated herein, we grant Downey's request.

2. *Background.* Downey's license for Station WIM839 currently authorizes operation on five UHF<sup>5</sup> frequencies. Downey, whose dispatch center serves the fire departments of four cities in the Los Angeles metropolitan area, intends to join the Interagency Communications Interoperability System (ICIS), a regional UHF trunked radio network.<sup>6</sup> The modified radio system will enable Downey to operate on the ICIS and have several fire ground channels available for its dispatch service.<sup>7</sup> Due to a

<sup>1</sup> See FCC File No. 0001540550, filed December 9, 2003, as amended March 17, 2005 and February 6, 2006.

<sup>2</sup> *Id.*, Letter dated November 10, 2003 from Henry L. Richter, Richter Group Communications Consultants, to Federal Communications Commission, Wireless Telecommunications Bureau (Request). On February 6, 2006, Downey amended its application to delete its request to use frequency 470.0250 MHz, which is a Part 22 paging control channel.

<sup>3</sup> 47 C.F.R. § 90.311.

<sup>4</sup> See Request at 2.

<sup>5</sup> Frequencies from 300 MHz to 3 GHz are Ultra High Frequencies (UHF), but land mobile frequencies in the 450-512 MHz range are sometimes referred to as the land mobile "UHF band." In this *Order*, references to UHF mean 450-512 MHz. See, e.g., Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd 5206, 5215 ¶¶ 11-12 (1999).

<sup>6</sup> Request at 1. The *Public Notice* seeking comment on Downey's request mistakenly stated that Downey was a member of ICIS. See Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by the City of Downey, California to Utilize a Part 22 Paging Control Frequency for Public Safety Purposes and to Operate a Base Station on a Part 90 Mobile Frequency, *Public Notice*, 20 FCC Rcd 11443 (WTB PSCID 2005) (*Public Notice*).

<sup>7</sup> Request at 1.

shortage of available channels in the Los Angeles Basin, Downey seeks a waiver of Section 90.311 of our Rules to permit base station operations on frequency 474.0250 MHz. This frequency is available under Section 90.311 only for mobile use.<sup>8</sup> On July 6, 2005, we sought comment on Downey's waiver request.<sup>9</sup>

3. *Discussion.* Under Section 1.925(b)(3) of the Commission's Rules, a request for a rule waiver in the Wireless Telecommunications Services may be granted if it is shown that (a) the underlying purpose of the rule 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 (b) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>10</sup> For the reasons stated below, we conclude that grant of the requested waiver is warranted, and the application should be granted.

4. With respect to the first prong of the waiver standard, we note that the purpose of the Section 90.311 is to prevent base stations from interfering with mobile-only operations. Downey is already authorized to conduct mobile-only operations on frequency 474.0250 MHz, and intends to make only occasional use of the frequency as a fire ground base channel.<sup>11</sup> Thus, Downey is proposing only a slight increase in its use of the frequency. Furthermore, Downey has obtained letters of concurrence from the City of Santa Clarita, California<sup>12</sup> and the City of Alhambra, California.<sup>13</sup> Moreover, Downey's use of 12.5 kHz narrowband technology reduces the possibility of interference to adjacent channel incumbents.<sup>14</sup> We conclude that application of the rule under the circumstances presented would not serve its underlying purpose, because Downey's proposed fire ground base channel operations pose little if any potential for interference to other licensees' mobile-only operations.

5. We also conclude that grant of a waiver would be in the public interest. Downey has demonstrated a need for a rule waiver in order to promote effective public safety communications. Thus, a waiver would further the public interest by affording Downey to better use its radio system for the protection of life and property. Indeed, Section 1 of the Communications Act of 1934 defines one of the Commission's over-arching purposes as "promoting safety of life and property through the use of ... radio communication."<sup>15</sup> Further, we find it significant that the proposed modifications would facilitate Downey's participation in ICIS, thereby facilitating interoperability between public safety communities in the Los Angeles Basin.

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<sup>8</sup> See 47 C.F.R. § 90.311.

<sup>9</sup> See *Public Notice*. We received one comment in support of Downey's waiver request. See Letter dated July 22, 2005 from Henry L. Richter, Ph.D, P.E., Richter Group Communications Consultants, to Federal Communications Commission, Office of the Secretary. No reply comments were filed.

<sup>10</sup> 47 C.F.R. § 1.925(b)(3).

<sup>11</sup> See Request at 2.

<sup>12</sup> See Letter dated September 23, 1999 from Paul Zaengle, Technology Services Manager, City of Santa Clarita, to Chief Jeff Turner, Downey Fire Department. The City of Santa Clarita is licensed co-channel to Downey on frequency 474.025 MHz on Station WIL591.

<sup>13</sup> See Letter dated October 27, 1999 from James Higginbotham, Communications Supervisor, City of Alhambra, to Chief Jeff Turner, Downey Fire Department. The City of Alhambra is licensed adjacent channel to Downey on frequency 474.0125 MHz on Station KWT671.

<sup>14</sup> See Request at 1.

<sup>15</sup> 47 U.S.C. § 151.

6. *Conclusion and Ordering Clauses.* We conclude that Downey's waiver request and associated application satisfy the criteria in Section 1.925(b)(3) of our Rules. We therefore grant Downey's request for waiver, and will grant its application to modify its license for Station WIM839.

7. 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 Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the waiver request filed by the City of Downey **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that, 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, FCC File No. 0001540550 **SHALL BE PROCESSED** consistent with this *Order* and the Commission's Rules.

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

Michael J. Wilhelm  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau