

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

In the Matter of Application of	)	
	)	
COUNTY OF MORGAN, WEST VIRGINIA	)	File No. 0001691866
	)	
To Operate a County-wide Public Safety Radio	)	
System Utilizing 220 MHz Band Frequencies	)	

**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 and waiver request filed by the County of Morgan, West Virginia (Morgan County) for authority to operate a public safety land mobile radio system on fifteen frequencies in the 220 MHz band.<sup>1</sup> Morgan County seeks waiver of certain technical rules governing operation in the 220 MHz band. For the reasons stated herein, we grant Morgan County's waiver request in part and deny it in part.

2. *Background.* Morgan County is located in the northeast portion of West Virginia, adjacent to Maryland and Virginia. Morgan County states that it has upgraded its 911 center and is in the process of installing a new multi-site, simulcast radio dispatch system.<sup>2</sup> In order to further upgrade its emergency response capabilities, Morgan County seeks the use of Channels 161-170 and 181-185 in the 220 MHz band. Channels 161-170 are designated for mutual aid use.<sup>3</sup> Channels 181-185 are designated for non-nationwide, emergency medical use.<sup>4</sup> As a public safety service provider and owner and operator of a full-service hospital, Morgan County qualifies for use of both sets of channels.<sup>5</sup> Morgan County proposes to use the channels in support of mobile command centers that will provide on-scene emergency management capabilities and interoperability with neighboring governmental entities on a mutual aid basis.<sup>6</sup>

3. Morgan County requests waivers of two rule sections. First, Morgan County seeks a waiver of Section 90.729(a) of the Commission's Rules, which limits the effective radiated power (ERP) of Morgan County's proposed base stations to thirty watts, and limits the ERP of mobile units to fifty watts.<sup>7</sup> Morgan County states that the limits may be appropriate in areas of flat terrain, but they are not sufficient

<sup>1</sup> See FCC File No. 0001691866, filed on April 12, 2004, Supporting Statement and Waiver Request (Request).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> See 47 C.F.R. § 90.720(b).

<sup>4</sup> See 47 C.F.R. § 90.719(c).

<sup>5</sup> See 47 C.F.R. §§ 90.719(c), 90.720(a).

<sup>6</sup> See Request at 1.

<sup>7</sup> 47 C.F.R. § 90.729(a), (b).

to provide adequate coverage in the county's very mountainous terrain.<sup>8</sup> As a result, Morgan County seeks authority to operate with 150 watts ERP for both its base and mobile stations. In support of its request, Morgan County provides a showing that it meets the co-channel distance separation and contour protection requirements of Section 90.723(k) of the Commission's Rules<sup>9</sup> with respect to the nearest co-channel licensee, even with the increased power.<sup>10</sup> Morgan County notes that it has been granted similar relief of applicable power limitations for its operations in the 150 MHz band.<sup>11</sup>

4. Second, Morgan County seeks a waiver of Section 90.733(d) of the Commission's Rules<sup>12</sup> to permit the combination of contiguous channels to form channels wider than five kilohertz. Section 90.733(d) permits the combining of contiguous 220 MHz band channels *except* Channels 161-170 and 181-185, which Morgan County seeks.<sup>13</sup> Each of the channels has a bandwidth of five kilohertz.<sup>14</sup> Morgan County states that it seeks relief because it has been unable to locate a manufacturer that produces new 220 MHz equipment capable of operating on five kilohertz channels.<sup>15</sup> Morgan County states that 12.5 kilohertz equipment and possibly 25 kilohertz equipment are being manufactured in the 220 MHz band.<sup>16</sup>

5. On November 25, 2005, the Wireless Telecommunications Bureau's Public Safety and Critical Infrastructure Division placed Morgan County's application and waiver request on public notice.<sup>17</sup> No comments or reply comments were filed.

6. *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 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>18</sup> For the reasons stated below, we conclude that partial grant of the requested waiver is warranted, and the application should be granted in part.

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<sup>8</sup> Request at 1.

<sup>9</sup> 47 C.F.R. § 90.723(k).

<sup>10</sup> Request at 2-3, Attachment Two.

<sup>11</sup> Request at 1-2. *See, e.g.*, Licenses for Stations WPTD554 and WPTG353, Largent, West Virginia.

<sup>12</sup> 47 C.F.R. § 90.733(d).

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

<sup>14</sup> *See* 47 C.F.R. § 90.209(b)(5).

<sup>15</sup> Request at 2.

<sup>16</sup> *Id.*

<sup>17</sup> *See* Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by Morgan County, West Virginia, *Public Notice*, 20 FCC Rcd 188890 (WTB PSCID 2005).

<sup>18</sup> 47 C.F.R. § 1.925(b)(3).

7. The purpose of Section 90.729 of the Commission's Rules is to permit sufficient power levels for satisfactory operation while reducing the possibility of interference.<sup>19</sup> Under the first prong of the waiver standard, Morgan County has shown that grant of a waiver would be consistent with the underlying purpose of the rule under the circumstances presented, because Morgan County meets the relevant co-channel spacing and contour protection requirements. We also conclude that a waiver of Section 90.729 would be in the public interest. Morgan County has demonstrated that it needs additional power to provide adequate service to the mountains and valleys of eastern West Virginia. This need is reflected in the prior waiver grants with respect to Morgan County's 150 MHz band operations.

8. The Commission specifically excluded Channels 161-170 and Channels 181-185 from its decision to permit 220 MHz band licensees to aggregate five kilohertz channels into wider bandwidth channels because these channels were allocated, in part, to enable public safety entities to communicate with one another in emergencies, and permitting licensees to aggregate channels could result in some licensees employing five kilohertz technology while others employ non-standard bandwidths, which could limit the intended interoperability.<sup>20</sup> Despite the reported absence of new narrowband equipment,<sup>21</sup> we find that the underlying purpose of the Section 90.733(d) would be served, and would not be frustrated, by application to this case because operation on contiguous channels would not be interoperable with other licensees operating on single channels. Granting waiver requests like the one before us could result in pockets of non-interoperability, which would undermine the rule.<sup>22</sup> Given that Morgan County intends to use these channels for mutual aid with other governmental agencies, contiguous channels would not be useful for this purpose unless the other agencies have obtained waivers of this rule as well. Morgan County has not shown this to be the case. With respect to the second prong of the waiver standard, Morgan County has not argued that its circumstances with respect to equipment availability are unique or unusual, or that application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or leave it with no reasonable alternative. For example, Morgan County has not explained why it cannot operate in any other spectrum band. Accordingly, we deny Morgan County's request for waiver of Section 90.733(d).

9. *Conclusion and Ordering Clauses.* We conclude that Morgan County has justified its request for waiver of Section 90.729, but not its request for waiver of Section 90.733(d). We therefore grant Morgan County's request for waiver in part to operate a public safety communications system on frequencies in the 220-222 MHz band, and will process its application consistent with this *Order*.

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<sup>19</sup> See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Memorandum Opinion and Order on Reconsideration*, GN Docket No. 93-252, 13 FCC Rcd 14569, 14607 ¶ 80 (1998).

<sup>20</sup> See Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, PR Docket No. 89-552, RM-8506, 12 FCC Rcd 10943, 10993-94 ¶ 102 (1997).

<sup>21</sup> See Request at 2. We note that technology exists for five kilohertz operation in the 220 MHz band. See U.S. Department of Commerce, National Telecommunications and Information Administration, *Alternative Frequencies for Use by Public Safety Systems: Response to Title XVII, Section 1705 of the National Defense Authorization Act for FY 2001*, 6 (Dec. 2001); National Law Enforcement and Corrections Technology Center, *Understanding Wireless Communications in Public Safety: A Guidebook to Technology, Issues, Planning, and Management*, 74 (Jan. 2003). We also note that other public safety entities continue to apply for authorization to operate on these five kilohertz channels without requesting waivers. See, e.g., FCC File No. 00002453459 (filed Jan. 20, 2006).

<sup>22</sup> See Nextel Communications Inc., *Order*, 14 FCC Rcd 11678, 11691-92 ¶ 31 (WTB 1999) (the Commission "must not eviscerate a rule by a waiver").

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 Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver associated with the captioned application filed by the Morgan County IS GRANTED IN PART as set forth herein and IS OTHERWISE DENIED, application FCC File No. 0001691866 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

11. 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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Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau