

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

In the Matter of)
)
 COUNTY OF PLACER, CALIFORNIA) File Nos. 0001972725, 0002002101
)
 Request for Waiver of Sections 80.371, 80.773,)
 and 90.20 of the Commission's Rules)

ORDER

Adopted: June 21, 2006

Released: June 23, 2006

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

1. *Introduction.* On January 13 and 14, 2005, respectively, the County of Placer, California (Placer) filed new applications for stations at Mt. Pluto and Kings Beach, California,¹ and Mt. Rose, Nevada,² to operate on frequencies 157.225/161.825 MHz (VHF Public Coast (VPC) Channel 84) and 157.250/161.850 MHz (VPC Channel 25).³ In association with these applications, Placer filed requests for waiver of the Commission's Rules to permit it to operate with technical parameters beyond the limits set forth in Sections 80.773(c) and 90.20(g) of the Commission's Rules.⁴ Placer also seeks a waiver of Section 80.371⁵ to permit the Association of Public-Safety Communications Officials International, Inc. (APCO), a Commission-certified Public Safety frequency coordinator, to coordinate the public safety operations for the proposed Mt. Pluto and Kings Beach stations. For the reasons that follow, we grant the waiver requests to the extent indicated below, and will grant the above-captioned applications.

2. *Background.* Placer is a county in northern California that extends from Sacramento County east-northeast to the California-Nevada state line. The county is within VPC Service Area (VPCSA) 6. Nearby portions of California and Nevada are within adjoining VPCSA 34. Placer has developed a plan for using VHF spectrum to upgrade its inadequate analog communications system to a trunked, digital state-of-the-art voice and data communications network using narrowband technology to serve Federal, state and local agencies. On June 14, 2004, MariTEL Southern Pacific, Inc. (MariTEL), the geographic licensee for VPCSA 6, filed an application for consent to assign to Placer certain channels, including VPC Channels 84 and 25, in Placer County.⁶ MariTEL and Placer also filed a request for waiver to permit Placer to operate at the boundaries of VPCSA 34 and 6 on the partitioned and disaggregated spectrum with a higher signal strength than the rules permit. On February 16, 2005, the Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division (Division) granted the waiver request, subject to certain conditions intended to protect marine communications.⁷

¹ See File No. 0002002101 (Placer Mt. Pluto and Kings Beach Waiver Request).

² See File No. 0001972725 (Placer Mt. Rose Waiver Request).

³ The applications seek to use the frequencies on a narrowband basis, and also request authorization to operate on the interstitial narrowband channel between VPC Channels 84 and 25 -- 157.2375/161.8375 MHz (VPC Channel 284).

⁴ 47 C.F.R. §§ 80.773(c), 90.20(g).

⁵ 47 C.F.R. § 80.371.

⁶ See File No. 0001750425.

⁷ See County of Placer, California, *Order*, 20 FCC Rcd 3657 (WTB PSCID 2005) (*Order*).

The assignment application was consented to on February 22, 2005 under Call Sign WQCP558, and the parties consummated the assignment on April 14, 2005.⁸

3. In maritime VPCSA, such as VPCSA 6, VPC channels are licensed on a geographic basis for marine public correspondence use (although service to units on land is permitted under certain circumstances), and no frequency coordination is required.⁹ Section 80.773 limits the permissible field strength on these frequencies at the boundary with an adjacent VPCSA.¹⁰ Placer's proposed operations at Mt. Pluto and Kings Beach, which are in VPCSA 6, would result in a field strength at the border between VPCSA 6 and 34 in excess of that permitted by Section 80.773(c).¹¹ Consequently, Placer requests a waiver of Section 80.773(c).¹² Placer also requests a waiver of Section 80.371 to allow APCO to coordinate public safety operations in VPCSA 6.¹³

4. In certain inland VPCSA, including VPCSA 34, VPC Channels 84 and 25 are designated for public safety use.¹⁴ These public safety channels are licensed on a site-by-site basis, and must be coordinated by a Public Safety frequency coordinator.¹⁵ Section 90.20(g) limits the permissible antenna height, and the permissible field strength at the boundary of an adjacent maritime VPCSA.¹⁶ Placer's proposed operations at Mt. Rose, which is in VPCSA 34, would result in a field strength at the border between VPCSA 34 and 6 in excess of that permitted by Section 90.20(g).¹⁷ Placer also proposes to operate the Mt. Rose station with an antenna height greater than that permitted by Section 90.20(g) and, accordingly, requests a waiver of Section 90.20(g).¹⁸

5. *Discussion.* Section 1.925 of the Commission's Rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁹ Based on the record before us, we conclude that the waiver requests should be granted to the extent set forth below.

⁸ See File No. 0002133834; *Public Notice*, Report No. 2137 (WTB rel. April 27, 2005).

⁹ See 47 C.F.R. §§ 80.123, 80.371(c)(1)(i).

¹⁰ See 47 C.F.R. § 80.773(c).

¹¹ Specifically the limit will be exceeded at the VPCSA 6/34 border with the Nevada counties of Washoe, Storey, Carson City, and Douglas, and the California counties of Alpine and Sierra. Placer Mt. Pluto and Kings Beach Waiver Request at 3.

¹² *Id.* at 2-3. Placer also requests a waiver of the antenna height limit in Section 90.20(g). *Id.* at 3. We conclude, however, that such a request is unnecessary, because Section 90.20(g) governs only stations in inland VPCSA. See para. 4, *infra*.

¹³ See Placer Mt. Pluto and Kings Beach Waiver Request at 2.

¹⁴ See 47 C.F.R. §§ 80.371(c)(1)(ii), 90.20(g)(2)(ii). In other inland VPCSA, VPC Channels 25 and 85 are designated for public safety use.

¹⁵ See 47 C.F.R. § 90.20(g)(2)(ii), (5)(ii).

¹⁶ See 47 C.F.R. § 90.20(g)(5)(ii), (iii)(D).

¹⁷ See n.11, *supra*.

¹⁸ See Placer Mt. Pluto and Kings Beach Waiver Request at 2-3.

¹⁹ 47 C.F.R. § 1.925(b)(3); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

6. Mt. Pluto and Kings Beach. Placer requests a waiver of Section 80.773(c) to permit its proposed Mt. Pluto and Kings Beach stations to operate with a higher field strength at the boundary with VPCSA 34. Imposing a field strength limit in maritime VPCSA to channels that are set aside for public safety use in an adjoining inland VPCSA serves to protect and preserve public safety use of the spectrum. Placer states that the proposed operations at Mt. Pluto and Kings Beach are consistent with that purpose because the channels will be used by Placer for public safety in both VPCSA 6 and 34, without causing interference to others.²⁰ In addition, Placer submits that because the applications were coordinated by APCO, there is further assurance that the proposed operations will not cause interference to other public safety operations.²¹ Moreover, to the extent that the proposed stations could affect operations in VPCSA 6 beyond Placer County, we note that MariTEL has consented to Placer's proposed operations.²² We agree that applying the field strength limit under the circumstances presented would not serve the purpose of the rule.

7. Placer also requests a waiver of Section 80.371 to allow APCO to coordinate the public safety operations at Mt. Pluto and King's Beach.²³ We conclude, however, that such a waiver is unnecessary. Although Section 80.371 does not require frequency coordination for any frequencies in a maritime VPCSA, it does not preclude a licensee from utilizing the services of a frequency coordinator in connection with a waiver request.

8. Mt. Rose. Placer requests a waiver of Section 90.20(g) to permit its Mt. Rose station to operate with a greater antenna height, and with a higher field strength at the boundary with VPCSA 6. The limitations imposed by Section 90.20(g) serve to protect operations in adjacent maritime VPCSA from interference from public safety operations. However, Placer is now the geographic licensee in the affected portion of VPCSA 6 and therefore is capable of ensuring that the proposed Mt. Rose station will not interfere with Placer's own operations. Moreover, to the extent that the proposed stations could affect operations in VPCSA 6 beyond Placer County, we note that MariTEL has consented to Placer's proposed operations.²⁴ We therefore conclude that applying these technical limitations under the circumstances presented would not serve the purpose of the rule because the proposed operations do not pose the potential for harmful interference to other licensees.

9. Finally, we conclude that grant of the requested waivers would serve the public interest. In support of its requests, Placer states that granting the request for waiver would promote the public interest by ensuring sufficient spectrum to support its public safety and homeland security needs.²⁵ Authorization of the proposed facilities will allow Placer to continue to upgrade its analog public safety communications system to a trunked, digital state-of-the-art voice and data communications network using narrowband technology to serve Federal, state and local agencies.²⁶

10. *Conclusion and Ordering Clauses.* With respect to the proposed Mt. Pluto and Kings Beach stations, we grant Placer's request for a waiver of Sections 80.773(c), and conclude that its requests for waivers of Sections 80.371 and 90.20(g) are unnecessary. With respect to the proposed Mt. Rose station, we grant Placer's request for a waiver of Section 90.20(g). The stations will be subject to

²⁰ See Placer Mt. Pluto and Kings Beach Waiver Request at 7.

²¹ Frequency Coordination number 47YWAP340177359.

²² See Letter dated July 19, 2004 from Dan Smith, President & CEO, MariTEL, to Federal Communications Commission.

²³ Placer Mt. Pluto and Kings Beach Waiver Request at 1.

²⁴ See n.22, *supra*.

²⁵ See Placer Mt. Pluto and Kings Beach Waiver Request at 8; Placer Mt. Rose Waiver Request at 7.

²⁶ See Placer Mt. Pluto and Kings Beach Waiver Request at 1; Placer Mt. Rose Waiver Request at 1.

the same conditions that the Division attached to Placer's license for Call Sign WQCP558, in order to protect marine communications.²⁷ Grant of these waiver requests will further the Commission's goal of deploying spectrum to support public safety operations and promoting flexible use of the spectrum.

11. Accordingly, IT IS ORDERED, pursuant to the authority of Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the requests for waiver filed by the County of Placer, California in association with File Nos. 0002002101 and 0001972725 on January 13 and 14, 2005, respectively, ARE GRANTED to the extent set forth above, SUBJECT TO THE CONDITION THAT no interference is caused to current or future marine communications, including but not limited to Automatic Identification System operations.

12. IT IS FURTHER ORDERED that applications FCC File Nos. 0001972725 and 0002002101 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

13. 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
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Wireless Telecommunications Bureau

²⁷ See *Order*, 20 FCC Rcd at 3662 ¶ 16.