

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

In the Matter of )
COUNTY OF MECKLENBURG ) FCC File No. 0002443428
Request for Waiver of Section 90.157 of the )
Commission's Rules )

ORDER

Adopted: July 5, 2006

Released: July 7, 2006

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

1. Introduction. On January 11, 2006, the County of Mecklenburg (Mecklenburg) filed a request for waiver of Section 90.1571 of the Commission's Rules to ensure that its license for Station WPVU567 will not automatically cancel due to Station WPVU567 not being in operation for more than one year.2 For the reasons stated below, we grant Mecklenburg's request to the extent set forth below.

2. Background. On August 22, 2002, the Federal Communications Commission (Commission) issued Mecklenburg a license to operate trunked 800 MHz public safety frequencies under call sign WPVU567, Charlotte, North Carolina.3 On January 11, 2006, Mecklenburg filed the instant request for waiver of the Commission's rules. Mecklenburg states that it has committed substantial resources to improve the public safety communications infrastructure that supports its 800 MHz operations, including Station WPVU567.4 The effort, Mecklenburg states, has been undertaken with the City of Charlotte and reflects a commitment to improve communications in the Charlotte region.5 During 2005, construction and adjustments of this "County/City project" required that the system be shut down. Mecklenburg states that this project involves three other call signs, in addition to WPVU567.6 These call signs are WPUV635, WNGU623, and WNZB529.7 Mecklenburg states that the project's objective is to combine and coordinate the current frequencies and infrastructure to provide a digital overlay system to replace the current analog trunked system.8 Mecklenburg states that the changes will improve the region's police and emergency service communications capability, including interoperable communications among agencies.9 Mecklenburg states that implementation of the Commission's

1 47 C.F.R. § 90.157.

2 FCC File No. 0002443428 (filed Jan. 11, 2006) at attachment (Waiver Request).

3 See County of Mecklenburg, Memorandum Opinion and Order, 17 FCC Rcd 15608 (WTB PSPWD 2002) (granting request for waiver request for waiver of general category freeze to permit licensure of 800 MHz General Category Station in Charlotte, North Carolina).

4 See Waiver Request at 1.

5 Id.

6 Id.

7 Id.

8 Id.

9 Id.

rebanding decision will delay the project because many of the frequencies licensed under these call signs will be relocated to new frequency assignments yet to be determined.<sup>10</sup> Mecklenburg argues that station WPVU567 is currently “deconstructed” because of the project and cannot be “reengaged” until the 800 MHz band reconfiguration is complete.<sup>11</sup>

3. A waiver of the rules is needed because, as a condition of Mecklenburg’s license, if Mecklenburg discontinues operation on a “permanent” basis, Mecklenburg must cancel its license. Pursuant to Sections 1.957 of and 90.157 of the Commission’s rules, any station which has not operated for one year or more is considered to have been permanently discontinued,<sup>12</sup> with one exception of some relevance to station WPVU567.

4. As part of the 800 MHz rebanding plan, the Commission envisioned that 800 MHz licensees would shut down their operations temporarily to accommodate band reconfiguration, *i.e.* the relocation of licensees from one part of the 800 MHz band to another. The Commission recognized that some stations may have to shut down for significant periods of time. In order to avoid the inadvertent cancellation of station licenses, the Commission stated that the provisions of Section 90.157 will not apply to stations that have been shut down in order to accommodate the Commission’s rebanding plan.<sup>13</sup> Accordingly, the Commission adopted new rule Section 90.677,<sup>14</sup> which states that for the limited purpose of 800 MHz band reconfiguration, Section 90.157 does not apply.<sup>15</sup>

5. *Discussion.* To obtain a waiver of the Commission’s Rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;<sup>16</sup> or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>17</sup> For the reasons set out below, we conclude that Mecklenburg has demonstrated that its request would not frustrate the underlying purpose of the rule, and grant of its request would serve the public interest.

6. Grant of Mecklenburg’s request will not frustrate the underlying purpose of Section 90.157. The purposes of the rule are to ensure efficient utilization of authorized channels and to prevent warehousing of spectrum while also considering the licensee’s need for operational flexibility.<sup>18</sup> When

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<sup>10</sup> In July 2004, the Commission adopted a *Report and Order* in WT Docket No. 02-55, which reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band. See *Improving Public Safety Communications in the 800 MHz Band, Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*Report and Order*); see also *Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25120 (2004); *Memorandum Opinion and Order*, WT Docket No. 02-55, 20 FCC Rcd 16015 (2005).

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

<sup>12</sup> 47 C.F.R. § 90.157

<sup>13</sup> See *Report and Order*, 19 FCC Rcd at 15073 ¶ 198 & n.516.

<sup>14</sup> See *id.*

<sup>15</sup> 47 C.F.R. § 90.677.

<sup>16</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>17</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>18</sup> See Amendments of Parts 1 and 90 of the Commission’s Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7299 ¶ 14 (1991).

the Commission adopted the rule, it declined to codify any specific reasons that would permit the discontinuance of operations without automatic cancellation, and was not inclined to carve out any special, flexible exemptions from the rule for certain classes of licensees.<sup>19</sup> The Commission stated that any licensees experiencing special circumstances could request a waiver of Section 90.157, and each request would be evaluated on a case-by-case basis.<sup>20</sup> In this instance, Mecklenburg discontinued operations during 2005 for reasons not related to band reconfiguration. Mecklenburg states that it must maintain the non-operating status of Station WPVU567 until the County's 800 MHz channels have been reconfigured. As Mecklenburg states, "To place WPVU567 back into service, only to have to shut it down and adjust to conform with the changes required by the 800 MHz reconfiguration order, will waste resources and disrupt effective public safety communication."<sup>21</sup> We believe that grant of the instant waiver request would not frustrate the underlying purpose of the rule because the waiver will ensure that Mecklenburg has the flexibility to make necessary improvements to its system without incurring unnecessary costs and delays.

7. Grant of Mecklenburg's waiver request will serve the public interest. According to Mecklenburg, Station WPUV567 will be used to respond to emergencies in Charlotte, North Carolina.<sup>22</sup> "This difficult RF environment, with numerous high rise buildings and steel building structures, has required considerable engineering and technical effort to ensure that emergency communications for police, fire, emergency medical services and other public safety services provide dependable transmission and reception and that WPVU567's integration into the region wide system is critical."<sup>23</sup> Mecklenburg states that the County/City project is a multiyear effort to improve "the region's wireless communications infrastructure through the design, construction and implementation of the digital overlay for police and emergency services."<sup>24</sup> The effort, Mecklenburg states, "is directed toward improvements in the quality of communications, more efficient use of spectrum resources and providing interoperability among agencies."<sup>25</sup> Mecklenburg adds that the "region's radio system is a critical communications vehicle for not only traditional public safety uses, but for the expanding demands related to public health and safety."<sup>26</sup> Mecklenburg concludes that granting the instant waiver request will further these important policies.<sup>27</sup> We believe that Mecklenburg has demonstrated that the flexibility requested to implement the County/City project will serve the public interest in achieving reliable and interoperable public safety communications. Accordingly, we grant Mecklenburg's request to maintain Station WPVU567 non-operational for a period longer than one year. Specifically, we grant a waiver of Section 90.157 until Station WPVU567 is reconfigured, or the completion of 800 MHz rebanding in North Carolina, whichever occurs first.<sup>28</sup>

8. Accordingly, IT IS ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Section 1.925 of the Communications Act of 1934, as amended, 47 C.F.R. § 1.925, that the waiver request filed by the County of Mecklenburg on

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Waiver Request at 2.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> After this waiver expires, Mecklenburg shall file a construction notification on FCC Form 601.

January 11, 2006 in connection with FCC File No. 0002443428 IS GRANTED, and application FCC File No. 0002443428 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

9. This action is taken pursuant to delegated authority pursuant to Sections 0.131 (a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a), 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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