

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

In the Matter of)	
)	
CITY OF LONG BEACH, CALIFORNIA)	FCC File No. 0002369871
)	
Request for Waiver of Section 90.20(d)(81) of the)	
Commission's Rules to Allow Use of 25 kHz)	
Bandwidth Emissions in the 450-470 MHz Band)	

ORDER

Adopted: March 6, 2007**Released: March 7, 2007**

By the Chief, Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. We have before us an application and waiver request filed by the City of Long Beach, California (Long Beach).¹ Long Beach seeks a waiver of Section 90.20(d)(81) of the Commission's rules in order to exceed the authorized bandwidth on three channels in the 450-470 MHz band.² For the reasons discussed below, we grant Long Beach's waiver request.

II. BACKGROUND

2. Long Beach operates a private land mobile radio (PLMR) system of base stations and mobile units that supports public safety communications throughout Long Beach, California.³ Long Beach holds eleven licenses in the Public Safety pool and is authorized to operate on over twenty VHF and UHF frequency pairs.⁴ Long Beach is in the process of constructing a new airport security operations center (ASOC), which will consolidate the radio communications of its airport security, police, and fire personnel.⁵ At the ASOC, Long Beach proposes to construct a fixed transmitter that will relay communications from dispatch operators located at the ASOC to Long Beach's network of base stations.⁶ The proposed fixed transmitter at the ASOC will transmit on mobile service frequencies in the VHF and

¹ FCC File No. 0002369871 (filed on Dec. 7, 2005).

² See attachment to FCC File No. 0002369871 (Waiver Request).

³ *Id.* at 1.

⁴ Long Beach is licensed to operate stations KMA715, KMA651, KDO236, KTP996, KDF372, KMF644, KMK324, WNMQ356, WNQI870, WNMQ357, and WPNQ865.

⁵ Waiver Request at 1.

⁶ *Id.*

UHF band in order to access Long Beach's network of base stations in the same manner as a mobile or portable unit.⁷

3. Long Beach states that it must install compatible equipment at the ASOC if its proposed base station is to access the rest of the network.⁸ For instance, because Long Beach's network of base stations operates with 25 kHz bandwidth equipment on all channels, Long Beach states that it must install compatible 25 kHz bandwidth equipment at the ASOC.⁹ Long Beach therefore seeks a waiver of Section 90.20(d)(81) in order to transmit at the ASOC using 25 kHz bandwidth equipment because three of the frequencies proposed in its application – 458.2250 MHz, 458.7000 MHz and 458.8500 MHz – are immediately adjacent to channels designated for public safety interoperability communications.¹⁰ Section 90.20(d)(81) limits the authorized bandwidth on these frequencies to a maximum of 11.25 kHz because the channels are immediately adjacent to channels designated for public safety interoperability communications.¹¹

III. DISCUSSION

4. 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;¹² 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.¹³ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁴ Based on the information before us, we conclude that a grant of the waiver request is warranted.

⁷ See FCC File No. 0002369871. This type of station typically is referred to as a control station. A control station is defined as an operational fixed station that automatically controls, through its transmissions, the emissions or operations of another radio station at a specified location. See 47 C.F.R. § 90.7.

⁸ Waiver Request at 1.

⁹ *Id.*

¹⁰ *Id.* Long Beach seeks to license several frequencies at its proposed fixed site at the ASOC. While Long Beach seeks a waiver of Section 90.20(d)(81) specifically with respect to frequencies 458.7000 MHz and 458.8500 MHz, we observe that its waiver request overlooks frequency 458.2250 MHz, which is also adjacent to channels designated for public safety interoperability communications. Because Long Beach's application requires a waiver of Section 90.20 (d)(81) in order to operate with 25 kHz bandwidth equipment on frequency 458.2250 MHz, we include frequency 458.2250 MHz in our analysis of the instant waiver request.

¹¹ 47 C.F.R. § 90.20(d)(81). Section 90.20(d)(81) provides, "After December 7, 2000, new stations will only be licensed with an authorized bandwidth not to exceed 11.25 kHz. Licensees authorized prior to December 7, 2000 may continue to use bandwidths wider than 11.25 kHz on a co-primary basis until January 1, 2005." *Id.* The four UHF interoperability channel pairs are: 453/458.2125 MHz, 453/458.4625 MHz, 453/458.7125 MHz, and 453/458.8625 MHz. See 47 C.F.R. § 90.20(d)(80).

¹² 47 C.F.R. § 1.925(b)(3)(i).

¹³ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corporation, Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 ¶ 6 (2003).

5. The underlying purpose of the Section 90.20(d)(81) is to reduce the possibility of interference to licensees operating on adjacent interoperability channels.¹⁵ Specifically, the Commission limits the authorized bandwidth on channels separated in frequency by only 12.5 kHz from interoperability channels.¹⁶ The Commission limits the authorized bandwidth on these channels to 11.25 kHz.¹⁷ The bandwidth limitation applies to new stations authorized on these channels after the adjacent-channels become available primarily for public safety interoperability communications.¹⁸ Existing licensees authorized to operate before December 7, 2000, were permitted to operate with a wider bandwidth on a co-primary basis until January 1, 2005.¹⁹ After that date, all stations, whether new or existing, operating on channels adjacent to the interoperability channels are required to either: (a) operate with 11.25 kHz authorized bandwidth in order to retain co-primary status, or (b) operate with authorized bandwidths greater than 11.25 kHz on a secondary basis to adjacent channel interoperability operations.²⁰

6. In the instant case, Long Beach currently is authorized to operate its existing network on the frequencies at issue with 25 kHz bandwidth equipment on a secondary basis throughout Long Beach, California.²¹ Long Beach states that it has chosen to continue its 25 kHz bandwidth operations because reducing to 11.25 kHz authorized bandwidth would require replacement of Long Beach's entire radio equipment infrastructure.²² Long Beach states that an overhaul of its entire communications system would entail a multi-year planning and budgetary effort on its part.²³ Since the equipment Long Beach intends to install at its proposed ASOC site must match the "fit, form and function" of its existing network, Long Beach seeks a waiver of Section 90.20(d)(81) to operate compatible 25 kHz bandwidth equipment at the ASOC site on frequencies 458.2250 MHz, 458.7000 MHz and 458.8500 MHz.²⁴

7. Based on the information before us, we find that granting the waiver request in this instance would not frustrate the underlying purpose of the rule. Our analysis of Long Beach's application indicates that the 39 dBu F(50,50) service contour of the proposed fixed station will not extend beyond Long Beach's currently licensed mobile service area on the subject frequencies.²⁵ Long Beach's proposed operations at the ASOC with a bandwidth greater than 11.25 kHz must be secondary to adjacent channel interoperability operations.²⁶ We therefore believe that granting Long Beach's proposal would not

¹⁵ See Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, *Third Memorandum Opinion and Order and Third Report and Order*, 15 FCC Rcd 19844, 19884 ¶ 89 (2000).

¹⁶ See *id.*; 47 C.F.R. § 90.20(d)(81).

¹⁷ 47 C.F.R. § 90.20(d)(81).

¹⁸ *Id.* The adjacent channels became available primarily for public safety interoperability communications on December 7, 2000. See 47 C.F.R. § 90.20(d)(80).

¹⁹ See 47 C.F.R. § 90.20(d)(80).

²⁰ *Id.*; 47 C.F.R. §§ 90.20(d)(81). Secondary operations may not cause interference to primary interoperability use.

²¹ Long Beach is authorized to operate on frequency 458.2250 MHz under call sign KTP996, frequency 458.7000 MHz under call sign KDF372 and frequency 458.8500 MHz under call sign KMK324.

²² Waiver Request at 2.

²³ *Id.*

²⁴ *Id.*

²⁵ See licenses KTP996, KDF372 and KMK324.

²⁶ See 47 C.F.R. § 90.20(d)(81). We note that all Public Safety Radio Pool licensees operating in the 150-174 MHz and 421-512 MHz bands must migrate completely to 12.5 kHz narrowband technology by January 1, 2013. See 47 C.F.R. § 90.209(b)(5).

impede the Commission's goals to protect licensees operating on adjacent interoperability channels from interference. We also believe that granting the waiver request in this instance would be in the public interest to the extent the ASOC will provide an interface for police, airport security, fire, and local government dispatch operators to Long Beach's existing communications systems in a compatible and redundant manner.²⁷

IV. CONCLUSION

8. Based on the information before us, we find that Long Beach has satisfied the Commission's waiver criteria to support its request for a waiver of Section 90.20(d)(81) of the Commission's rules. Specifically, Long Beach may operate 25 kHz bandwidth equipment on the frequencies 458.2250 MHz, 458.7000 MHz and 458.8500 MHz at the fixed location specified in its application.

V. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, 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, that the Waiver Request filed by the City of Long Beach with respect to application FCC File No. 0002369871 IS GRANTED as noted herein.

10. IT IS FURTHER ORDERED that the Policy Division of the Public Safety and Homeland Security Bureau SHALL PROCESS application FCC File No. 0002369871 in accordance with this *Order* and the Commission's rules.

11. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Dana Shaffer
Chief, Policy Division
Public Safety and Homeland Security Bureau

²⁷ Waiver Request at 1. We also believe that this decision reduces the likelihood of creating a situation of "fractured" interoperability "islands" of 12.5 kHz users and 25 kHz users with dissimilar equipment. *See* 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, *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rulemaking and Order*, 19 FCC 25045, 25052 ¶ 13 (2004).