



Federal Communications Commission  
Washington, D.C. 20554

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DA-07-3130

Thomas M. Hall  
Engineering Manager  
Highway Information Systems  
4021 Stirrup Creek Drive, Suite 100  
Durham, NC 27703

Re: Edgecombe County Emergency Management  
FCC File No. 0001993632

Dear Mr. Hall,

On January 4, 2005, you filed an application<sup>1</sup> and an associated request for waiver<sup>2</sup> on behalf of Edgecombe County Emergency Management (Edgecombe), Tarboro, North Carolina, to modify its license for Conventional Public Safety Pool Station WQBV479, Edgecombe, North Carolina, a Travelers' Information Station (TIS). Specifically, Edgecombe seeks to increase transmitter output power from ten watts to sixty watts at one centrally-located station during emergencies (Location 1).<sup>3</sup> Consequently, Edgecombe seeks a waiver of Section 90.242(b)(4)(iii) and (iv) of the Commission's rules.<sup>4</sup> For the reasons set forth below, we dismiss Edgecombe's application and associated request for waiver. We note, however, that the concerns expressed in the request may be better addressed by a special temporary authority (STA) rather than a waiver of the Commission's rules, as explained below.

By way of background, a TIS is used by Public Safety Pool licensees to transmit over the AM broadcast band (530-1700 kHz) non-commercial voice information pertaining to traffic and road conditions, traffic hazards and travel advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest.<sup>5</sup> Section 90.242(b)(4)(iii) limits the transmitter RF output power to ten watts to enable the user to comply with Section 90.242(b)(4)(iv), which limits the field strength to two mV/m at a distance of 1.50 kilometers from the transmitter.<sup>6</sup>

Edgecombe is authorized under call sign WQBV479 to operate a system of six TIS transmitters located in various portions of the county on frequency 1610 kHz. Edgecombe proposes to operate only from Location 1 on its existing license, during emergencies.<sup>7</sup> To replicate the coverage of its complete system from Location 1, however, Edgecombe requests to increase its transmitter output power from the maximum allowable ten watts to sixty watts.<sup>8</sup>

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<sup>1</sup> FCC File No. 0001993632, filed Jan. 4, 2005.

<sup>2</sup> *Id.*, attached Exhibit A, Waiver Request of Edgecomb [sic] County Emergency Management (Waiver Request)

<sup>3</sup> See Waiver Request at 1. See also FCC File No. 0001993632, attached Exhibit B.

<sup>4</sup> 47 C.F.R. § 90.242(b)(4)

<sup>5</sup> 47 C.F.R. § 90.242(a)(7).

<sup>6</sup> 47 C.F.R. § 90.242(b)(4)(iii), (iv).

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

<sup>8</sup> *Id.* See also 47 C.F.R. § 90.242(b)(4)(iii).

Edgecombe cites two main reasons for requesting a waiver to operate a higher-power mode at a single site during emergencies. First, U.S. Route 64 through Edgecombe County is an evacuation route in the event of hurricanes and for the Shearon Harris Nuclear Plant in Wake County, North Carolina.<sup>9</sup> In addition to traffic problems that must be communicated, there is often extensive flooding, necessitating dissemination of rapidly changing information on passability of roads to travelers.<sup>10</sup> Since there are few alternate routes, Edgecombe states that it is desirable to provide alternative route information over as large an area as possible.<sup>11</sup> Edgecombe states that there is no commercial radio station in the county that can be used for local traffic messages.<sup>12</sup> Second, due to Location 1's close proximity to Edgecombe's headquarters, Edgecombe believes a single TIS transmitter at Location 1 can be directly controlled, easily monitored for service disruptions, and can maintain service during power outages through automatic switching to alternate power sources.<sup>13</sup> On the other hand, the outlying TIS facilities may face power outages and communications delays, and are out of direct monitoring range.<sup>14</sup>

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 requested waiver would be in the public interest;<sup>15</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>16</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>17</sup> Based on the information before us, we conclude that Edgecombe has not satisfied the requirements in Section 1.925 for grant of a waiver request.

We find that the underlying purpose of the TIS rules would not be frustrated by application of the rules to the present case; in fact, application of the rules serves the very purpose of the rule, that "intended programming on Travelers Information Stations would normally consist of . . . specific information pertinent only to travelers within a very limited reception area,"<sup>18</sup> *i.e.*, "local information of interest only to travelers at specific locations (*e.g.*, a highway intersection, an airport entrance and parking facility, a county park, etc.)."<sup>19</sup> For this reason, the Commission restricted TIS transmitting sites to the vicinity of specific destinations or landmarks,<sup>20</sup> and specifically stated that it did not intend for a TIS to broadcast

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<sup>9</sup> Waiver Request at 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

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

<sup>14</sup> *Id.*

<sup>15</sup> 47 C.F.R. § 1.925(b)(3)(i).

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

<sup>17</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); Birach Broad Corp., *Memorandum Opinion and Order*, 18 FCC Rcd. 1414, 1415 (2003).

<sup>18</sup> Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public, *Report and Order*, Docket No. 20509, 67 F.C.C. 2d 917, 919 ¶ 6 (1977) (*TIS R&O*); *see also id.* at 923 ¶ 22 ("As intended, TIS is to be a source of localized information pertinent only to the traveler in the immediate proximity of the station."), 929 ¶ 40 ("use of low power systems to provide highly localized information of immediate interest to motorists . . . is the use contemplated of TIS systems").

<sup>19</sup> *Id.* at 919 ¶ 7.

<sup>20</sup> *See id.* at 923 ¶ 23.

“area-wide” information.<sup>21</sup> Thus, Edgecombe’s objective—to provide area-wide information to individuals anywhere in the county, and not just to a particular area—is in conflict with the intended purpose of the rules to limit such information and not allow a travelers’ information station to be used for area-wide information. In addition, we conclude that, although Edgecombe has demonstrated a compelling reason, it has not demonstrated unique or unusual circumstances or that application of the rule is unduly burdensome or that it has no reasonable alternative. First, Edgecombe is not the only jurisdiction subject to hurricanes, nor is it the only county in the country with evacuation routes. Edgecombe offers no explanation of how the county is different in this regard from other such jurisdictions in terms of the usefulness of alerting individuals over a wide area of emergency security information. There is no evidence that limiting the transmitter output in accordance with our rules has posed an undue burden. With regard to whether Edgecombe has an alternative,<sup>22</sup> we find that an alternative to the requested waiver clearly exists in the form of a more narrowly tailored remedy: in the event of an emergency requiring increased transmitter output, Edgecombe may request STA from the Commission to increase such output.

In fact, we believe that the STA process is a more appropriate vehicle to address the emergency needs of Edgecombe. Moreover, because the STA process allows applicants to obtain temporary relief of certain rules on an expedited basis under certain conditions, we believe that this process would enable Edgecombe to utilize TIS during emergency situations.<sup>23</sup>

Also, Edgecombe’s stated desire to centralize its operations<sup>24</sup> is inconsistent with an assertion that the increased transmitter output would only be used in the event of an emergency. Use of an STA is more appropriate, and ensures that the increased transmitter output is only used when needed, in the event of an emergency. In the event of a current or impending emergency, therefore, we encourage Edgecombe to consider filing an application for STA to obtain temporary relief from our rules.

Accordingly, we conclude that the Edgecombe has not met either prong of the waiver standard to justify the relaxation of the TIS power limitation.

Accordingly, IT IS ORDERED pursuant to Sections 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 FCC File No. 00001993632 and the associated request for waiver, filed by the Edgecombe Emergency Management, are DISMISSED.

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

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<sup>21</sup> *Id.* at 919 ¶ 8.

<sup>22</sup> We do not doubt Edgecombe’s contention that there is no commercial station in the county to broadcast local traffic messages; however, this fact is not relevant to whether Edgecomb has an alternative to the waiver they seek. Moreover, a permanent waiver to allow Edgecombe’s TIS station to operate at six times the normal transmitter output could deter commercial stations from serving the county.

<sup>23</sup> *See* 47 C.F.R. §1.931.

<sup>24</sup> *See* Waiver Request at 1.

cc: Mark Walters  
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