

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

In the Matter of
COUNTY OF ARLINGTON, VIRGINIA
Application for New License and Application to
Modify Station WNTK494 in Arlington, VA
File Nos. 0002465045; 0002464977

ORDER

Adopted: January 30, 2007

Released: January 31, 2007

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

I. INTRODUCTION

1. We have before us two applications and associated waiver requests filed by the County of Arlington, Virginia (Arlington).1 Arlington seeks a waiver of Section 1.924(e)(3) of the Commission's Rules2 in order to operate new 18 GHz microwave paths within the Washington, DC exclusion zone.3 For the reasons discussed below, we grant the waiver request.

II. BACKGROUND

2. Arlington is in the process of upgrading its county-wide 800 MHz Private Land Mobile Radio system.4 The existing four-site 800 MHz system is connected via 18 GHz digital microwave and has been licensed since 1990.5 In upgrading its 800 MHz radio system, Arlington seeks to modify its existing Ritz-Carlton site by installing a new 18 GHz path and adding a frequency to an existing 18 GHz path.6 Arlington also intends to install two 18 GHz paths at a new site located at the Anser Building (Anser) in Arlington, VA.7 The Ritz-Carlton and Anser sites are located within the restricted "Quiet Zone" described in Section 1.924(e)(3) of the Commission's Rules.8

3. Arlington seeks a waiver because Section 1.924(e)(3) of the Commission's Rules states that no applicant seeking authority to operate a microwave facility in the 18 GHz band will be accepted

1 FCC File Nos. 0002464977, 0002465045 and accompanying waiver request (filed January 27, 2006) (Waiver Request).

2 47 C.F.R. § 1.924(e)(3).

3 See generally Waiver Request.

4 See Letter from Lisa Thompson, Radio Systems Manager, Arlington County, to Mr. Badri Younes, OSD-NII (May 3, 2006) (Thompson Letter).

5 Id. at 1.

6 See generally Waiver Request.

7 Id.

8 Id. citing 47 C.F.R. § 1.924(e)(3).

for filing if the proposed station operates within 20 kilometers of the geographic area specified in the rule.<sup>9</sup>

### 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;<sup>10</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>11</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>12</sup> We conclude that Arlington has shown that its request should be granted under the first prong of the waiver standard.

5. The underlying purpose of Section 1.924(e)(3) of the Commission's Rules is to create a quiet zone for fixed microwave operations in the 18 GHz band in and around Washington, D.C. to protect sensitive Government satellite earth stations operating in the Washington D.C. area.<sup>13</sup> Arlington contends that adding 18 GHz paths at the existing Ritz-Carlton site and proposed Anser site will present no interference issues.<sup>14</sup> Arlington notes that the existing Ritz-Carlton site, which is located 18.2 kilometers from the center of the "Quiet Zone," has to date presented no interference issues.<sup>15</sup> In addition, Arlington notes that the proposed Anser site—at 19.7 kilometers is further away from the center of the "Quiet Zone" than the Ritz-Carlton site (18.2 kilometers) and will therefore be even less likely to present interference issues.<sup>16</sup> Arlington also contends that there are no alternative frequency bands available to it. Alternative frequency bands, such as, the 23 GHz band, are not reliable for the required distances, and are susceptible to rain outages.<sup>17</sup> Arlington also states that the 11 GHz band would require larger dishes, and as an urban entity operating on existing buildings, this would be impracticable.<sup>18</sup>

6. Moreover, we have coordinated the subject applications with the Interdepartment Radio Advisory Committee (IRAC) of the National Telecommunications and Information Administration (NTIA). IRAC has determined that the proposed 18 GHz transmitters would present no interference issues. Under such circumstances, the Commission has determined that application of Section 1.924(e) of

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<sup>9</sup> 47 C.F.R. § 1.924(e)(3).

<sup>10</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>11</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>12</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *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 Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

<sup>13</sup> See 47 C.F.R. § 1.924(e); *18 GHz Order*, 13 FCC Rcd at 3581 ¶ 4 (explaining that the Commission's adoption of the quiet zones will ensure that Government satellite Earth stations important to national security will operate without harmful interference from non-Government operations).

<sup>14</sup> See Thompson Letter at 2.

<sup>15</sup> *Id.*

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

<sup>17</sup> *Id.* at 1.

<sup>18</sup> *Id.*

the Commission's Rules<sup>19</sup> is unnecessary to ensure protection of Government satellite earth stations from harmful interference from non-Government operations.<sup>20</sup>

7. Lastly, we find that the public interest would be served by granting Arlington a waiver of Section 1.924(e)(3) of the Commission's Rules.<sup>21</sup> We believe that Arlington's filings demonstrate that access to additional microwave paths is needed in order to promote effective public safety communications. We agree with Arlington that grant of the application and waiver request would be in the public interest as it will allow Arlington to improve and upgrade its public safety radio system.<sup>22</sup> Arlington is the primary first responder to the Pentagon, Henderson Hall and numerous Department of Defense installations in the County, and serves as the secondary Fire/EMS responder to Ft. Myer and Washington Reagan National Airport.<sup>23</sup> The licenses will be used by Arlington to preserve and promote critical communications that protect the safety of life, health, and property.<sup>24</sup> We therefore find that granting the application is consistent with the public interest.

#### IV. ORDERING CLAUSES

8. 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 Requests filed by the County of Arlington with respect to applications FCC File No. 0002465045 and 0002464977 ARE GRANTED as noted herein.

9. IT IS FURTHER ORDERED that the Policy Division of the Public Safety and Homeland Security Bureau SHALL PROCESS application FCC File Nos. 0002465045 and 0002464977 in accordance with this *Order* and the Commission's rules.

10. 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

Michael J. Wilhelm  
Deputy Chief, Policy Division  
Public Safety and Homeland Security Bureau

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<sup>19</sup> 47 C.F.R. § 1.924(e).

<sup>20</sup> See WGN Continental Broadcasting Company, *Memorandum Opinion and Order*, DA 06-2530, 21 FCC Rcd 14503 (WTB 2006).

<sup>21</sup> 47 C.F.R. § 1.924(e)(3).

<sup>22</sup> See Waiver Request.

<sup>23</sup> Thompson Letter at 2.

<sup>24</sup> See Waiver Request. Section 1 of the Act defines one of the Commission's over-arching purposes as "promoting safety of life and property through the use of ... radio communication." 47 U.S.C. § 151.