

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

In the Matter of
NANTUCKET, MASSACHUSETTS
Request for Waiver of Section 90.615(a)
of the Commission's Rules
File No. 0003161195

ORDER

Adopted: November 1, 2007

Released: November 2, 2007

By the Associate Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. We have before us an application and associated waiver request filed by the Town of Nantucket, Massachusetts (Nantucket) seeking authority to expand its public safety land mobile operations on frequency pairs 809.2375/854.2375 and 809.4375/854.4375 MHz on Nantucket Island. Nantucket seeks a waiver of Section 90.615(a) of the Commission's rules in order to use these two frequency pairs at three new transmitter sites on the island prior to the end of the 800 MHz rebanding process, the date by which these frequencies would normally become available for public safety use. For the reasons discussed herein, we grant Nantucket's request.

II. BACKGROUND

2. Nantucket currently operates a conventional analog 800 MHz system using these two frequency pairs at a single site under call sign WPAJ872. Nantucket states it is currently in the process of implementing an island-wide digital trunked four channel system that will use the same two frequency pairs. The new system will employ three new sites and will provide improved communications for public safety and municipal agencies over all of Nantucket Island. It states that the footprint of the new system will not extend over land beyond the island.

3. Outside of the area served by station WPAJ872, Sprint holds the Economic Area license that includes frequency pairs 809.2375/854.2375 and 809.4375/854.4375 MHz. As part of rebanding, Sprint will vacate these frequencies in their entirety at the end of the 36-month rebanding period, at

1 See FCC File No. 0003161195 and accompanying waiver request filed by Town of Nantucket, September 4, 2007 (Nantucket Waiver Request).

2 47 C.F.R. § 90.615(a).

3 Nantucket Waiver Request at 1.

4 The island is approximately twenty-five miles from the mainland coast. See Nantucket Waiver Request at 1.

5 Sprint is the Economic Area (EA) licensee of EA 003, Block FF (854.1375-854.7375 MHz) under call sign WPRQ635, which includes the two frequency pairs at issue here in the Nantucket, Massachusetts area.

6 See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, Third Memorandum (continued....)

which point Section 90.615 of the Commission's rules provides that the frequencies will become available for licensing to eligible public safety entities.<sup>7</sup> Thus, Nantucket cannot apply for a license for these frequency pairs at new sites until the conclusion of rebanding.<sup>8</sup> Nantucket, however, wishes to expand its operations on these frequency pairs before rebanding is concluded, and thus seeks a waiver of Section 90.615.<sup>9</sup> Nantucket has obtained Sprint's consent for use of the two frequency pairs at the proposed new transmitter locations.<sup>10</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; 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> We conclude that Nantucket's request should be granted under this waiver standard.

5. In this case, allowing Nantucket to use these two frequency pairs at three new sites on Nantucket Island will improve its ability to provide public safety service to all portions of the island. We believe that requiring Nantucket to delay its system upgrade would be contrary to the public interest. Grant of the waiver will also have minimal impact on other public safety entities in the area that might have an interest in obtaining new channels after rebanding is completed.<sup>12</sup> Nantucket is already licensed for these two frequency pairs on Nantucket Island. Thus, these frequencies would be of little or no utility to other public safety entities seeking to serve the island or the adjacent mainland, because any such entity they would have to protect Nantucket's existing operations.<sup>13</sup>

### IV. ORDERING CLAUSES

6. 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 Town of Nantucket, Massachusetts with respect to application FCC File No. 0003161195 IS GRANTED as noted herein.

7. IT IS FURTHER ORDERED that the Policy Division of the Public Safety and Homeland Security Bureau SHALL PROCESS application FCC File No. 0003161195 in accordance with this *Order* and the Commission's rules.

(Continued from previous page) \_\_\_\_\_  
*Opinion and Order*, FCC 07-167 ¶ 28 (2007).

<sup>7</sup> See 47 C.F.R. § 90.615.

<sup>8</sup> *Id.*

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

<sup>10</sup> See letter from Richard Edwards, Legal Analyst, Sprint Nextel Corporation, to the Public Safety and Homeland Security Bureau, Federal Communications Commission (July 2, 2007) attached to application 0003161195.

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

<sup>12</sup> Our decision here is consistent with our recent waiver grant to the State of Minnesota under similar circumstances. See State of Minnesota, *Order*, 22 FCC Red 17485 (PSHSB 2007).

<sup>13</sup> Because the three new transmitter sites are farther from the mainland than Nantucket's existing base station, we conclude that their addition will have virtually no impact on the availability of the channels on the mainland.

8. 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

David Furth  
Associate Bureau Chief  
Public Safety and Homeland Security Bureau