

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

In the Matter of)
CITY OF LOS ANGELES) File Nos. 0003096479, 0003096484
Request for Waiver of Section 90.311(a)(2) of the)
Commission's Rules)

ORDER

Adopted: June 5, 2008

Released: June 5, 2008

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

I. INTRODUCTION

1. The City of Los Angeles, California (the City) filed two applications and request for waiver of Section 90.311(a)(2) of the Commission's rules to use three Industrial/Business (I/B) Pool frequency pairs in the 470-512 MHz band for public safety communications. For the reasons stated below, we grant the City's request.

II. BACKGROUND

2. On behalf of its Harbor Department, the City seeks authority to operate I/B frequency pairs 472/475.1875, 472/475.2125, and 508/511.0375 MHz. The City recognizes that use of the channels is limited by Section 90.311(a)(2). This rule provides that once a channel in the 470-512 MHz band is assigned in a given urbanized area, subsequent authorizations to use the channel within the same urbanized area will be granted only to users of the same category. The City notes that the requested channels "have been assigned in the Business/Industrial [P]ool to Radio Communications Association (RCA) and Comm Enterprises, LLC (Comm)." The City observes that it would require a waiver of Section 90.311(a)(2) in order to use the desired channels, because it intends to use them for public safety purposes.

1 47 C.F.R. § 90.311(a)(2).

2 See File No. 0003096479 (filed July 3, 2007) and accompanying Description of Application and Request for Rule Waiver, and Frequency Use Statement; File No. 0003096484 (filed July 3, 2007) with identically-worded attachments. These two applications concern a single communications system. For convenience, we refer to the identically-worded attachments as Waiver Request and Frequency Use Statement.

3 See Waiver Request at 1.

4 Id.

5 Urbanized areas are listed and defined in 47 C.F.R. §§ 90.303, 90.305.

6 47 C.F.R. § 90.311(a)(2).

7 Waiver Request at 1. RCA is licensed on frequency pairs 472/475.1875 and 508/511.0375 MHz under call sign WQDY898; and Comm is licensed on frequency pair 472/475.2125 MHz under call signs KJV843 and WIJ316, and frequency pair 472/475.1875 MHz under call signs WCA547, WIH681, WIJ316, WIJ663, and WIK613.

8 Waiver Request at 1.

3. The City notes, however, that the pertinent co-channel licensees, RCA and Comm, have provided it with letters of concurrence.⁹ RCA and Comm both concur with the City's proposed co-channel operation at locations closer than the Commission's co-channel separation rules¹⁰ to their respective stations, and both agree to accept any interference resulting from reduced separation between the stations.¹¹ The City further notes RCA and Comm "plan, as indicated in their concurrence letters, upon FCC grant of the Application, to cancel their existing authorizations, leaving the City as the sole licensee of the Channels in the Los Angeles metropolitan area."¹² In light of these circumstances, the City argues that grant of the waiver would make spectrum available for public safety use, consistent with a Commission Report to Congress, "in which it committed to examining how it could make additional spectrum available for public safety operations."¹³

4. The City also argues that the purpose of Section 90.311(a)(2) is to ensure that entities sharing channels in the 470-512 MHz band are engaged in compatible operations, so as to limit the possibility of co-channel interference,¹⁴ and that the rule is intended to avoid, among other things, public safety entities being required to share channels in the same geographic area with entities eligible in the Industrial/Business Pool.¹⁵ The City states that, upon cancellation of the licenses held by co-channel licensees RCA and Comm, the City would be the only licensee on the subject frequencies and, thus, the underlying purpose of the rule would not be served by application in this instance.¹⁶

III. DISCUSSION

5. 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;¹⁷ 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.¹⁸ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and

⁹ *Id.* See File Nos. 0003096479 and 0003096484, attached Letter from Henry J. Matson, Vice President on behalf of RCA, to Public Safety and Homeland Security Bureau, Federal Communications Commission (FCC) (June 7, 2007) (RCA Letter); Letter from James A. Kay, Jr. on behalf of Comm to Public Safety and Homeland Security Bureau, FCC (June 4, 2007) (Comm Letter). Both File No. 0003096479 and File No. 0003096484 contain copies of these same documents. We refer to the documents collectively as Letters of Concurrence.

¹⁰ See 47 C.F.R. § 90.313(c); (The Commission allows a frequency pair in the 470-512 MHz band to be reassigned 64 kilometers (forty miles) or more from the location of base stations authorized on that pair).

¹¹ See Letters of Concurrence.

¹² Waiver Request at 1 *citing* Letters of Concurrence.

¹³ Waiver Request at 2 *citing* Report to Congress on the Study to Address Short-Term and Long-Term Needs for Allocation of Additional Portions of the Electromagnetic Spectrum for Federal, State and, Local Emergency Response Providers, WT Docket No. 05-157 (Dec. 19, 2005).

¹⁴ Waiver Request at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 47 C.F.R. § 1.925(b)(3)(i).

¹⁸ 47 C.F.R. § 1.925(b)(3)(ii).

circumstances that warrant a waiver.¹⁹ Based on the information before us, we conclude that a grant of the Waiver Request is warranted.

6. In the instant case, we believe that a grant of the Waiver Request under the circumstances presented would not frustrate the purpose of Section 90.311(a)(2); that is, to promote the deployment of compatible communications operations in the 470-512 MHz band and, thus, to reduce instances of co-channel interference.²⁰ Because this rule determines channel availability by category, we find it significant that the City has concurrences from all co-channel Business category licensees, *i.e.*, representatives of a non-public safety category, within the same urbanized area. Additionally, we find that any interference issues are addressed by their concurrence with the City's short-spaced locations and agreement to accept any interference resulting from the reduced separation between the stations.²¹ Based on the information before us, we agree with the City that the purpose of the rule would not be served by application in the instant case.²² To the extent that RCA and Comm indicate their intent to cancel their licenses once grant of the instant applications becomes final,²³ we are further persuaded that the purpose of the rule would not be served by application in the instant case because ultimately, the City would be the only licensed entity on the subject channels in the Los Angeles urbanized area.

7. Further, we believe that granting the requested relief would serve the public interest. According to the City, the proposed system would be used by the City's Harbor Department "to conduct routine and emergency operations for the protection of life and property throughout the area."²⁴ The applicant has established that there is a lack of frequencies available for assignment to public safety agencies in the greater Los Angeles metropolitan area. This showing, coupled with the intended use and overall circumstances presented by the application lead us to find that the public interest would be promoted by affording the City's public safety community the necessary spectrum to enable it to protect the lives and property in its care.²⁵ Accordingly, we find that the Commission's waiver standard has been met, and that a waiver of Section 90.311(a)(2) is warranted.

IV. CONCLUSION

8. Based on the record before us, we find that the City has satisfied the requirements to obtain a waiver of Section 90.311(a)(2). We therefore grant the City's request for waiver.

V. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED that, 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, the requests for waiver associated with the applications, FCC File Nos.

¹⁹ *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).

²⁰ *See* City of Los Angeles, Department of Airports, *Order*, 22 FCC Rcd 1808, 1813 ¶ 13 (PSHSB PD 2007).

²¹ *See* Letters of Concurrence.

²² *See* Waiver Request at 2.

²³ *See* Letters of Concurrence. Comm conditions its license cancellation on resolution of an unrelated pending matter. *See* Comm Letter. We see no reason to delay a grant due to this contingency, given that Comm agrees to accept any interference.

²⁴ *See* Waiver Request at 1.

²⁵ *See, e.g.*, 47 U.S.C. § 151 (one of the Commission's over-arching purposes is to "promot[e] safety of life and property through the use of ... radio communication.").

0003096479 and 0003096484, filed by the City of Los Angeles, California on July 3, 2007, ARE GRANTED, and SHALL BE PROCESSED, consistent 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 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Erika Olsen
Deputy Chief
Public Safety and Homeland Security Bureau