

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

In the Matter of)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86
)	
State of Mississippi Request for Waiver)	

ORDER

Adopted: July 25, 2008

Released: July 25, 2008

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On July 31, 2007, the Commission adopted a *Second Report and Order* revising the rules governing the 700 MHz band.¹ In the *Second Report and Order*, the Commission redesignated ten megahertz of public safety 700 MHz spectrum (763-768/793-798 MHz) for the purpose of establishing a nationwide, interoperable broadband public safety communications network. In order to accommodate this broadband allocation, the Commission consolidated the public safety narrowband channels so that they are located at 769-775/799-805 MHz.² Subject to certain conditions and limitations, the Commission determined that the Upper 700 MHz Band D Block licensee will pay the costs associated with relocating public safety narrowband operations to the consolidated channels.³ To facilitate the relocation process, and clearly define the costs that would be entitled to reimbursement, the Commission required every 700 MHz band public safety licensee, whether holding individual narrowband authorizations or operating pursuant to a State License, to certify the number of narrowband mobile and portable handsets and base stations serving these handsets in operation as of August 30, 2007 (30 days following adoption of the *Second Report and Order*).⁴ The Commission also prohibited authorization, whether pursuant to individual license or State License, of any new narrowband operations outside of the consolidated channels as of August 30, 2007, and cautioned that any equipment deployed outside of the consolidated channels after August 30, 2007 would be ineligible for relocation funding.⁵

¹ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*Second Report and Order*).

² *Id.* at ¶ 329.

³ *Id.* at ¶ 336.

⁴ *Id.* at ¶¶ 336-337.

⁵ *Id.* at ¶ 339.

2. On September 13, 2007, the State of Mississippi (Mississippi) requested waiver relief concerning narrowband operations outside of the consolidated channels.⁶ Mississippi requests waiver of the provisions of the *Second Report and Order* prohibiting authorization of new narrowband operations outside the consolidated channels as of August 30, 2007. Mississippi also seeks “assurances that future costs of reprogramming [units deployed after the August 30, 2007 deadline] will be covered pursuant to the *Second Report and Order*.”⁷ For the reasons discussed below, we grant the Waiver Request in part on a limited basis, and defer action on the Waiver Request in all other respects.

II. DISCUSSION

3. As an initial matter, several parties have filed petitions for reconsideration of provisions of the *Second Report and Order*, including the prohibition on authorization of new narrowband operations outside of the consolidated channels following August 30, 2007, and the limitation on cost reimbursement to equipment that was in operation as of August 30, 2007.⁸ In addition, on May 14, 2008, the Commission issued a *Second Further Notice of Proposed Rulemaking* seeking comment on, among other issues, narrowband relocation, including the petitions for reconsideration of the *Second Report and Order*.⁹ In the interests of public safety, we provide Mississippi limited waiver relief of the prohibition on new narrowband operations outside of the consolidated channels after August 30, 2007. As further explained below, the Commission will determine the duration of such relief, and whether Mississippi is entitled to reimbursement for relocation of equipment installed after August 30, 2007, after fully considering the public record submitted in response to the *Second Further Notice*.

4. Section 1.925 states that 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; 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,¹⁰ or the applicant has no reasonable alternative.¹¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹²

5. On November 14, 2007, the Commission adopted and released an Order that granted the Commonwealth of Virginia, Virginia State Police (Virginia) limited interim waiver relief to enable Virginia to continue to deploy new narrowband operations outside of the consolidated narrowband channels.¹³ In this Order, the Commission found that it is in the public interest to “provide interim waiver relief for continued deployment outside of the consolidated narrowband channels where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan

⁶ Letter from Haley Barbour, Governor, State of Mississippi, to Derek Poarch, Chief, Public Safety and Homeland Security Bureau, FCC, filed Sept. 13, 2007 (*Waiver Request*).

⁷ *Id.* at 2.

⁸ See, e.g., Commonwealth of Virginia, Virginia State Police, Petition for Reconsideration, PS Docket No. 06-229, WT Docket No. 96-86 (filed Sept. 24, 2007).

⁹ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *Second Further Notice of Proposed Rulemaking*, WT Docket No. 06-150, PS Docket No. 06-229, FCC 08-128 (2008) (*Second Further Notice*).

¹⁰ 47 C.F.R. § 1.925(b)(3)(i).

¹¹ 47 C.F.R. § 1.925(b)(3)(ii).

¹² See *WAIT Radio v. FCC*, 418 F.2d 1153, 1158-59 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, 22 FCC Rcd 20290 (2007) (*Virginia Order*).

that predates August 30, 2007 for which equipment has been received and/or deployed.”¹⁴ We next examine whether Mississippi satisfies these criteria.

6. In its Waiver Request, Mississippi makes several claims of potential public harm should it be unable to continue to deploy additional narrowband operations following August 30, 2007.¹⁵ Mississippi states that “strict application of the August 30 deadline would not be in the public interest as it would prevent the deployment of a radio system needed now to address damaging hurricanes that may strike the Mississippi coastal area within the next two months.”¹⁶ According to Mississippi, FEMA has contracted with Motorola for the installation of a 700 MHz trunked radio system to be installed at six existing tower sites in the coastal area of Mississippi, which “will improve interoperability, command and control capacity, and provide improved situational awareness for State and Federal officials, especially during contra flow and evacuation operations.”¹⁷ Mississippi adds that the FEMA contract for the 700 MHz equipment was signed on July 6, 2007 and the equipment was programmed for then-current State channels, and delivered to Mississippi on September 7, 2007, with installation commencing September 11, 2007.¹⁸

7. Accordingly, we find that Mississippi has made a sufficient showing of “potential public harm,” based on its representation that its ability to respond to a public safety emergency would be compromised should it be unable to continue to deploy new narrowband operations outside of the consolidated narrowband channels. Further, the FEMA contract for the state’s 700 MHz system was in place in July 2007. Thus, we find that Mississippi has provided sufficient “evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007, for which equipment has been received and/or deployed.” Having satisfied the criteria established by the Commission in the *Virginia Order*, we find it to be in the public interest to grant Mississippi limited interim waiver relief to deploy new narrowband operations outside the consolidated bands following August 30, 2007, until the Commission resolves the outstanding narrowband issues pending in the *Second Further Notice*. For the same reason, we defer ruling on the continued duration of this limited waiver relief, and whether Mississippi would be entitled to cost reimbursement for any new narrowband operations deployed following August 30, 2007, until the Commission rules on the outstanding petitions.

8. Our decision to permit Mississippi to continue to place new narrowband radios into operation after August 30, 2007 is without prejudice to the Commission’s subsequent ruling on these outstanding waiver issues – including whether Mississippi would be entitled to reimbursement for the costs associated with relocating any additional narrowband operations outside of the consolidated narrowband channels that Mississippi deploys after August 30, 2007. To the extent, however, that Mississippi is able to deploy in the consolidated bands and avoid the need for relocation, we encourage it to do so. Such deployment would eliminate any future disruptions to operations due to the need to relocate, and would reduce the overall cost of the relocation process.¹⁹

¹⁴ *Id.* at ¶ 7.

¹⁵ Mississippi supplemented its Waiver Request in response to a request for information by staff of the Commission’s Public Safety and Homeland Security Bureau (PSHSB). See Letter from Robert M. Gurss, Counsel for State of Mississippi, to Jeffrey S. Cohen, Senior Legal Counsel, Public Safety and Homeland Security Bureau, FCC, filed Sept. 17, 2007 (*Supplement Waiver Request*).

¹⁶ *Supplemental Waiver Request* at 1.

¹⁷ *Waiver Request* at 1.

¹⁸ *Id.*

¹⁹ To the extent that waiver of any Commission rules would be required to enable immediate deployment in the consolidated bands, such requests may be filed in accordance with the Commission’s waiver rules, 47 C.F.R. § 1.925. We also note that public safety entities in need of commencing operations in advance of Commission approval of a 700 MHz regional plan should file a request for Special Temporary Authority. See Public Safety and Homeland Security Bureau Reminds 700 MHz Regional Planning Committees of the January 31, 2008 Deadline to Amend 700 MHz Narrowband Plans and Provides Further Guidance, 22 FCC Rcd 21889, 21892 (2007).

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that pursuant to sections 1, 4(i), 301, 303, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 332, and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, THIS ORDER in PS Docket No. 06-229 and WT Docket No. 96-86 is ADOPTED.

10. IT IS FURTHER ORDERED that the Waiver Request filed by the State of Mississippi on September 13, 2007 is GRANTED to the extent discussed herein, and that action on the Waiver Request is DEFERRED IN ALL OTHER RESPECTS.

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

Derek K. Poarch
Chief
Public Safety and Homeland Security Bureau