

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

In the Matter of)
City of Mesa, Arizona, Police Department) FCC File No. 0004383640
Request for Waiver of Section 90.531(b)(1)(iii) of)
the Commission's Rules)

ORDER

Adopted: June 14, 2011

Released: June 14, 2011

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

I. INTRODUCTION

1. Before us is a request for waiver filed by the City of Mesa, Arizona, Police Department (Mesa).1 Mesa requests the licensing of six 700 MHz narrowband interoperability channels for a deployable trunked facility.2 It seeks a waiver of Section 90.531(b)(1)(iii)3 of the Commission's rules to exceed the maximum number of interoperability channels that may be trunked.4 We grant Mesa's waiver request, subject to conditions, because doing so will not frustrate the Commission's intent in enacting Section 90.531(b)(1)(iii), and because it is in the public interest to do so.

1 See FCC File No. 0004383640 (filed Sep. 10, 2010, amended Dec. 14, 2010 and June 1, 2011) at Letter from Randy Thompson, Communications Administrator, City of Mesa, Arizona, Police Department (dated Sept. 2, 2010) (Cover Letter); Letter from Randy Thompson, Communications Administrator, City of Mesa, Arizona, Police Department (dated Dec. 14, 2010) (Waiver Request); and Letter from Randy Thompson, Communications Administrator, City of Mesa, Arizona, Police Department (dated June 1, 2011) (Supplemental Waiver Request).

2 Waiver Request. The proposed facility incorporates a freestanding six-channel P25 trunked 700 MHz radio system installed in a "deployable goose-neck style trailer." Id. at 1. Mesa states that "[t]his transportable trunk[ed] system will provide radio coverage for first responders and other emergency personnel in areas that are not otherwise covered by regional radio systems." Cover Letter at 1. It adds that "[t]his system can also be used to provide backup support of existing 700/800 MHz public safety radio systems." Id. The Statewide Interoperability Executive Committee (SIEC) concurs with Mesa's request. See FCC File No. 0004383640 at Letter from Messrs. Paul Wilson and Mark Venuti, SIEC Co-Chairs (dated June 3, 2010) (SIEC Letter). We note that Mesa's initial application for trunked use of 700 MHz interoperability channels was returned by the Licensing Branch because it lacked an approval letter from the Region 3 Regional Planning Committee (RPC). See FCC Return Letter Reference No. 5061661 (dated Nov. 25, 2010). The application should not have been returned because the SIEC has not delegated approval of interoperability applications to the RPC. Hence, RPC approval was not required.

3 47 C.F.R. § 90.531(b)(1)(iii).

4 See Supplemental Waiver Request.

II. BACKGROUND

2. In the *Fourth Report and Order*⁵ in WT Docket 96-86, the Commission allowed secondary trunking of interoperability channels but imposed limits on the number of interoperability channels that could be used as part of fixed infrastructure:

Based on the record in this proceeding, we believe that jurisdictions are more likely to implement interoperability capability in their trunked infrastructure if they could use some of the Interoperability channel pairs as part of their general use trunked systems during the majority of the time when the channels are not needed for interoperability purposes. Further, we agree with the NCC⁶ that to obtain the benefits here we need only to allow trunking on a few of the Interoperability channels. The majority of Interoperability channels should remain available for the most likely interoperability communications scenario, conventional communications on a unit-to-unit basis. Therefore, we will allow trunking on a limited number of Interoperability channels. To ensure that these Interoperability channels are always available when necessary for conventional interoperability operations, we will allow trunking only on a secondary basis as recommended by the NCC. Further, as recommended by the NCC, we will put a limit on the number of Interoperability channels that can be used in a trunked system.⁷

3. The Commission imposed a limit on the number of interoperability channels that may be used in a trunked system, *inter alia*, out of the NCC's concern that a licensee could acquire such a large number of interoperability channels in a trunked system that the channels would "become so integral to the jurisdiction's [general use] trunked system that it could become 'politically impossible' to release them for interoperability communication."⁸ To prevent the jurisdiction from holding the interoperability channels "hostage," the NCC recommended limits on the number of interoperability channels that could be trunked at any one fixed location.⁹ The Commission adopted a modified version of that recommendation in Section 90.531(b)(1)(iii) of the Commission's rules which limits licensees to two trunked interoperability channels per ten general use channels.¹⁰

4. Here, Mesa submits that (1) the proposed deployable trunked facility will be "de-trunked" when necessary to allow conventional operation; (2) that the proposed trunked operations will operate secondary to conventional operations; and (3) the deployable trunked facility "will be under the control of the first responders at an incident scene who can, if necessary, readily disable the trunked

⁵ Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010, WT Docket 96-86, *Fourth Report and Order and Fifth Notice of Proposed Rulemaking*, 16 FCC Rcd 2020 (2001) (*Fourth Report and Order*); *Memorandum Opinion and Order*, 17 FCC Rcd 17202 (2002).

⁶ The National Coordinating Committee (NCC) was a Federal Advisory Committee chartered to provide the Commission with recommendations on the optimum use of the 700 MHz public safety spectrum that became available as a consequence of the digital television transition.

⁷ *Fourth Report and Order*, 17 FCC Rcd at 2036 ¶ 42.

⁸ *Id.* 2034 at ¶ 37.

⁹ *Id.*

¹⁰ 47 C.F.R. § 90.531(b)(1)(iii).

channels and revert to conventional operation.”¹¹ Mesa further notes that this deployable trunked facility will not be employed for trunked day-to-day operations and will only be used to provide interoperable radio coverage at incident scenes.¹² Mesa adds that it would use the interoperability channels consistent with the Bureau’s recent *Florida Order*.¹³ It contends that grant of its waiver request would serve the public interest by providing “local area interoperable communications for Federal, State, County and local public safety users when responding to a disaster or major incident in an area that lacks radio coverage or where existing radio coverage has been incapacitated.”¹⁴

III. DISCUSSION

5. To obtain a waiver, 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.¹⁵

6. We conclude, for the reasons stated above, that grant of the requested waiver will not frustrate the intent of Section 90.531(b)(1)(iii) of the Commission’s rules. We also find that the public interest will be served by grant of the waiver because the deployable facility operated in the trunked mode, will provide greater spectrum efficiency – and hence enhanced communications capability – at incident scenes. Consequently, subject to the conditions specified below, we grant Mesa a waiver of Section 90.531(b)(1)(iii) which limits the number of narrowband interoperability channels that may be trunked.¹⁶

7. In June 2008, the Bureau sought comment on the National Public Safety Telecommunications Council’s (NPSTC) proposal to designate the narrowband reserve channels “to promote deployment of mobile trunked infrastructure that can be transported into [an] incident area.”¹⁷ Most commenting parties supported the NPSTC proposal, although two commenting parties raised questions regarding interference and the licensing of these channels.¹⁸ Although the Commission has not issued a notice of proposed rule making in response to the NPSTC proposal, we condition the instant waiver grant on the disposition of the NPSTC petition.

¹¹ Supplemental Waiver.

¹² Waiver Request at 1.

¹³ Supplemental Waiver Request *citing* State of Florida, *Order*, DA 11-964 (PSHSB May 27, 2011) (granting a conditional waiver to exceed the maximum number of interoperability channels that may be trunked).

¹⁴ Waiver Request at 1.

¹⁵ 47 C.F.R. § 1.925(b)(3)(i)-(ii).

¹⁶ In order to facilitate interoperability, we require that the deployable repeater systems authorized by this waiver be “open,” *i.e.*, they shall not require a system key. In addition, Mesa must advise all potential authorized users of the repeaters of the frequencies and other parameters of the deployable repeaters.

¹⁷ *See* Petition for Rulemaking of the National Public Safety Telecommunications Council at 7, RM-11433 (filed Feb. 8, 2008). Public Safety and Homeland Security Bureau Seeks Comment on Petition for Rulemaking of the National Public Safety Telecommunications Council Concerning the 700 MHz Public Safety Narrowband Channels, RM-11433, *Public Notice*, 23 FCC Rcd 395 (PSHSB 2008).

¹⁸ *See* Comments of Motorola, Inc., RM-11433 at 3 (filed July 16, 2008); Comments of the Commonwealth of Virginia, RM-11433 at 3 (filed July 16, 2008).

8. Specifically, should the Commission authorize mobile trunked infrastructure using narrowband reserve channels, this waiver shall expire and the deployable facility authorized by this waiver must be reprogrammed to operate on narrowband reserve channels. Mesa must bear the cost of reprogramming its deployable facility, shall not be eligible for reimbursement of any costs associated with modifying its deployable facility to migrate to the narrowband reserve channels, and must comply with the technical and licensing rules applicable to those channels.

9. Furthermore, operations pursuant to this waiver are secondary, *i.e.*, the deployable trunked facility (a) must not cause interference to, and must accept interference from, any fixed base station, and its associated mobiles, operating on the narrowband interoperability channels, and (b) must not cause interference to, and must accept interference from, any mobile or portable unit operating in the “direct,” *i.e.*, unit-to-unit mode.

IV. ORDERING CLAUSES

10. 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 waiver request filed by the City of Mesa, Arizona, Police Department IS GRANTED to the extent discussed herein and SUBJECT TO THE CONDITIONS in Paragraphs 6, 8 and 9 *supra*.

11. IT IS FURTHER ORDERED, that Application, FCC File No. 0004383640, SHALL BE PROCESSED.

12. This action is taken under delegated authority pursuant to Sections 0.191(f) and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191(f) and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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