

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

In the Matter of
University of Iowa Hospitals and Clinics
Request for Waiver of Section 90.209(b) of the
Commission's Rules
WT Docket 99-87

ORDER

Adopted: August 10, 2012

Released: August 10, 2012

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

I. INTRODUCTION

1. We have before us the request of University of Iowa Hospitals and Clinics (UIHC), for a waiver until December 31, 2013, of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline, which requires private land mobile radio licensees in the 150-174 MHz and 450-512 MHz bands to operate using channel bandwidth of no more than 12.5 kHz or equivalent efficiency by January 1, 2013. By this Order, we grant the Waiver Request.

II. BACKGROUND

2. UIHC operates a paging system for hospital personnel using two authorizations, WPNR291 and WXR228. WXR228 operates on 152.0075 MHz, a VHF paging-only frequency that is exempt from the narrowband mandate. WPNR291 operates on 453.025 MHz, a UHF frequency that is subject to the narrowbanding mandate. In July 2010, UIHC sought guidance from FCC staff on narrowbanding and was advised in writing that both channels were exempt from the narrowbanding mandate. In April 2011, the Bureau sent a letter to UIHC advising it that WPNR291 would need to be narrowbanded. UIHC sought clarification and received confirmation that the guidance it had previously received was incorrect and that 453.025 MHz is not a narrowbanding-exempt channel. By this time, however, UIHC had missed the opportunity to provide for narrowbanding compliance in its then-current fiscal year funding cycle. UIHC therefore seeks a one-year waiver to allow it to obtain the necessary

1 See Request for Waiver of Commission Rules, filed October 24, 2011, by the University of Iowa Hospitals and Clinics (Waiver Request). See also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004).

2 47 C.F.R. § 90.209(b)

3 Waiver Request at 1.

4 Id., see also 47 C.F.R. § 90.265(e)(2).

5 Waiver Request at 1.

6 [cite]

7 Id.

funding in its next fiscal year cycle and complete an orderly transition of some of WPNR291's traffic to WXR228 as well as a distributed antenna system, which would allow the use of cellphones, smartphones and tablets to serve as an adjunct to the paging system.⁸

3. On November 12, 2011, the Public Safety and Homeland Security Bureau (Bureau) issued a Public Notice seeking comment on the Waiver Request.⁹ No party filed comments in support or opposition.

III. DISCUSSION

4. UIHC seeks relief pursuant to Section 1.925 of the Commission's rules, which provides 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 waiver would be in the public interest;¹⁰ 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.¹¹ Applying this standard to narrowbanding, we have stated in the *Narrowbanding Waiver Guidance Notice*, jointly issued by the Wireless Telecommunications Bureau, the Public Safety and Homeland Security Bureau, and the Office of Engineering and Technology, that narrowbanding waiver requests "will be subject to a high level of scrutiny" under the waiver standard.¹² We have also provided recommended guidance on the factors that licensees should address in their requests and have recommended that in addressing these factors, licensees should seek to demonstrate that "(i) they have worked diligently and in good faith to narrowband their systems expeditiously; (ii) their specific circumstances warrant a temporary extension of the deadline; and (iii) the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process."¹³

5. Based on the record before us, we conclude that UIHC has presented sufficient facts to meet the standard for grant of the requested waiver. The record shows that UIHC diligently attempted to ascertain its narrowbanding obligations well before the deadline and received initial written guidance that narrowbanding was not required. When the Bureau sent a subsequent notice that WPNR291 would need to be narrowbanded, UIHC promptly sought clarification and took steps to develop a compliance plan that would enable it to complete narrowbanding in the shortest possible time. While this required UIHC to carry the project over into the next-year funding cycle, we consider the extenuating circumstances to warrant the requested extension until December 31, 2013. The record also indicates grant of the waiver will not harm neighboring systems or impair interoperability during the one-year waiver period.¹⁴ Station

⁸ *Id.* at 1-2.

⁹ See Public Safety and Homeland Security Bureau Seeks Comment on Requests for Waiver Of The January 1, 2013 VHF-UHF Narrowbanding Deadline Filed By University of Iowa Hospitals and Clinics, *Public Notice*, DA 11-1968, 26 FCC Rcd 16397 (PSHSB 2011).

¹⁰ 47 C.F.R. § 1.925(b)(3)(i).

¹¹ 47 C.F.R. § 1.925(b)(3)(ii).

¹² Wireless Telecommunications Bureau, Public Safety And Homeland Security Bureau, And Office Of Engineering And Technology Provide Reminder Of January 1, 2013 Deadline For Transition To Narrowband Operations In The 150-174 MHz And 421-512 MHz Bands And Guidance For Submission Of Requests For Waiver And Other Matters, *Public Notice*, 26 FCC Rcd 9647 (2011) (*Narrowbanding Waiver Guidance Notice*).

¹³ *Id.* at 9649.

¹⁴ See *id.* (waiver applicant should show "[p]lans to minimize the negative impact of extended wideband operations on co-channel and adjacent channel operations").

WPNR291 only operates on a single frequency in the Iowa City area, and there is no indication that it will have any negative impact on co-channel or adjacent channel VHF/UHF operations.

IV. CONCLUSION

6. Based on the foregoing, we conclude that grant of the waiver is in the public interest. Accordingly, we grant UIHC a waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline until December 31, 2013.

V. ORDERING CLAUSES

7. 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(b)(3) of the Commission's rules, 47 C.F.R. § 1.925(b)(3), that the Request for Waiver filed by University of Iowa Hospitals and Clinics IS GRANTED.

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

Thomas J. Beers
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau