

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

In the Matter of
Pittsylvania County, Virginia
WPKG892
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 Pittsylvania County, Virginia (the County), for a waiver until August 30, 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. The County operates a communications system on VHF authorization, WPKG892. In 2009, the County, after realizing that it could not obtain the additional VHF spectrum necessary to expand its system, undertook a search process which resulted in a decision to transition its system to the 700 MHz band. The County signed a contract with its primary vendor in late 2011 and the project kicked off in January 2012. The County anticipates that it will complete this transition by July 31, 2013. Once the transition is complete, the County will relinquish six of the eight frequencies authorized under WPKG892

1 See Request for Extension, filed December 12, 2011, by Pittsylvania County, Virginia (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, 3.

4 Waiver Request at 1-2.

5 Email, dated April 20, 2012, from Terry Forehand, Senior Consultant Federal Engineering to Roberto Mussenden, Federal Communications Commission.

6 Waiver Request.at 3.

and narrowband the remaining two.⁷ The County therefore seeks a waiver to allow it to an orderly transition to the new system.⁸

3. On January 27, 2012, the Public Safety and Homeland Security Bureau (Bureau) issued a Public Notice seeking comment on the Waiver Request.⁹ No party filed comments specifically in support of or in opposition to the County's request.

III. DISCUSSION

4. The County 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 the County has presented sufficient facts to meet the high standard for grant of the requested waiver. The record shows that County has planned since 2009 to upgrade its VHF system.¹⁴ Its 2011 decision to migrate to a Project 25 system in 700 MHz band will increase the reliability of public safety communications in the region.¹⁵

6. We recognize that narrowbanding a public safety radio system is not an insignificant endeavor since it requires not only retuning or replacing all of a systems radios but also scheduling this work to ensure that the system remains operational during the transition. Therefore, if we were to strictly

⁷ The County will relinquish fixed frequencies 155.415 MHz, 156.135 MHz, 156.180 MHz and mobile frequencies 158.850 MHz, 159.195 MHz, and 159.045 MHz. Email, dated April 19, 2012, from Terry Forehand, Senior Consultant Federal Engineering to Roberto Mussenden, Federal Communications Commission.

⁸ *Id.* at 1.

⁹ See Public Safety and Homeland Security Bureau Seeks Comment on Requests for Waiver Of The January 1, 2013 VHF-UHF Narrowbanding Deadline, *Public Notice*, DA 12-90 (rel. Jan. 27, 2012).

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 Waiver Request at 1.

¹⁵ *Id.* at 1, 3.

apply the narrowbanding rules, we would require the County to expend financial and administrative resources to narrowband their existing VHF/UHF wideband facilities by January 1, 2013, even though they plan to decommission the vast majority of these facilities and vacate the bulk of VHF/UHF frequencies no more than eight months later when they migrate to the new 700 MHz system. We conclude that strict enforcement of the narrowbanding deadline under these circumstances would not serve the underlying purpose of the rule and that a waiver would be in the public interest. In reaching this conclusion, we place significant weight on the showing that the County has made with respect to the factors identified in our *Narrowbanding Waiver Guidance Notice*.

7. First, the County has shown diligence in planning for and implementing their transition to the 700 MHz band, which will enable them to decommission their existing wideband facilities and substantially diminish their VHF/UHF footprint.¹⁶ The County will fully fund the system. Under these circumstances, we conclude that the eight-month waiver period requested by the County is no more than is reasonably necessary to substantially vacate their existing VHF/UHF facilities.¹⁷

8. Second, the record indicates that grant of the waiver will not harm neighboring systems or impair interoperability during the waiver period.¹⁸ No party opined that grant of the waiver will have any negative impact on co-channel or adjacent channel VHF/UHF operations.

9. Third, the County plans to relinquish substantial VHF/UHF spectrum once Petitioners and other licensees migrate to the new 700 MHz system.¹⁹ Grant of the waiver will avoid the diversion of the County's financial, technical, and administrative resources to narrowbanding their existing VHF/UHF facilities pending the transition to the 700 MHz band and will allow the County to devote their resources to decommissioning their existing wideband facilities and vacating their VHF/UHF frequencies. This will facilitate efficient use of scarce VHF/UHF spectrum and free up capacity for potential new spectrum users, which are key goals of the narrowbanding program.²⁰ The County has shown that these circumstances support a temporary extension of the deadline.

IV. CONCLUSION

10. Based on the foregoing, we conclude that grant of the waiver is in the public interest. Accordingly, we grant Pittsylvania County a waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline until August 30, 2013.

¹⁶ *Narrowbanding Waiver Guidance Notice*, 26 FCC Rcd 9647, 9649.

¹⁷ See *Narrowbanding Waiver Guidance Notice*, 26 FCC Rcd at 9649 (waiver applicant should show that "the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process").

¹⁸ See *id.* (waiver applicant should show "[p]lans to minimize the negative impact of extended wideband operations on co-channel and adjacent channel operations"). The County contends that grant will have no impact on neighboring jurisdictions. Waiver Request at 4.

¹⁹ See *id.* (waiver applicant migrating to a non-VHF/UHF band (*e.g.*, 700 MHz or 800 MHz) should indicate "whether it will relinquish VHF/UHF spectrum once it has migrated and the amount of spectrum to be relinquished").

²⁰ See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 10 FCC Rcd 10076, 10077 ¶2 (1995).

V. ORDERING CLAUSES

11. 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 Pittsylvania County, Virginia IS GRANTED.

12. 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