

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

In the Matter of )  
 )  
Hawai'i, County of ) WT Docket 99-87  
 )  
Request for Waiver of Section 90.209(b) of the )  
Commission's Rules )

**ORDER**

**Adopted: August 23, 2012**

**Released: August 23, 2012**

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

**I. INTRODUCTION**

1. The County of Hawai'i (the County) submitted a request for waiver<sup>1</sup> of the Federal Communication Commission's (Commission) VHF/UHF narrowbanding deadline, which requires private land mobile radio licensees in the 150-174 MHz and 450-512 MHz bands<sup>2</sup> to operate using a channel bandwidth of no more than 12.5 kHz or equivalent efficiency by January 1, 2013.<sup>3</sup> The County seeks a twenty-one month extension of the deadline until September 30, 2014. By this Order, we grant the Waiver Request.

**II. BACKGROUND**

2. The County currently operates a VHF-band (150-174 MHz) conventional radio system,<sup>4</sup> consisting of approximately 1593 subscriber devices and thirteen transceiver sites.<sup>5</sup> The County states that only 347 of the County's radios are Project 25 (P25) compatible, and of those, most are not upgradeable to P25 Phase 2.<sup>6</sup> According to the County, this system is aged and consequently "largely incapable of meeting the FCC mandate for narrowband operation."<sup>7</sup> In 2006, the County released a

<sup>1</sup> See Narrowband Deadline Waiver Request, filed Jan. 31, 2012, by the County of Hawai'i (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).

<sup>2</sup> A suspension on applications in the T-Band (450-512 MHz) has been in effect since April 26, 2012. See Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, 27 FCC Rcd 4218 (WTB/PSHSB 2012). T-Band stations need not be narrowbanded. *Id.*

<sup>3</sup> 47 C.F.R. § 90.209(b).

<sup>4</sup> See Waiver Request at 4. The County also holds 4 licenses in the UHF band that operate using narrowband emissions.

<sup>5</sup> See *id.* at 4-5.

<sup>6</sup> See *id.* at 5. The County indicates that 116 radios are capable of P25 Phase 1 trunking but not Phase 2, eighteen radios are capable of trunking at "non-current baud rates" [sic], and 213 are capable of P25 Conventional Operation but are not upgradeable to P25 trunking or P25 Phase 2 operation. *Id.*

<sup>7</sup> *Id.* at 4.

Request for Proposal to upgrade its VHF system,<sup>8</sup> and it awarded the contract to Macro Corporation (Macro). In April 2008, Macro submitted its report and recommended that the county upgrade to a 700 MHz voice communications system supported by a 2.4 GHz/4.9 GHz broadband data system.<sup>9</sup> The County declined to accept this proposal in October 2008, citing significant cost concerns.<sup>10</sup> The County therefore released a second Request for Proposal on April 14, 2010, and awarded the final contract to Scientel Wireless LLC (Scientel) on September 15, 2010.<sup>11</sup>

3. Scientel delivered its Conceptual Design and Analysis recommendation on June 7, 2011.<sup>12</sup> The Scientel plan requires twenty remote radio sites: the use of thirteen of the existing VHF wideband sites, three microwave-only sites, and four new sites, three of which are owned by the County and one that must be acquired and developed.<sup>13</sup> This plan, which consists of three phases, is based on a P25 based digital trunked system utilizing the County's VHF spectrum.<sup>14</sup> As of the filing of its instant request, the County had completed the first phase (research and planning).<sup>15</sup> The second (design, RFP, and bid process support) and third (construction, commissioning, and implementation) phases are in progress. The Hawai'i County Council approved funding for the project on May 4, 2012,<sup>16</sup> and, as part of the instant request, the County states that it expects to be narrowband-compliant by September 30, 2014.<sup>17</sup>

4. On January 27, 2012, the Bureau issued a Public Notice seeking comment on the Waiver Request.<sup>18</sup> No party filed comments in support or opposition.

### III. DISCUSSION

5. The County seeks waiver 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;<sup>19</sup> 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.<sup>20</sup>

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<sup>8</sup> See *id.* at 6.

<sup>9</sup> See *id.* at 7.

<sup>10</sup> See *id.* Macro's plan required 26 remote radio sites, only 10 of which were existing VHF transmitter sites. *Id.* The total projected cost was \$84 million. *Id.*

<sup>11</sup> See *id.* at 7-8.

<sup>12</sup> See *id.* at 8.

<sup>13</sup> See *id.* at 9.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See email, dated June 18, 2012 from John Drummond, Project Manager, County of Hawai'i Civil Defense to Roberto Mussenden, FCC (Drummond Email).

<sup>17</sup> See attachment to Drummond Email. The County originally planned to be narrowband compliant by July 1, 2014 but encountered a delay in receiving funding.

<sup>18</sup> See Public Safety and Homeland Security Bureau Seeks Comment on Requests for Waiver of the January 1, 2013 VHF-UHF Narrowbanding Deadline, *Public Notice*, 27 FCC Rcd 430 (PSHSB 2012) (*Public Notice*).

<sup>19</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>20</sup> 47 C.F.R. § 1.925(b)(3)(ii).

6. 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.<sup>21</sup> We have also provided recommended guidance on the factors that licensees should address in their requests. Specifically, we stated that, when 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.”<sup>22</sup>

7. Based on the record before us, we find that the County warrants waiver relief because it has demonstrated that the underlying purpose of the narrowbanding rule – to promote spectrum efficiency – 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.<sup>23</sup> The record shows that the County has taken concrete steps since 2006 to secure a contract for upgrading its system to satisfy the Commission’s narrowbanding requirement.<sup>24</sup> The record shows that the County issued a second request for proposal after declining the first contract proposal because of cost concerns, thus leading to delays.<sup>25</sup> The record also shows that the project will be funded through a County of Hawai’i bond issue, and that the Hawai’i County Council approved a \$30 million appropriation for the project’s completion. Based on these facts, including the County’s assertion that it expects to be narrowband-compliant within fewer than two years after the January 1, 2013 deadline, we find that strict enforcement of the narrowbanding deadline under these circumstances would not serve the underlying purpose of the rule.

8. Furthermore, we find that grant of the request is consistent with the public interest because it will ensure that the County completes narrowbanding without affecting the radio operations of neighboring systems. The County states that because of its “unique geographical location” few neighbors would be affected by its request, and that “few public safety agencies are in the region competing for the same limited VHF spectrum.”<sup>26</sup> Only two licensed VHF public safety users operate within the County: the County and the State of Hawai’i.<sup>27</sup> The only remaining VHF licensee in proximity is the County of Maui, which is twenty-nine miles away across the Pacific Ocean.<sup>28</sup> All three potentially affected users – the Maui County Police Department, the State of Hawai’i Civil Defense – Statewide Interoperability Coordinator, and the State of Hawai’i Department of Accounting and General Services – Information and Communications Services Division – have indicated their support and approval of the County’s plan and do not anticipate any negative impact.<sup>29</sup>

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<sup>21</sup> 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*).

<sup>22</sup> *Id.* at 9649.

<sup>23</sup> See 47 C.F.R. § 1.925(b)(3)(i).

<sup>24</sup> See Waiver Request at 6.

<sup>25</sup> See *id.* at 6-7.

<sup>26</sup> See *id.* at 10.

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See *id.* at App. A .

**IV. CONCLUSION**

9. Based on the foregoing, we conclude that grant of the waiver is in the public interest. Accordingly, we grant the County of Hawai'i a waiver of the Commission's January 1, 2013 VHF narrowbanding deadline for the call signs listed in the Appendix<sup>30</sup> until September 30, 2014.

**V. ORDERING CLAUSES**

10. 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 the County of Hawai'i IS GRANTED.

11. We take this action 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

Zenji Nakazawa  
Deputy Chief  
Policy and Licensing Division  
Public Safety and Homeland Security Bureau

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<sup>30</sup> The Waiver Request is silent on the disposition of the 4 UHF licenses listed in the Appendix. We assume that the facilities authorized by these licenses will be narrowbanded by the January 1, 2013 deadline. If our assumption is incorrect, however, Hawai'i must file an additional waiver request documenting why an extension of the January 1, 2013 narrowbanding deadline is warranted. for these UHF licenses.

**Appendix: List of Affected Call Signs**

FRN	CALL SIGN	LICENSEE	FREQUENCY ASSIGNED
0001513563	WQNT403	HAWAII, COUNTY OF (L) - Reg 4 FCCA (CL)	151.2500
0001513563	WQNT435	HAWAII, COUNTY OF (L) - Reg 4 FCCA (CL)	151.2500
0001513472	KNGE236	Hawaii, County of (L) - Department of Water Supply, County of Hawaii (CL)	153.4100
0001513472	KB30772	Hawaii, County of (L) - Department of Water Supply, County of Hawaii (CL)	153.4100
0001513472	KNGE234	Hawaii, County of (L) - Department of Water Supply, County of Hawaii (CL)	153.4250
0001513472	KNGE235	Hawaii, County of (L) - Department of Water Supply, County of Hawaii (CL)	153.4250
0001513472	WPBU837	Hawaii, County of (L) - Department of Water Supply, County of Hawaii (CL)	153.4250
0001513472	KNGE241	Hawaii, County of (L) - Department of Water Supply, County of Hawaii (CL)	153.4250
0001513472	KNGE240	Hawaii, County of (L) - Department of Water Supply, County of Hawaii (CL)	153.7100
0001513472	KNGE242	Hawaii, County of (L) - Department of Water Supply, County of Hawaii (CL)	153.7100
0001513472	KNGE237	Hawaii, County of (L) - Department of Water Supply, County of Hawaii (CL)	153.7250
0001513597	KVC491	HAWAII, COUNTY OF (L) - HAWAII COUNTY CIVIL DEFENSE AGENCY (CL)	153.8900
0001513563	WNXJ395	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	153.9500
0001513597	KUA505	HAWAII, COUNTY OF (L) - Hawaii Police Department (CL)	154.6950
0001513597	WPUB844	HAWAII, COUNTY OF (L)	154.7400
0001513597	KBK610	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	154.8300
0001513597	WPBP886	HAWAII, COUNTY OF (L)	154.8300
0001513597	KCI563	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	154.8300
0001513597	KZR682	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	154.9050
0001513597	KA5682	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	154.9050
0001513563	KCB70	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513563	KLK561	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513563	KLK562	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513563	KLK563	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150

0001513563	KLL567	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513563	KNIB343	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513563	KYJ273	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513563	KZE695	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513563	WNFE738	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513563	WNVK229	HAWAII, COUNTY OF (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513563	WZM949	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513563	WZM952	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150

0001513563	WZX701	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513563	KL3123	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.1150
0001513597	KNAR878	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	155.2500
0001513597	KNAR879	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	155.3100
0001513597	KUA500	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	155.3100
0001513597	KUA510	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	155.3100
0001513597	KUV65	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	155.3100
0001513597	WNVM376	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	155.3100
0001513597	KAW853	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	155.3100
0001513597	KNJV579	HAWAII, COUNTY OF (L)	155.5350
0001513563	WBJ876	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.8650
0001513563	WBC323	Hawaii County Civil Defense Agency (L) - Hawaii County Civil Defense Agency (CL)	155.8650
0001513597	WBW931	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	156.2100
0001513597	WNFE914	HAWAII, COUNTY OF (L) - Hawaii County Police Department (CL)	158.7900
0001513472	KNEX863	Hawaii, County of (L) - Department of Water Supply, County of Hawaii (CL)	173.3963