



Federal Communications Commission
Washington, D.C. 20554

DA 12-1583

October 3, 2012

Ron Wong
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Re: County of Los Angeles, Request for Waiver and Further Extended Implementation Authorization (Call Signs WPLU218, *et al.*), filed June 27, 2012

Dear Mr. Wong:

This letter addresses the above-referenced request for a further waiver of Section 90.629 of the Commission's rules, and extension of the current extended implementation filed on behalf of the County of Los Angeles (County).¹ The County requests the waiver to extend from June 30, 2012, to June 30, 2013, the construction deadline associated with twenty narrowband UHF licenses that are to be integrated into the Los Angeles Regional Interoperable Communications System (LA-RICS).² In the alternative, the County requests an extension until October 31, 2012 to complete an analysis of its options for continuation of LA-RICS in light of Section 6103 of the Middle Class Tax Relief and Job Creation Act of 2012.³ For the reasons discussed below, we grant the County's waiver request in part and extend the County's construction deadline until October 31, 2012, subject to the conditions detailed herein.

In 1998, the County received twenty-one narrowband UHF licenses to construct the LA-RICS county-wide public safety communications system.⁴ At the time of the initial grant, the County requested extended implementation or "slow growth" authority under Section 90.629.⁵ This section permits licensees up to five years to complete construction of a licensed system, versus the general one-year allowance, if licensees can show that the technical or coordination complexities of their system

¹ See File Nos. 0005061531 *et al.*, attached "Extended Implementation Authorization for WPLU218 *et al.*" (filed June 30, 2012) (June 2012 Extension Request). For a complete list of file numbers associated with the June 2012 Extension Request and the related call signs, see *infra* Table 1.

² See June 2012 Extension Request at 2. Notwithstanding the June 30, 2013 date set forth in the June 2012 Extension Request, all the applications have a requested expiration date of January 12, 2015. See File Nos. 0005061531 *et al.* Additionally, we note that the County requested an extension "at least" until October 31, 2012 to assess its options and make a decision as to whether it will pursue construction of the licenses at issue. For purposes of this waiver request, we address the County's request for additional time until October 31, 2012.

³ See June 2012 Extension Request at 1.

⁴ See *infra* Table 1. See Letter from Michael J. Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, to Mr. Ron Wong, Manager, Engineering/Technical, LA-RICS Project (dated June 24, 2011) at Table 1. The County's earlier extension requests included call sign WPME990, but there is no recent extension request associated with this license.

⁵ See File No. 0000549192, attached "Status Report on the Los Angeles County 12.5 kHz UHF Countywide Radio System" (filed Aug. 8, 2001) (2001 Extension Request).

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necessitate additional time.⁶ Under this initial grant, the licenses were set to expire in 2003 if the County had not adequately completed construction and implementation.⁷ Through subsequent waivers of the rule, however, the County received four extensions, citing an expanding scope of the project and funding and planning issues.⁸ Under the most recent waiver, the licenses were set to expire on June 30, 2012.⁹ The Bureau noted that any future request by the County for additional extensions would be “subject to a high level of scrutiny and must include a showing that the County has made substantial progress towards completion of the system.”¹⁰

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;¹¹ 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.¹² An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹³ As discussed below, we find that the underlying purpose of the rule would not be frustrated by granting the County limited waiver relief and that the public interest would be served.

As an initial matter, the circumstances under which we granted the previous waivers have changed. On February 22, 2012 the President of the United States signed into law the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act).¹⁴ Section 6103 of the Spectrum Act requires that the Commission, not later than February 2021: (1) reallocate public safety spectrum in the 470 – 512

⁶ See 47 C.F.R. § 90.629.

⁷ See 2001 Extension Request at 1.

⁸ See 2001 Extension Request; see also File Nos. 0002462790 *et al.*, attached “Status Report on the Los Angeles County Wide UHF Refarming Project” (filed Jan. 27, 2006) (2006 Extension Request); File Nos. 0004740426 *et al.*, attached “Waiver Request and Status Report, Los Angeles County Wide UHF Refarming Project, Revised May 24th, 2011” (filed May 24, 2011) (May 2011 Extension Request); File Nos. 0004863991 *et al.*, attached “Request for Waiver and Further Implementation Authorization” (filed Aug. 30, 2011) (August 2011 Extension Request).

⁹ See Letter from James A. Barnett, Jr., Rear Admiral (ret.), Chief, Public Safety and Homeland Security Bureau, to Mr. Ron Wong, Manager, Engineering/Technical, LA-RICS Project (dated Oct. 27, 2011), 26 FCC Rcd 14286 (PSHSB 2011) (*October 2011 Waiver*). As a condition of that waiver, the Bureau required the County to file a report with the Bureau by January 31, 2012 detailing status of the project and the progress towards finalizing the prime contract for construction. *Id.* at 14288. The County filed the required report and updated timeline on January 31, 2012, indicating that it had received two proposals and planned to complete its evaluation of the proposals by March 2012. See County of Los Angeles LA-RICS FCC Granted Waiver Status Report (2012 Status Report).

¹⁰ See *October 2011 Waiver*, 26 FCC Rcd at 14288.

¹¹ 47 C.F.R. § 1.925(b)(3)(i).

¹² 47 C.F.R. § 1.925(b)(3)(ii).

¹³ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

¹⁴ See Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). Pub. L. No. 112-96, 126 Stat. 156.

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MHz (T-Band),¹⁵ and (2) begin a system of competitive bidding to grant new initial licenses for such spectrum,¹⁶ and relocate public safety users not later than two years after said competitive bidding is completed.¹⁷ The Commission's staff has taken preliminary steps to perform the actions required by the Spectrum Act.¹⁸ The County requests at least until October 31, 2012 to complete an analysis of the situation and to formulate available options for continuation of LA-RICS in the T-Band.¹⁹

The County argues that no other entity could utilize the narrowband channels in question as such use would interfere with the County's existing operations on overlapping wideband (20 kHz bandwidth) channels.²⁰ The County cites the Commission's waiver of narrowbanding requirements for T-Band licensees in light of the Spectrum Act. We agree with the County's argument, because under the T-Band narrowbanding waiver, the County's operational wideband licenses that are authorized on main frequencies interleaved with the narrowband frequencies may remain in wideband mode beyond January 1, 2013.²¹ The bandwidth overlap of the County's wideband channels with the interleaved narrowband channels would prevent new applicants in the vicinity from using the narrowband channels if they were otherwise available. The County also notes that the Commission's suspension of new T-Band applications in light of the Spectrum Act "creates additional impediments to any alternate use of the channels."²² We agree that the T-Band application suspension would prevent new entities from applying for the narrowband channels at issue here if they were otherwise available. In this instance, where the County's interleaved wideband channels and the Commission's recent actions in light of the Spectrum Act render the narrowband channels unusable by any other party, we find that a limited grant of a waiver would not frustrate the underlying purpose of Section 90.629.²³

¹⁵ *Id.* § 6103(a)(1) citing 47 C.F.R. § 90.303.

¹⁶ *Id.* § 6103(a)(2) (citing 47 U.S.C. § 309(j)).

¹⁷ *Id.* § 6103(c).

¹⁸ First, the Commission's staff issued an order waiving the deadline for licensees in the T-Band to migrate to 12.5 kHz bandwidth (otherwise known as "narrowbanding"). See 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, *Order*, 27 FCC Rcd 4213 (WTB, PSHSB and OET 2012) (*Narrowbanding Waiver Order*). Second, the Commission staff has taken steps to suspend future licensing in the T-Band. 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 (PSHSB and WTB 2012) (*Application Suspension PN*).

¹⁹ June 2012 Extension Request at 1.

²⁰ *Id.* at 2.

²¹ Pending further Commission action, the Commission staff concluded that it would be "inequitable and contrary to the public interest to require PLMR licensees to meet the January 1, 2013 narrowbanding deadline with respect to frequencies in the 470-512 MHz band." *Narrowbanding Waiver Order*, 26 FCC Rcd at 4215 ¶ 6.

²² The purpose of the suspension is to stabilize the spectral environment while the Commission considers issues surrounding future use of the T-Band and implementation of the Spectrum Act. The suspension, however, "does not apply to ... requests for extensions of time to construct or consummate previously granted applications." *Application Suspension PN*, 27 FCC Rcd at 4219.

²³ The purpose of Section 90.629 of the Commission's rules is "to ensure beneficial uses of licensed spectrum, and prevent licensees from 'warehousing' spectrum and making it unavailable to other potential licensees." *October 2011 Waiver*, 26 FCC Rcd at 14287.

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The County argues that grant of the request would be in the public interest as it would allow the County an opportunity to evaluate the most cost-effective and spectrum-efficient means of meeting the interoperable communications requirements of the County's first responders.²⁴ Under the unique circumstances of this case, we conclude that granting the County a limited extension would be consistent with the County's goals and the Commission's waiver criteria, and would not adversely affect other licensees. Accordingly, we grant an extension until October 31, 2012, the minimum extension requested by the County,²⁵ to permit the County to evaluate its options and determine whether it intends to pursue a further extension in light of the Spectrum Act. If the County elects to pursue an extension, we require the County to file a report with the Bureau by October 31, 2012, detailing: (1) the status of the County's efforts to select a vendor and finalize all contracts to begin construction,²⁶ (2) how quickly the County could begin construction of the LA-RICS system and (3) how long construction would take. We also note that further requests for extension by the County will be subject to a high level of scrutiny and must include a detailed showing that the County has made substantial progress towards completion of the system.

Finally, as an ancillary matter, we note that the County attached the June 2012 Extension Request to three other applications for extension of time with respect to three licenses that were not part of the County's earlier extension requests.²⁷ The three licenses are set to expire in October 2013, which is beyond the June 30, 2013, date that the County suggested in the June 2012 Extension Request. Because these licenses do not face termination until October 2013, we do not act on these three applications at this time.

Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 1.925, 1.946(e), and 90.629 of the Commission's rules, 47 C.F.R. §§ 1.925, 1.946(e), 90.629, that the request for waiver filed by the County of Los Angeles on May 24, 2011, in connection with applications File Nos. 0005061531, 0005061532, 0005061533, 0005061534, 0005061535, 0005061536, 0005061537, 0005061538, 0005061539, 0005061540, 0005061541, 0005061542, 0005061543, 0005061544, 0005061545, 0005061546, 0005061547, 0005061551, 0005061552, and 0005061553 IS GRANTED in part, and the applications SHALL BE PROCESSED consistent with the Commission's Rules and this letter.

²⁴ *Id.* at 1.

²⁵ June 2012 Extension Request at 2.

²⁶ We note that the County in its January 2012 update indicated that it was evaluating the two proposals it received and hoped to complete this task by March 2012. *See* 2012 Status Report.

²⁷ *See* File Nos. 0005061548, 0005061549, 0005061550 (filed June 30, 2012). The associated call signs are WPMP238, WPMP266, and WPMP438, respectively. If the County attached the June 2012 Extension Request to these applications in error, or filed the applications prematurely, the County is free to remove the attachment or withdraw the applications to eliminate any confusion.

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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

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Table 1

Call Sign	2001 Request File Nos.	2006 Request File Nos.	May 2011 Request File Nos.	August 2011 Request File Nos.	June 2012 Request File Nos.
WPLU218	0000549192	0002462790	0004740426	0004863991	0005061531
WPLU220	0000549192	0002462791	0004740427	0004863992	0005061532
WPLU221	0000549192	0002462792	0004740428	0004863993	0005061533
WPLU224	0000549192	0002462793	0004740429	0004863994	0005061534
WPLU230	0000549192	0002462794	0002498215	0004863995	0005061535
WPLU231	0000549192	0002498215	0004740431	0004863996	0005061536
WPLU232	0000549192	0002462796	0004740432	0004863997	0005061537
WPLU234	0000549192	0002462798	0004740433	0004863998	0005061538
WPME990	0000549192	0002462799	0004740434	N/A	N/A
WPMK204	0000549192	0002462800	0004740435	0004863999	0005061539
WPMK277	0000549192	0002462801	0002462801	0004864000	0005061540
WPMK278	0000549192	0002462802	0003343590	0004864001	0005061541
WPMK279	0000549192	0002462803	0003343591	0004864002	0005061542
WPMK280	0000549192	0002462804	0003343592	0004864003	0005061543
WPMK281	0000549192	0002462805	0003343593	0004864004	0005061544
WPMK282	0000549192	0002462806	0003343594	0004864005	0005061545
WPM805	0000549192	0002462808	0003343595	0004864006	0005061546
WPM807	0000549192	0002462809	0003343596	0004864007	0005061547
WPMW796	0000549192	0002462810	0004740444	0004864008	0005061551
WPNP716	0000549192	0002462812	0004740445	0004864009	0005061552
WPNP718	0000549192	0002462813	0004740446	0004864010	0005061553