

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

In the Matter of
PACIFICORP
Request for Waiver of Section 90.209(b) of the
Commission's Rules
WT Docket No. 99-87

ORDER

Adopted: October 16, 2012

Released: October 16, 2012

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. We have before us the request of PacifiCorp for a waiver until October 31, 2013, of the Commission's VHF/UHF narrowbanding deadline, which requires private land mobile radio (PLMR) licensees in the 150-174 MHz and 421-512 MHz bands to operate using channel bandwidth of no more than 12.5 kHz or equivalent efficiency by January 1, 2013. PacifiCorp seeks the extension for sixty-two PLMR stations. For the reasons set forth below, we grant the request.

2. Background. PacifiCorp provides electric service to approximately 1.7 million customers in a service territory of more than 165,000 square miles in portions of Utah, Oregon, Wyoming, Washington, Idaho, and California. Its current system consists of approximately 3,000 mobile and portable radios served from 165 communication sites. In conjunction with modifying its facilities to meet the narrowbanding standard, PacifiCorp plans to upgrade its PLMR system onto a common VHF

1 See Request for Extension of Narrowbanding Deadline (filed Aug. 31, 2012) (Request); Letter dated Sept. 4, 2012 from Jeffrey L. Sheldon, counsel for PacifiCorp to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau (Supplement). On September 11, 2012, comment was sought on the narrowbanding waiver request. See Wireless Telecommunications Bureau Seeks Comment on PacifiCorp Request for Waiver of the January 1, 2013 VHF-UHF Narrowbanding Deadline, Public Notice, WT Docket No. 99-87, DA 12-1474 (WTB MD rel. Sept. 11, 2012). No comments were filed.

2 47 C.F.R. § 90.209(b); 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). On April 26, 2012, the Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology waived the January 1, 2013 narrowbanding deadline for 470-512 MHz band frequencies. 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, WT Docket No. 99-87, RM-9332, 27 FCC Rcd 4213 (WTB/PSHSB/OET 2012).

3 Stations KA3274*, KA3339*, KDS448, KFS283, KFS675, KGR928, KIA403, KKK857, KMB290, KMC907, KNBW267, KNBY998, KNDY726, KNGY563, KNHM272, KNIR653, KNIR657, KNIR661, KNIR744, KOA390, KOA415, KOB656, KOB761, KOB762, KOB819, KOB830, KOC478, KOC479, KOC480, KOE348, KOK356, KOL422, KOL569, KOM980, KRU227, WCQ918, WCQ919, WCT853, WCT854, WGN671, WGN672, WNAZ798, WNB645, WNJC203, WNJX893, WNKH495, WNKJ602, WNKJ920, WNKK332, WNLG735, WNVK327, WNXJ563*, WNXV973*, WPAM854, WPDH703, WPDY677, WPEH447, WPGJ511, WPHB759, WPHU883, WQX764, and WZX245 (* denotes mobile-only license).

4 Request at 2.

5 Id. at 3.

trunked radio system platform with improved spectrum efficiency and service features.⁶ Because it is migrating most of its system to Part 22 and Part 80 spectrum, it anticipates being able to relinquish a substantial number of its current Part 90 VHF frequencies once the migration is complete.⁷

3. Due to climate and geography in the Pacific Northwest, however, PacifiCorp can safely and reasonably conduct all construction work at its higher elevation sites only from late spring to early fall.⁸ While PacifiCorp's work schedule is still targeting the conversion to narrowbanding to be completed this year, it is concerned that contingencies outside its control, such as delays in obtaining site leases and government land permits, could cause elements of the project to be delayed into 2013.⁹ Consequently, PacifiCorp seeks a waiver of the narrowbanding deadline out of an abundance of caution.

4. *Discussion.* 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 PacifiCorp has presented sufficient facts to meet the high standard for grant of the requested waiver. In reaching this conclusion, we place significant weight on the showing that PacifiCorp has made with respect to the factors identified in our *Narrowbanding Waiver Guidance Notice*.

6. First, the record shows that PacifiCorp has been diligently preparing for the transition to narrowbanding since 2003 by allotting all the necessary funding to meet the deadline, licensing new narrowband frequencies, placing all switching infrastructure for the new system in service, and replacing all mobile and portable radios with narrowband-capable models.¹⁴ Approximately eighty percent of the

⁶ *Id.* at 3.

⁷ *Id.* at iv.

⁸ *Id.*

⁹ *Id.*

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 (WTB/PSHSB/OET 2011) (*Narrowbanding Waiver Guidance Notice*).

¹³ *Id.* at 9649.

¹⁴ Request at iii, 3, 5, 6 and 8.

new units are currently operating in narrowband mode.¹⁵ As of August 31, 2012, PacifiCorp has converted 46 of its 75 electric operating areas to narrowband-compliant service.¹⁶ The remaining 29 operating areas are scheduled for conversion by December 2012.¹⁷ So far, PacifiCorp has converted 131 out of 165 base station sites to narrowband, with only 34 sites remaining to be converted.¹⁸

7. In addition, it does not appear that grant of the waiver will significantly harm neighboring systems. PacifiCorp's PMRS system operates independently of similar systems used by neighboring utilities or jurisdictions, and does not have any interoperability or interdependence with other radio systems.¹⁹ Moreover, it appears that PacifiCorp will return more VHF spectrum to the licensing pool than otherwise achievable by narrowbanding its existing VHF licenses once it deploys its Part 22 and 80 system.

8. *Conclusion and Ordering Clauses.* While it still plans to complete the conversion to narrowbanding by the deadline, PacifiCorp is concerned that contingencies, such as difficulty in obtaining land leases, land use and building permits, as well as third-party backhaul availability and weather conditions, might cause unexpected delays outside its control.²⁰ Based on the size and complexity of the new system, and the necessity to maintain public utility electric service to rural communities, we conclude that the ten-month waiver period requested by PacifiCorp is no more than is reasonably necessary to complete narrowbanding.²¹

9. While we grant the instant request, we take this opportunity to discourage licensees from submitting narrowbanding waiver requests solely as a precaution. As the deadline approaches, licensees should request additional time only if they know or reasonably believe that they will be unable to complete their narrowbanding conversion by January 1, 2013.

10. Based on the foregoing, we conclude that grant of the requested waiver is warranted. Accordingly, we grant PacifiCorp a waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline until October 31, 2013 for Stations KA3274, KA3339, KDS448, KFS283, KFS675, KGR928, KIA403, KKK857, KMB290, KMC907, KNBW267, KNBY998, KNDY726, KNGY563, KNHM272, KNIR653, KNIR657, KNIR661, KNIR744, KOA390, KOA415, KOB656, KOB761, KOB762, KOB819, KOB830, KOC478, KOC479, KOC480, KOE348, KOK356, KOL422, KOL569, KOM980, KRU227, WCQ918, WCQ919, WCT853, WCT854, WGN671, WGN672, WNAZ798, WNBN645, WNJC203, WNJX893, WNKH495, WNKJ602, WNKJ920, WNKK332, WNLG735, WNVK327, WNXJ563, WNXV973, WPAM854, WPDH703, WPDY677, WPEH447, WPGJ511, WPHB759, WPHU883, WQX764, and WZX245.

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 Extension of Narrowbanding Deadline filed by PacifiCorp on August 31, 2012 IS GRANTED.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 7.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 8.

²⁰ *Id.* at 9.

²¹ 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").

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau