

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

In the Matter of)
)
COUNTY OF SAN JUAN, WASHINGTON) File No. 0005086320
)
Request for Waiver to Use VHF Public Coast)
Channel 85 (151.275 MHz and 161.875))

ORDER ON RECONSIDERATION

Adopted: November 7, 2012

Released: November 7, 2012

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

I. INTRODUCTION

1. The County of San Juan, Washington (San Juan) filed an application to construct a new public safety communications station¹ using VHF Public Coast (VPC) Channel pair 85 (151.275 MHz and 161.875 MHz)² on Orcas Island, Washington. San Juan requested a waiver to license this VPC channel for Private Land Mobile Radio (PLMR) public safety use.³ The Public Safety and Homeland Security Bureau’s (Bureau) licensing staff denied the waiver request and dismissed San Juan’s application.⁴ San Juan filed a timely Petition for Reconsideration on May 10, 2012 (Petition).⁵ By this *Order on Reconsideration*, we deny San Juan’s Petition for failure to meet the Commission’s rules respecting petitions for reconsideration.

II. BACKGROUND

2. *San Juan’s Waiver Request.* On February 21, 2012, San Juan requested a waiver to allow VPC Channel 85 to be used by Orca Island Fire and Rescue (Fire Department).⁶ In its waiver request, San Juan noted that the repeater for the station would be located on top of Mt. Constitution at a 675 meter elevation on Orcas Island.⁷ San Juan claimed that the site is the only one from which a repeater can cover most of the island.⁸ San Juan observed that Mt. Constitution is between Victoria British Columbia, Canada (Victoria, B.C.) and Vancouver, British Columbia, Canada (Vancouver B.C.), “with direct line of

¹ FCC File No. 0005086320 (filed Feb. 21, 2012).

² 47 C.F.R. § 80.371(c)(1)(i) (listing VHF Public Coast (VPC) channels for communications with ships and units on land).

³ See Letter from Paul Turner, San Juan County Deputy Fire Marshal to Wireless Telecommunications Bureau, FCC (dated Oct. 27, 2011) (Waiver Request) attached to FCC File No. 0005086320.

⁴ See Notice of Dismissal Reference No. 5352198 (dated Apr. 10, 2012) (Dismissal Letter) *re* FCC File No. 0005086320.

⁵ See Petition for Reconsideration (May 10, 2012) attached to FCC File No. 0005086320 (Petition).

⁶ Waiver Request.

⁷ *Id.*

⁸ *Id.*

[sight] from that elevation to both locations.”⁹ San Juan added that “[t]here is also a direct line of [sight] to Seattle, [Washington] and Everett, [Washington].”¹⁰ San Juan stated that “Mt. Constitution looks directly down the Frazier Valley and has a TV station and FM radio stations located at Mt. Constitution Sites to cover the Canadian Market because the Canadian coverage is so good.”¹¹ San Juan stated that “Channel 85 has no license issued anywhere in the State of Washington.”¹² It claimed that “[t]he closest use is in Canada 250 miles away.”¹³

3. San Juan argued that because of Orca Island’s location “North of Line A we have no 700 MHz or 800 MHz available.”¹⁴ San Juan noted that “Orcas Island is a rural Island with a large Washington State Park with old growth Forest. Much of the Island still has evergreen trees whose needles are the perfect length to absorb 450, 700 and 800 MHz frequencies.”¹⁵ San Juan added that “[b]ecause of our direct line of [sight] to Canada there are no frequencies available on 450 or 150 MHz.”¹⁶

4. *Dismissal Notice.* On April 10, 2012, the Commission’s licensing staff denied San Juan’s waiver request and dismissed the underlying application in accordance with Section 1.934(d) of the Commission’s Rules.¹⁷ In the Dismissal Letter, the staff stated that San Juan’s waiver request “does not provide sufficient justification under rule 1.925 to allow you to license Part 80 marine frequencies under Part 90 land mobile rules.”¹⁸ The staff further noted that the “justification listed in the waiver does not provide sufficient reason why current Part 90 channels cannot be licensed and you have not exhausted all alternatives such as waiver of the [800 MHz U.S.–Canada] border freeze.”¹⁹ Accordingly, the staff denied the waiver and dismissed San Juan’s application as defective.

5. *San Juan’s Petition for Reconsideration.* In its Petition, San Juan states that Orcas Island is “located in the middle of Puget Sound” and that “[g]etting to Orcas Island is by Washington State Ferry.”²⁰ San Juan states that “even though we have mutual aid pacts with other Fire Departments on the other San Juan Islands and the mainland, it will be hours, or if the timing is bad, it will be the next day

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* San Juan states that it is “requesting 75 watts with 100 watts E.R.P. to service areas which are heavily forested with dense undergrowth.” *Id.* at 2. “By using 100 Watt E.R.P. the radio signal can penetrate the dense vegetation. Orcas Island has high ridges and deep valleys.” *Id.* San Juan states that “[t]he higher power is needed to provide the coverage to those areas.” *Id.*

¹⁷ Dismissal Letter, *citing* 47 C.F.R. § 1.934(d) (Section 1.934(d) provides that the Commission may dismiss without prejudice an application that it finds to be defective.)

¹⁸ Dismissal Letter, *citing* 47 C.F.R. § 1.925. Section 1.925(b)(3) of the Commission’s rules provides that to obtain a waiver of the Commission’s rules, a petitioner must demonstrate either that: “(i) [t]he 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; or (ii) [i]n 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.” 47 C.F.R. § 1.925(b)(3)(i-ii).

¹⁹ Dismissal Letter.

²⁰ Petition at 1.

before additional resources/fire vehicles arrive.”²¹ San Juan states that it is “essential that we have good reliable communications so that fires can be extinguished before they turn into a major forest fire.”²² However, because of Orca Island’s location in the middle of Puget Sound, San Juan claims that finding frequencies that it can use without causing interference to others “is almost impossible.”²³

6. San Juan states that, in the 150 MHz band, there are no high power, high site, frequencies that it can apply for without causing interference.²⁴ With regard to the 450 MHz band, San Juan claims that its researcher ran out of time to do the same research for the 450 MHz band, but that another licensee, a Whatcom County Public Safety entity, was “unable to come up with any high power high site repeater frequency pairs” for use at Orcas Island.²⁵ San Juan states that, Regional Planning Committee 43 “said that there are very few frequencies even available above Line A and they eliminated 700 MHz frequency allotment by county years ago because of lack of frequencies.”²⁶ Additionally, San Juan claims that “700 MHz and 800 MHz frequencies are highly absorbed by our evergreen trees whose needles are just the right length to absorb the signal.”²⁷ With regard to 800 MHz, San Juan states that the 800 MHz Transition Administrator “is having a very hard time just finding a replacement frequency for San Juan Public Works for Mt. Constitution which will not be interfered with by King County, Seattle WA etc.”²⁸ Finally, San Juan requests that the Commission “keep [San Juan] in the loop on this reconsideration petition.”²⁹

III. DISCUSSION

7. Section 1.106 of the Commission’s rules sets forth the procedures, requirements and standards for a petition for reconsideration.³⁰ Under Section 1.106(d)(1), petitioners must “state with particularity the respects in which petitioner believes the action taken by the Commission ... should be changed.”³¹ Section 1.106(d)(2) also requires petitions for reconsideration to cite, where appropriate, “the findings of fact and/or conclusions of law which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and conclusions should be changed.”³²

8. San Juan’s reconsideration petition lacks such particulars. Instead of stating “the findings of fact and conclusions of law” which San Juan believes to be erroneous, it merely restates and amplifies its previous arguments to the effect that no Part 90 frequencies are available for its proposed station and that a waiver to permit it to use VPC frequencies would be in the public interest. Indeed, it is not possible to discern from the Petition, exactly which portion of the *Dismissal Notice* San Juan believes to be erroneous. Importantly, San Juan does not challenge the staff’s finding that San Juan did not “provide

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 3.

³⁰ 47 C.F.R. § 1.106(d).

³¹ 47 C.F.R. § 1.106(d)(1).

³² 47 C.F.R. § 1.106(d)(2).

sufficient justification under rule 1.925 to allow you to license Part 80 marine frequencies under Part 90 land mobile rules.”

9. The Commission has stated that the Part 80 rules applicable to VPC licensees can be waived if licensees demonstrate, on a case-by-base basis, that waiver relief is warranted.³³ The Commission noted that waiver requests to license Part 80 VPC channels for PLMR use “are, like other waivers of the rules pertaining to Wireless Radio Services, assessed under the criteria set forth in Section 1.925 of the Commission’s Rules.”³⁴ “In order to reduce potential administrative burdens, delay and uncertainty, the Commission provided guidance for prospective waiver applicants, explaining”³⁵:

In that context, we will expect such waiver applicants to explain, *inter alia*, how they intend to provide priority to maritime communications or why they believe the requirement should be waived.[footnote omitted] Second, the distance of a proposed land mobile radio operation from the nearest navigable waterways will be a factor in evaluating whether to grant the requested waiver(s); the greater the distance, the more favorably the waiver request will be viewed.[footnote omitted] Third, with respect to requested waivers of Part 80 technical requirements, such as power limits and emission masks, the magnitude of the divergence from Part 80 will be considered in evaluating the waiver. Relatively small variations from the Part 80 technical requirements will be viewed more favorably than larger variations. Fourth, a showing that alternative spectrum that could accommodate the proposed PLMR or other land mobile radio service is unavailable or unsuitable for that purpose will be a factor militating in favor of grant of a waiver. Fifth, although we are not confining PLMR use of VPC [VHF Public Coast] and AMTS [Automated Maritime Telecommunications System] spectrum to public safety or CII [critical infrastructure industry] entities, a showing that authorization of the proposed operation, and grant of the associated waiver(s), would benefit public safety or homeland security will be a factor militating in favor of granting the waiver(s).[³⁶]

IV. CONCLUSION.

10. San Juan’s waiver request failed to address, much less satisfy, most of the waiver criteria *supra*. Its attempt to show that no other spectrum is available for its use rested on hearsay and was otherwise incomplete. Moreover, the proposed Orcas Island site is unquestionably proximate to a navigable waterway. We find, therefore, that San Juan’s Petition failed to demonstrate error in the *Dismissal Notice*, and otherwise does not comply with Section 1.106 of the Commission’s rules. Accordingly, we hold that the staff properly dismissed the application and denied the request for waiver, and deny San Juan’s Petition.

V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.106 of the Commission’s rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by San Juan County, Washington on May 10, 2012, IS DENIED.

³³ See Maritel, Inc. and Mobex Network Services, LLC, WT Docket No. 04-257, *Report and Order*, 22 FCC Rcd 8971 8985 ¶ 21 (2007) (*Coast Station Flexibility Order*).

³⁴ *Id.* at 8986 ¶ 26.

³⁵ See Maritel, Inc. and Mobex Network Services, LLC, WT Docket No. 04-257, *Memorandum Opinion and Order*, 25 FCC Rcd 533, 536 note 38 (2010).

³⁶ *Coast Station Flexibility Order*, 22 FCC Rcd at 8986-87 ¶ 26. See, e.g., County of Silverbow, Montana, *Order*, 24 FCC Rcd 12547 (PSHSB PD 2009) and County of Granite, Montana, *Order*, 24 FCC Rcd 5704 (PSHSB PD 2009).

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

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