

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

In the Matter of)	
)	
PIMA COUNTY, ARIZONA)	WT Docket 99-87
)	
Request for Waiver of Section 90.209(b) of the)	
Commission's Rules)	

ORDER

Adopted: November 9, 2012**Released: November 9, 2012**

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

I. INTRODUCTION

1. On March 2, 2012, Pima County, Arizona (Pima), on behalf of specific members of the Pima County Wireless Integrated Network (PCWIN),¹ submitted a request for waiver² of the Commission's VHF/UHF narrowbanding deadline, which requires private land mobile radio 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, 2013.³ Pima seeks an extension of the narrowbanding deadline until and including July 1, 2014.⁴ By this *Order*, we grant the request.

II. BACKGROUND

2. Pima is in the midst of deploying a Project 25 800 MHz public safety voice radio network designed to combine the majority of the county's radio resources into a single interoperable network.⁵ The project is fully funded through a general obligation capital improvement bond.⁶ Pima began construction in 2010, estimates completion by 2013, and

¹ A list of the 29 PCWIN agencies is contained in the Waiver Request, Appendix B.

² See Request for Waiver of Commission Rules, filed March 2, 2012, by Pima County, Arizona (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, 19 FCC Rcd 25045 (2004).

³ 47 C.F.R. § 90.209(b)(5). Licensees in the T-Band (450-512 MHz) are exempt from the narrowbanding requirement, effective 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).

⁴ Waiver Request at 2.

⁵ *Id.* at 2, 4.

⁶ *Id.* at 2.

anticipates that testing will be completed in early 2014.⁷ The project's two primary objectives are to replace older VHF and UHF systems with a county-wide public safety communications system, and to construct a regional emergency communications and operations center.⁸

3. Pima claims that, despite its best efforts, some PCWIN agencies will not be able to transition to the new system until July 1, 2014.⁹ Pima surveyed all twenty-nine PCWIN agencies regarding their need for narrowbanding waivers, and six member agencies indicated that, absent a waiver, they would need to divert resources if they were to narrowband their systems.¹⁰ Although it has over \$100 million at its disposal to implement its new Project 25 800 MHz network, Pima claims it did not anticipate narrowbanding older systems as part of the PCWIN budget.¹¹ Pima submits that such interim upgrades would not be in the public interest as they represent capital investments with a limited period of use.¹²

4. Pima does not foresee a negative impact on co-channel and adjacent channel operations as a result of the grant of this Waiver Request, because it has coordinated the PCWIN transition with surrounding agencies.¹³ Many other PCWIN agencies submitted letters in support of the Waiver Request.¹⁴

5. Lastly, Pima claims that PCWIN agencies have worked diligently and in good faith to transition to an 800 MHz system, and that the agencies' resources would be best applied to the successful implementation of the new 800 MHz system rather than upgrading older systems that the agencies would subsequently abandon.¹⁵

6. On January 27, 2012, the Public Safety and Homeland Security Bureau issued a Public Notice seeking comment on the Waiver Request.¹⁶ No party filed comments in support or opposition.

III. DISCUSSION

7. Pima seeks relief pursuant to Section 1.925(b)(3) of the Commission's rules, which provides that, in order 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;¹⁷ or (ii) in view of unique or unusual factual circumstances of the instant case,

⁷ *Id.* at 3. For a schedule of implementation tasks, *see* Waiver Request, Appendix A.

⁸ *Id.* at 3.

⁹ *Id.* at 3.

¹⁰ *Id.* at 3-4. A listing of agencies anticipating the need for waiver of the narrowbanding deadline is contained in the Waiver Request, Appendix C.

¹¹ *Id.* at 6.

¹² *Id.* at 5.

¹³ *Id.* at 7.

¹⁴ *Id.* at Appendix D.

¹⁵ *Id.* at 9.

¹⁶ *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 5101 (PSHSB 2012).

¹⁷ 47 C.F.R. § 1.925(b)(3)(i).

application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁸

8. The Wireless Telecommunications Bureau, the Public Safety and Homeland Security Bureau, and the Office of Engineering and Technology stated in the jointly issued *Narrowbanding Waiver Guidance Notice*, that “requests for waivers of the deadline (under § 1.925) will be subject to a high level of scrutiny.”¹⁹ The notice suggests factors for licensees to include in a request for a waiver.²⁰ In addressing those factors, the notice specifically recommends that licensees explain how: (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.²¹

9. Based on the record, we find that Pima’s request warrants waiver relief because Pima has demonstrated that the underlying purpose of the narrowbanding rule—to promote spectrum efficiency and increase available capacity— 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.²² The record shows that Pima has taken concrete steps since 2004 to transition to a new system that would obviate the need for the affected agencies to meet the Commission’s narrowbanding requirement.²³ Implementation has been underway since 2010 and the project is fully funded.²⁴ Based on these facts, including Pima’s assertion that it expects the affected agencies to discontinue operations in the VHF and UHF bands in 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.

10. Furthermore, we find that grant of the request is consistent with the public interest. Requiring PCWIN agencies to divert money, time, and other resources from the new Project 25 800 MHz system in order to upgrade nearly-obsolete VHF and UHF systems would be counterproductive, especially because the upgraded systems would be used only for a short time. We also find that granting Pima’s Waiver Request will provide the PCWIN agencies with a reasonable amount of time to complete their transition to the new system while allowing the existing UHF and VHF systems to continue to provide area first responders with interoperability without adversely affecting other licensees.

IV. CONCLUSION

11. Based on the foregoing, we conclude that granting the requested waiver is in the public interest. Accordingly, we grant Pima County, Arizona a waiver of the Commission’s

¹⁸ § 1.925(b)(3)(ii).

¹⁹ 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, 9648 (PSHSB, OET, WTB 2011) (*Reminder and Guidance Notice*).

²⁰ *Id.* at 9649.

²¹ *Id.*

²² See 47 C.F.R. § 1.925(b)(3)(i).

²³ See Waiver Request at 2, 4.

²⁴ See *Id.* at 4-6.

January 1, 2013 VHF/UHF narrowbanding deadline, until and including July 1, 2014, for the call signs set forth in the Appendix.

V. ORDERING CLAUSES

12. 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)(i) of the Commission's rules, 47 C.F.R. § 1.925(b)(3)(i), that the Request for Waiver of Commission Rules filed by Pima County, Arizona IS GRANTED.

13. 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 and 0.392

FEDERAL COMMUNICATIONS COMMISSION

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

Appendix: List of Affected Call SignsCity of Tucson:

KA84711, KA84711, KA88381, KE3806, KJP433, KNAH823, KOA255, KOM548, KR9241, KUS424, KUV784, KVI548, KXK344, WNGN289, WPEV625, WPJV434, WQD440, WRG369, WRG585, WXB941, WYD944, WYR785, WYR786, WYV453, WYX314

City of South Tucson

WPAT711

Mount Lemmon FD

KB76652, WNMB651

County of Pima

KLU459, KXV642, WYZ441