



Federal Communications Commission  
Washington, D.C. 20554

DA 12-1892

November 21, 2012

Ron Wong, Manager  
Engineering/Technical Support  
LA-RICS  
County of Los Angeles  
Internal Services Department  
1110 North Eastern Avenue  
Los Angeles, California 90063

Re: County of Los Angeles, Request for Waiver and Extended Implementation Authorization  
(Call Signs WPLU218, *et al.*) filed October 26, 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).<sup>1</sup> The County requests the waiver to extend until December 31, 2016 the construction deadline associated with twenty narrowband UHF "T-Band" licenses that are to be integrated into the Los Angeles Regional Interoperable Communications System (LA-RICS).<sup>2</sup> For the reasons discussed below, we grant the County's waiver request and extend the County's construction deadline until December 31, 2016.

In 1998, the County received twenty-one narrowband UHF licenses to construct the LA-RICS county-wide public safety communications system.<sup>3</sup> At the time of the initial grant, the County requested extended implementation or "slow growth" authority under Section 90.629.<sup>4</sup> 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 necessitate additional time.<sup>5</sup> Under this initial grant, the licenses were set to expire in 2003 if the County had not adequately completed construction and implementation.<sup>6</sup> Through subsequent waivers of the rule, however, the County received five extensions, citing an expanding scope of the project and funding

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<sup>1</sup> See File Nos. 0005465936 *et al.*, attached "Extended Implementation Authorization for WPLU218 et al." (filed Oct. 26, 2012) (October 2012 Extension Request). For a complete list of file numbers associated with the October 2012 Extension Request and the related call signs, see *infra* Table 1.

<sup>2</sup> See October 2012 Extension Request at 2.

<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</sup> See 47 C.F.R. § 90.629.

<sup>6</sup> See 2001 Extension Request at 1.

and planning issues.<sup>7</sup> Under the most recent waiver, the Bureau granted the County a limited extension until October 31, 2012 “to complete its 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.”<sup>8</sup> The Bureau noted that 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 [footnote omitted], (2) how quickly the County could begin construction of the LA-RICS system and (3) how long construction would take.”<sup>9</sup>

The County states that it completed its analysis and that it “has not been able to identify a viable alternative to the T-Band for LA-RICS.”<sup>10</sup> The County states that it “is proceeding to select a vendor and move forward on the project.”<sup>11</sup> The County states that “the LA-RICS Joint Powers Authority (JPA) Board of Directors had previously initiated and made considerable progress towards selecting a single vendor for its UHF Land Mobile Radio (LMR) and 700 MHz Long Term Evolution (LTE) Broadband Projects.”<sup>12</sup> The County states that “the JPA terminated the combined procurement and approved a new, separate procurement for the LMR Project.”<sup>13</sup> The County observes that the “new [Request for Proposals] for the LMR Project was released on October 25, 2012” and “[r]esponses are due from prospective vendors by January 3, 2013.”<sup>14</sup> “Following review of the responses and selection of a vendor, the JPA anticipates that a vendor contract will be finalized and a Notice to proceed will be issued in May 2013.”<sup>15</sup> The County states that the LMR Project “will commence and roll out according to the schedule outlined for five (5) Phases:

- Phase 1 – LMR System Design – Complete by May 2014.
- Phase 2 – LMR Site Construction/Modification – Complete May 2015.
- Phase 3 – LMR Telecommunications System Components – Complete by July 2015.

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<sup>7</sup> 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 24<sup>th</sup>, 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); File Nos. 0005061531 *et al.*, attached “Extended Implementation Authorization for WPLU218 *et al.*” (filed June 30, 2012) (June 2012 Extension Request).

<sup>8</sup> See Letter from David, S. Turetsky, Chief, Public Safety and Homeland Security Bureau, to Mr. Ron Wong, Manager, Engineering/Technical, LA-RICS Project, *Letter*, 27 FCC Rcd 12120 (PSHSB 2012) (*October 2012 Waiver*). 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). See Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). Pub. L. No. 112-96, 126 Stat. 156.

<sup>9</sup> *Id.* at 12123.

<sup>10</sup> See October 2012 Extension Request at 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 2 citing County of Los Angeles LA-RICS FCC Granted Waiver Status Report attached to FCC File No. 0005061531 (Feb. 3, 2012).

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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- Phase 4 – LMR Telecommunications System Implementation – Complete by December 2016.
- Phase 5 – LMR System Warranty – Complete by December 2017<sup>[16]</sup>

The County states that “[f]inal acceptance and completion of construction is projected for December 2016.”<sup>17</sup> Therefore, the County seeks to extend until December 31, 2016 the construction deadline associated with its 20 narrowband T-Band licenses.

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;<sup>18</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>19</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>20</sup> As discussed below, under the unique circumstances of this case, we conclude that granting the County an extension would be consistent with the County’s goals and the Commission’s waiver criteria, and would not adversely affect other licensees.

As noted in our previous decision, the circumstances under which the Bureau granted the previous waivers have changed. Section 6103 of the Spectrum Act requires that the Commission, not later than February 2021: (1) reallocate public safety spectrum in the 470 – 512 MHz (T-Band);<sup>21</sup> and (2) begin a system of competitive bidding to grant new initial licenses for such spectrum,<sup>22</sup> and relocate public safety users not later than two years after said competitive bidding is completed.<sup>23</sup> The Commission’s staff has taken preliminary steps to perform the actions required by the Spectrum Act.<sup>24</sup> Against this background, however, the County claims that it has not identified a viable alternative to the T-Band and therefore seeks to proceed with construction of its system.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 47 C.F.R. § 1.925(b)(3)(i).

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

<sup>20</sup> *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).

<sup>21</sup> *Id.* § 6103(a)(1) *citing* 47 C.F.R. § 90.303.

<sup>22</sup> *Id.* § 6103(a)(2) *citing* 47 U.S.C. § 309(j).

<sup>23</sup> *Id.* § 6103(c).

<sup>24</sup> 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, including placing a “freeze” on all T-Band applications which change or add a frequency or extend a system’s contour “footprint.” *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*).

We continue to believe 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.”<sup>25</sup> 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.”<sup>26</sup> “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.”<sup>27</sup> We also continue to 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.”<sup>28</sup> Under these circumstances, “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 grant of a waiver would not frustrate the underlying purpose of Section 90.629.”<sup>29</sup> Finally, we continue to agree that grant of the waiver request would be in the public interest as it would allow the County an opportunity to meet the interoperable communications requirements of the County’s first responders.<sup>30</sup> Accordingly, we grant the County an extension until December 31, 2016, to permit the County to complete construction of its LMR Project.<sup>31</sup>

We note that in deciding to continue with the LMR project, the County assumes the risk that the system to be constructed in the T-Band will have a limited lifetime, and that, absent waiver from the Commission, the County may not add frequencies or extend the contours of its existing licensed T-Band authorizations. Moreover we note that, although the Spectrum Act contemplates funding for incumbent relocation, there has been no spectrum set aside for relocating T-Band licensees. Finally, we 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. We emphasize, however, that the Commission may not waive the statutory requirements of the Spectrum Act.

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<sup>25</sup> See *October 2012 Waiver* at 12122.

<sup>26</sup> *Id.* We note that “[p]ending 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.’ *Id.* citing *Narrowbanding Waiver Order*, 26 FCC Rcd at 4215 ¶ 6.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* We noted that “[t]he 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.’ *Id.* citing *Application Suspension PN*, 27 FCC Rcd at 4219.

<sup>29</sup> 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 2012 Waiver*, 27 FCC Rcd 12122 note 23.

<sup>30</sup> *Id.* at 12123.

<sup>31</sup> We note that the licenses listed in Table 1 *infra* are set to expire well before December 31, 2016, so we remind the County to file timely requests for license renewal consistent with 47 C.F.R. § 1.949. Failure to file timely renewal applications will result in automatic termination of the County’s licenses. 47 C.F.R. § 1.955.

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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 October 26, 2012, in connection with applications File Nos. 0005465936, 0005466028, 0005466029, 0005466030, 0005466031, 0005466032, 0005466033, 0005466034, 0005466035, 0005466036, 0005466037, 0005466038, 0005466039, 0005466040, 0005466041, 0005466042, 0005466043, 0005466044, 0005465813, and 0005466045 IS GRANTED, and the applications SHALL BE PROCESSED consistent with the Commission's Rules and this letter.

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

David S. Turetsky  
Chief, Public Safety and Homeland Security Bureau

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.	October 2012 Request File Nos.
WPLU218	0000549192	0002462790	0004740426	0004863991	0005061531	0005465936
WPLU220	0000549192	0002462791	0004740427	0004863992	0005061532	0005466028
WPLU221	0000549192	0002462792	0004740428	0004863993	0005061533	0005466029
WPLU224	0000549192	0002462793	0004740429	0004863994	0005061534	0005466030
WPLU230	0000549192	0002462794	0002498215	0004863995	0005061535	0005466031
WPLU231	0000549192	0002498215	0004740431	0004863996	0005061536	0005466032
WPLU232	0000549192	0002462796	0004740432	0004863997	0005061537	0005466033
WPLU234	0000549192	0002462798	0004740433	0004863998	0005061538	0005466034
WPMK204	0000549192	0002462800	0004740435	0004863999	0005061539	0005466035
WPMK277	0000549192	0002462801	0002462801	0004864000	0005061540	0005466036
WPMK278	0000549192	0002462802	0003343590	0004864001	0005061541	0005466037
WPMK279	0000549192	0002462803	0003343591	0004864002	0005061542	0005466038
WPMK280	0000549192	0002462804	0003343592	0004864003	0005061543	0005466039
WPMK281	0000549192	0002462805	0003343593	0004864004	0005061544	0005466040
WPMK282	0000549192	0002462806	0003343594	0004864005	0005061545	0005466041
WPMK805	0000549192	0002462808	0003343595	0004864006	0005061546	0005466042
WPMK807	0000549192	0002462809	0003343596	0004864007	0005061547	0005466043
WPMW796	0000549192	0002462810	0004740444	0004864008	0005061551	0005466044
WPNP716	0000549192	0002462812	0004740445	0004864009	0005061552	0005465813
WPNP718	0000549192	0002462813	0004740446	0004864010	0005061553	0005466045