

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

In the Matter of)
State of Colorado, Governor's Office of)
Information Technology) FCC File No. 0005029158
Request for Waiver of Section 90.531(b)(1)(iii) of)
the Commission's Rules)

ORDER

Adopted: June 5, 2012

Released: June 5, 2012

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

I. INTRODUCTION

1. The State of Colorado, Governor's Office of Information Technology (Colorado)1 requests a waiver to permit licensing of a transportable 700 MHz trunked system to operate on twelve 6.25 kHz interoperable channels.2 Specifically, Colorado seeks a waiver of Section 90.531(b)(1)(iii)3 of the Commission's rules that provides that: (a) no more than eight interoperability pairs (four 12.5 kHz channels) may be trunked at any one location and (b) for every ten General Use channels trunked at a station, entities may obtain a license to operate in the trunked mode on two of the Interoperability channels.4 For the reasons set out below, we grant Colorado's waiver request, subject to conditions.

1 We note that the Region 7 700 MHz Regional Planning Committee (Region 7) administers the 700 MHz interoperability spectrum within Colorado. In 2001, the Commission decided that the states should be responsible for administration of the interoperability channels. See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Dockets No. 96-86, Fourth Report and Order and Fifth Notice of Proposed Rulemaking, 16 FCC Rcd 2020, 2025-26 ¶¶ 11-13 (2001). Each state was required to notify the Commission by December 31, 2001, of its decision to administer the interoperability spectrum. See 700 MHz Public Safety Band - Announcement of Updates of Interoperability Spectrum Administration Decisions, WT Docket No. 96-86, Public Notice, 17 FCC Rcd 16535 (WTB 2002). If a state did not notify the Commission of a decision by December 31, 2001, then effective January 1, 2002, the 700 MHz Regional Planning Committee(s) (RPC) would assume the responsibility for administering the interoperability spectrum. Id. The Commission received no response from Colorado, id. at n.8; hence, the administration of the interoperability channels has defaulted to Region 7.

2 See FCC File No. 0005029158 (Jan. 13, 2012 amended Apr. 24, 2012) at Letter from Richard Schmidt, Electronic Engineer, State of Colorado, Governor's Office of Information Technology (dated April 19, 2012) (Waiver Request). We note that Region 7 approves Colorado's request to use the following frequency pairs: 770.14375/800.14375 MHz, 770.64375/800.64375 MHz, 773.10625/803.10625 MHz, 773.60625/803.60625 MHz, 774.10625/804.10625 MHz, and 774.60625/804.60625 MHz. See FCC File No. 0005029158 at Letter from Reynolds Emery, Chair, Region 7 700 MHz Regional Planning Committee (dated Oct. 9, 2011).

3 47 C.F.R. § 90.531(b)(1)(iii).

4 Waiver Request at 1.

II. BACKGROUND

2. In the *Fourth Report and Order*⁵ in WT Docket 96-86, the Commission allowed secondary trunking of interoperability channels but imposed limits on the number of interoperability channels that could be used as part of fixed infrastructure:

Based on the record in this proceeding, we believe that jurisdictions are more likely to implement interoperability capability in their trunked infrastructure if they could use some of the Interoperability channels pairs as part of their general use trunked systems during the majority of the time when the channels are not needed for interoperability purposes. Further, we agree with the NCC⁶ that to obtain the benefits here we need only to allow trunking on a few of the Interoperability channels. The majority of Interoperability channels should remain available for the most likely interoperability communications scenario, conventional communications on a unit-to-unit basis. Therefore, we will allow trunking on a limited number of Interoperability channels. To ensure that these Interoperability channels are always available when necessary for conventional interoperability operations, we will allow trunking only on a secondary basis as recommended by the NCC. Further, as recommended by the NCC, we will put a limit on the number of Interoperability channels that can be used in a trunked system.⁷

3. The Commission imposed a limit on the number of interoperability channels that may be used in a trunked system, *inter alia*, out of the NCC's concern that a licensee could acquire such a large number of interoperability channels in a trunked system that the channels would "become so integral to the jurisdiction's [General Use] trunked system that it could become 'politically impossible' to release them for interoperability communication."⁸ To prevent the jurisdiction from holding the interoperability channels "hostage," the NCC recommended limits on the number of interoperability channels that could be trunked at any one location.⁹ The Commission adopted a modified version of that recommendation in Section 90.531(b)(1)(iii) of the Commission's rules which limits licensees to two trunked interoperability channels per ten General Use channels.¹⁰

4. Here, Colorado states that "[t]his transportable trunk system will be deployed on an emergency as-needed basis in response to a major incident or catastrophic event."¹¹ Colorado also states

⁵ Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010, WT Docket 96-86, *Fourth Report and Order and Fifth Notice of Proposed Rulemaking*, 16 FCC Rcd 2020 (2001) (*Fourth Report and Order*); *Memorandum Opinion and Order*, 17 FCC Rcd 17202 (2002).

⁶ The National Coordinating Committee (NCC) was a Federal Advisory Committee chartered to provide the Commission with recommendations on the optimum use of the 700 MHz public safety spectrum that became available as a consequence of the digital television transition.

⁷ *Fourth Report and Order*, 17 FCC Rcd at 2036 ¶ 42.

⁸ *Id.* at 2034 ¶ 37.

⁹ *Id.*

¹⁰ 47 C.F.R. § 90.531(b)(1)(iii).

¹¹ Waiver Request at 1.

“[t]his system will not be deployed for regular day to day non-emergency usage.”¹² Colorado adds that the system “will only be used for the purpose of providing interoperable radio coverage for the protection of life and property when public safety personnel that are responding to such an emergency situation.”¹³ Colorado emphasizes that “[t]he deployable trunk site will be under the control of the licensee who can, if necessary, readily disable the trunked channels and revert to conventional operation.”¹⁴

5. Colorado also submits that “[t]he trailer mounted trunked radio system is a State of Colorado asset that was approved through the Public Safety Interoperability Communication (PSIC) grant program funded by the Department of Commerce.”¹⁵ Colorado adds that “[t]he radio system is an asset that is available to all state agencies, counties and local jurisdictions to include law enforcement, fire, emergency management and disaster response organizations in time of need.”¹⁶ Additionally, “[t]he system will provide efficient trunked usage of the 700 MHz interoperability channels being requested and operated as secondary to conventional operations.”¹⁷ Colorado states that “[v]arious public safety entities throughout the state can have this interoperable trunk system preprogrammed into their existing radios, which would allow them to immediately communicate when called to assist in an emergency event outside of their normal coverage area.”¹⁸ Finally, Colorado states that “[t]he operation of these requested channels will be used in full compliance of the same special conditions listed in the FCC Order issued on May 27, 2011 (DA 11-964) in the matter of the State of Florida waiver request.”¹⁹

III. DISCUSSION

6. To obtain a waiver, 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; 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.²⁰

7. We conclude, for the reasons stated above, that grant of the requested waiver will not frustrate the intent of Section 90.531(b)(1)(iii) of the Commission’s rules. Specifically, we find that (1) the interoperability channels will be used in a “stand alone” deployable system unassociated with General Use fixed infrastructure and (2) the deployable system will be under the control of the first responders at an incident scene who readily can revert the repeater to conventional operation.²¹ We also find that the public interest will be served by grant of the waiver because the deployable system operated in the

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* citing State of Florida, *Order*, 26 FCC Rcd 7730 (PSHSB 2011) (*Florida Order*). See also City of Mesa, Police Department, *Order*, 26 FCC Rcd 8466 (PSHSB 2011).

²⁰ 47 C.F.R. § 1.925(b)(3)(i)-(ii).

²¹ *Florida Order*, 26 FCC Rcd at 7731-32 ¶ 4.

trunked mode, will provide greater spectrum efficiency – and hence enhanced communications capability – at incident scenes. Consequently, subject to the conditions specified below, we grant Colorado a waiver of Section 90.531(b)(1)(iii) that limits the number of narrowband interoperability channels that may be trunked.²²

8. As noted in the *Florida Order*, the Bureau sought comment on the National Public Safety Telecommunications Council's (NPSTC) proposal to designate the narrowband reserve channels “to promote deployment of mobile trunked infrastructure that can be transported into [an] incident area.”²³ Although most commenters supported the NPSTC proposal, the Commission has not issued a notice of proposed rule making in response to the NPSTC proposal. Accordingly, we condition the instant waiver grant on the disposition of the NPSTC petition. Specifically, should the Commission authorize mobile trunked infrastructure using narrowband reserve channels:

- this waiver shall expire and the deployable repeaters authorized by this waiver must be reprogrammed to operate on narrowband reserve channels.
- Colorado must bear the cost of reprogramming its repeaters and shall not be eligible for reimbursement of any costs associated with modifying its repeaters in order to migrate to the narrowband reserve channels and comply with the technical and licensing rules applicable to those channels.

9. Finally, operations pursuant to this waiver are secondary, *i.e.*, the repeaters (a) must not cause interference to, and must accept interference from, any fixed base station, and its associated mobiles, operating on the narrowband interoperability channels, and (b) must not cause interference to, and must accept interference from, any mobile or portable unit operating in the “direct,” *i.e.*, unit-to-unit mode.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, the waiver request filed by the State of Colorado, Governor's Office of Information Technology IS GRANTED to the extent discussed herein and SUBJECT TO THE CONDITIONS in Paragraphs 7, 8 and 9 *supra*. IT IS FURTHER ORDERED, that the Application, FCC File No. 0005029158, SHALL BE PROCESSED.

11. This action is taken under delegated authority pursuant to Sections 0.191(f) and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191(f) and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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²² In order to facilitate interoperability, we require that the deployable system authorized by this waiver be “open,” *i.e.*, it shall not require a system key. In addition, Colorado must advise all potential authorized users of the system of the frequencies and other parameters of the deployable system.

²³ See Petition for Rulemaking of the National Public Safety Telecommunications Council at 7, RM-11433 (filed Feb. 8, 2008). Public Safety and Homeland Security Bureau Seeks Comment on Petition for Rulemaking of the National Public Safety Telecommunications Council Concerning the 700 MHz Public Safety Narrowband Channels, RM-11433, *Public Notice*, 23 FCC Rcd 395 (PSHSB 2008).