

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

In the Matter of
PUGET SOUND ENERGY, INC.
Request for Waiver of Section 90.209(b) of the
Commission's Rules
WT Docket 99-87

ORDER

Adopted: June 18, 2012

Released: June 19, 2012

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

1. Introduction. We have before us the request of Puget Sound Energy, Inc. (PSE), for a temporary 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. PSE seeks ten-month extension of the deadline, until October 31, 2013, for thirty-two PLMR stations, and a concurrent extension of the construction deadline for twelve narrowband PLMR stations for which it is licensed. For the reasons set forth below, we grant the request.

2. Background. PSE provides electric and natural gas service to more than one million customers in a service territory of more than 6,000 square miles in western Washington. It currently operates multiple incompatible systems in different frequency bands. In conjunction with modifying its

1 See Request for Extension of Narrowbanding Deadline and for Extended Implementation Authority (filed April 6, 2012) (Request); Letter dated April 24, 2012 from Jeffrey L. Sheldon, Counsel for Puget Sound Energy, Inc. to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau (Supplement). On May 3, 2012, comment was sought on the narrowbanding waiver request. See Wireless Telecommunications Bureau Seeks Comment on Puget Sound Energy, Inc. Request for Waiver of the January 1, 2013 VHF-UHF Narrowbanding Deadline, Public Notice, WT Docket No. 99-87, DA 12-700 (WTB MD rel. May 3, 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, DA 12-642 (WTB/PSHSB/OET rel. Apr. 26, 2012).

3 Stations KB84718, KB88137, KE7734, KGQ933, KNDS949, KNGD316, KOB408, KOF303, KOL304, WNAK427, WNDK618, WNGP437, WNGX308, WNPW453, WNPY247, WNPZ378, WNPZ380, WNQB832, WNQX240, WNRJ531, WNVS282, WNWB592, WNXC741, WNXX899, WNYG522, WPAH895, WPNR563, WPZK229, WPZP436, WPZU454, WQGT731, and WQLW916. See Request at 17. PSE also requested an extension of the narrowbanding deadline for Station KBV811, but that license has expired.

4 Stations WQLI605, WQLI929, WQLJ376, WQLJ638, WQLM876, WQLM921, WQLQ631, WQMJ921, WQMN360, WQMN658, WQMP747, and WQMQ547. See id. at 18. The current construction deadline for those stations is December 31, 2012. PSE also requested an extension of the construction deadline for Stations WQEJ919 and WQHQ356, but those stations already have been constructed.

facilities to meet the narrowbanding standard, PSE is completely rebuilding its PLMR facilities as a consolidated interoperable system.⁵ PSE states that the new system will improve the safety and reliability of its utility operations.

3. PSE states that the new system cannot be operated until all stations are completed, so it must use its current facilities until it migrates users to the new system.⁶ The new system will consist of more than sixty radio sites, with seventy-five console positions and approximately two thousand subscriber units.⁷ PSE has already allotted the necessary funding and acquired the equipment for the new system.⁸ Due to climate and geography in the Pacific Northwest, however, PSE can safely and reasonably deploy base station equipment only from late spring to early fall. PSE anticipates completing the major portion of the network in 2012, but does not expect to complete construction and testing until the 2013 deployment season.⁹ The consolidated system will use some Part 90 spectrum but will operate largely on Part 80 VHF spectrum, so PSE anticipates being able to relinquish a substantial number of its current Part 90 frequencies once the migration is complete.¹⁰

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;¹¹ 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.¹² 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.¹³ 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."¹⁴

5. Based on the record before us, we conclude that PSE has presented sufficient facts to meet the high standard for grant of the requested waiver. The record shows that PSE began planning its consolidated system in 2008, began construction in 2011, and expects to complete most of the system in 2012. Strict application of the narrowbanding rules would require PSE to expend significant resources to

⁵ Request at 3.

⁶ Supplement at 1.

⁷ Request at 4.

⁸ *Id.* at 8-10.

⁹ *Id.* at 14.

¹⁰ *Id.* at 11.

¹¹ 47 C.F.R. § 1.925(b)(3)(i).

¹² 47 C.F.R. § 1.925(b)(3)(ii).

¹³ 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*).

¹⁴ *Id.* at 9649.

narrowband its existing wideband facilities even though it plans to phase those facilities out once it deploys its consolidated system. We conclude, under the circumstances presented, that strict enforcement of the narrowbanding deadline with respect to the remaining systems would be inequitable, unduly burdensome, and contrary to the public interest. In reaching this conclusion, we place significant weight on the showing that PSE has made with respect to the factors identified in the *Narrowbanding Waiver Guidance Notice*.

6. First, PSE has shown diligence in planning for the rebuilding of its PLMR system and the transition to narrowbanding, and has, since 2007, already committed and spent significant funds for its implementation. In conjunction with narrowbanding, PSE is completely rebuilding its PLMR facilities as a consolidated interoperable system, which will result in improved coverage, reduced congestion, enhanced mobile-to-mobile radio communication, improved interoperability within PSE, and improved safety of PSE operations.¹⁵ Based on the size and complexity of the new system and the limited deployment season in the Pacific Northwest, we conclude that the ten-month waiver period requested by PSE is no more than is reasonably necessary to complete narrowbanding.¹⁶

7. Second, PSE is migrating the majority of its system to Part 80 spectrum, and will therefore also be able to relinquish a substantial number of Part 90 VHF and UHF channels. Grant of the waiver will avoid the diversion of PSE's financial, technical, and administrative resources to narrowbanding its existing facilities pending the transition to the consolidated system and will allow PSE to devote its resources to decommissioning its existing wideband facilities and relinquishing frequencies that will not be used in the consolidated system. This will facilitate efficient use of scarce VHF spectrum and free up capacity for potential new spectrum users, which are key goals of the narrowbanding rules.¹⁷

8. Finally, PSE requests a construction extension for certain Part 90 narrowband stations that it has not yet constructed, also until October 31, 2013. We grant the extension to permit construction of those stations to be completed as part of the consolidated system within the period of the narrowbanding waiver.¹⁸ Requiring construction of these stations prior to migration of PSE's operations to the consolidated system would be unduly burdensome and contrary to the public interest.

9. *Conclusion and Ordering Clauses.* Based on the foregoing, we conclude that grant of the requested waivers is warranted. Accordingly, we grant PSE a waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline until October 31, 2013 for the call signs listed in note 3, *supra*. We also grant PSE a concurrent extension of the construction deadline for the call signs listed in note 4, *supra*.

10. 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.

¹⁵ Request at 9.

¹⁶ 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").

¹⁷ See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 10 FCC Rcd 10076, 10077 ¶ 2 (1995).

¹⁸ See New York State Electric & Gas Corporation, *Order*, 22 FCC Rcd 1787, 1790-91 ¶¶ 8-12 (WTB MD 2007) (granting construction extension in order to provide the same deadline for different stations within a utility's consolidated system) (citing National Rural Telecommunications Cooperative, LLC, *Memorandum Opinion and Order*, 15 FCC Rcd 13402, 13405 ¶ 9 (WTB CWD 2000), *aff'd*, *Order on Reconsideration*, 17 FCC Rcd 4398 (WTB CWD 2002)).

§ 1.925(b)(3), that the Request for Extension of Narrowbanding Deadline and for Extended Implementation Authority filed by Puget Sound Energy, Inc. on April 6, 2012 IS GRANTED to the extent set forth above.

11. 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

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