

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

In the Matter of Application of	)	
	)	
AVISTA CORPORATION	)	WT Docket 99-87
	)	
Request for Waiver of Section 90.209(b) of the Commission's Rules	)	

**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 Avista Corporation (Avista)<sup>1</sup> for a waiver until September 30, 2014, 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.<sup>2</sup> Avista seeks the extension for PLMR Stations KA3396, KFM796, KGO651, KNIC261, KOA401, KOA544, KOB227, KOB519, KOE262, KOE290, KOE390, KOE464, KOF407, KOG402, KOG592, KOH901, KOI282, KOK432, KOK940, WNFU403, WNSU658, WPAZ378, WPEQ287, WPMJ881, WQF840, and WQFT245. For the reasons set forth below, we grant the request.

2. *Background.* Avista provides electrical and natural gas service to more than 485,000 customers in a service territory of more than 30,000 square miles in parts of Washington, Idaho, Montana, and Oregon. In June 2009, it acquired four Automated Maritime Telecommunications System (AMTS) geographic licenses, which it intended to use to replace its wideband PLMR system in advance of the narrowbanding deadline.<sup>3</sup> While geographic licensees generally are authorized to place stations anywhere within their licensed service areas, the Commission requires individual licensing of AMTS station in

<sup>1</sup> See Request for Extension of Narrowbanding Deadline (filed Dec. 13, 2011) (Request); Supplement to and Modified Request for Extension of Narrowbanding Deadline (filed Feb. 2, 2012) (Supplement). On February 10, 2012, comment was sought on the Request. See Wireless Telecommunications Bureau Seeks Comment on Avista Corporation Request for Waiver of the January 1, 2013 VHF-UHF Narrowbanding Deadline, *Public Notice*, WT Docket No. 99-87, 27 FCC Rcd 1446 (WTB MD 2012). No comments were filed.

<sup>2</sup> See 47 C.F.R. § 90.209(b)(5); 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).

<sup>3</sup> Request at 2.

proximity to certain television stations.<sup>4</sup> In December 2009, Avista filed modification applications seeking separate authorization for particular locations.<sup>5</sup> Petitions to deny the applications were filed.

3. In December 2011, Avista requested an extension of the narrowbanding deadline on the grounds that the continued pendency of its modification applications prevented it from initiating construction of its AMTS system. It requested a 24-month extension, until December 31, 2014, to ensure that the company would either have time to construct its AMTS network or comply with the Commission's narrowbanding requirement on a deferred basis. It stated that, due to climate and geography in the Pacific Northwest, Avista can safely and reasonably deploy base station equipment only from late spring to early fall, and that construction of its AMTS network was expected to take all or part of three deployment seasons. After the modification applications were granted in January 2012,<sup>6</sup> Avista reduced its requested extension to 21 months, until September 30, 2014.<sup>7</sup> Upon construction and implementation of its AMTS network, Avista will relinquish the above-listed PLMR licenses.<sup>8</sup>

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;<sup>9</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>10</sup> 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.<sup>11</sup> 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."<sup>12</sup>

5. Based on the record before us, we conclude that Avista has presented sufficient facts to meet the high standard for grant of the requested waiver. The record shows that Avista has been planning since 2009 to migrate its VHF communications operations to the AMTS band. Strict application of the narrowbanding rules would require Avista to expend significant resources to narrowband its existing VHF wideband facilities even though it plans to relinquish those frequencies once it deploys its AMTS system. We conclude that strict enforcement of the narrowbanding deadline under these circumstances would be

---

<sup>4</sup> See 47 C.F.R. §§ 80.215(h), 80.385(b), 80.475(a).

<sup>5</sup> FCC File Nos. 0004076538, 0004076539, 0004076544.

<sup>6</sup> See Avista Corp., *Order*, 27 FCC Rcd 263 (WTB MD 2012), *recon. pending*.

<sup>7</sup> See Supplement at 1.

<sup>8</sup> Request at 9.

<sup>9</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>10</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>11</sup> 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 (2011) (*Narrowbanding Waiver Guidance Notice*).

<sup>12</sup> *Id.* at 9649.

inequitable and unduly burdensome, and that a waiver would be in the public interest. In reaching this conclusion, we place significant weight on the showing that Avista has made with respect to the factors identified in our *Narrowbanding Waiver Guidance Notice*.

6. First, Avista has shown diligence in planning its transition to the AMTS band, which will enable it to decommission its existing wideband facilities and vacate its VHF frequencies.<sup>13</sup> Planning began in 2009, and Avista has prepared extensive engineering studies and obtained access rights to the real estate and tower space necessary for system deployment.<sup>14</sup> Avista would have constructed its AMTS system in time to migrate its VHF operations before the narrowbanding deadline had construction not been delayed by administrative matters beyond its control. The AMTS system will significantly upgrade Avista's communications capabilities, which will improve the safety and reliability of its utility operations.<sup>15</sup> Under these circumstances, we conclude that the 21-month waiver period requested by Avista is no more than is reasonably necessary to vacate its existing VHF facilities.<sup>16</sup>

7. Second, Avista is committed to returning significantly more VHF spectrum to the licensing pool than otherwise achievable by narrowbanding its existing VHF licenses once it deploys its AMTS system.<sup>17</sup> Grant of the waiver will avoid the diversion of Avista's financial, technical, and administrative resources to narrowbanding their existing VHF facilities pending the transition to the AMTS land mobile system and will allow Avista to devote its resources to decommissioning their existing wideband facilities and vacating its VHF frequencies. 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.<sup>18</sup>

8. *Conclusion and Ordering Clauses.* Based on the foregoing, we conclude that grant of the requested waiver is warranted. Accordingly, we grant Avista a waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline until September 30, 2014, for the above-listed call signs.

9. 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. § 1.925(b)(3), that the Request for Extension of Narrowbanding Deadline, filed on December 13, 2011 and supplemented on February 2, 2012 by Avista Corporation IS GRANTED.

10. 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

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

---

<sup>13</sup> *Narrowbanding Waiver Guidance Notice*, 26 FCC Rcd at 9649.

<sup>14</sup> Request at 6.

<sup>15</sup> *Id.* at 7.

<sup>16</sup> 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").

<sup>17</sup> See Request at 4.

<sup>18</sup> 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).