

Before the
I/B Communications Commission
Washington, D.C. 20554

In the Matter of)
COUNTY OF SANDOVAL, NEW MEXICO) File No. 0004902839
Request for Waiver of Section 90.35 of the)
Commission's Rules)

ORDER

Adopted: September 18, 2013

Released: September 18, 2013

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

I. INTRODUCTION

1. The County of Sandoval, New Mexico (Sandoval, or the County) filed an application and a request for waiver seeking authorization to use Industrial/Business (I/B) Pool frequency 173.325 MHz for vehicular repeaters. Sandoval seeks waiver relief pursuant to Section 1.925 of the Commission's rules. Sandoval requests this frequency because "no suitable public safety category frequencies are currently available." For the reasons discussed below, we grant the waiver request as conditioned herein.

II. BACKGROUND

2. The County asserts that it has many coverage holes in which "little or no reliable communications is possible, particularly using portable radios." Sandoval operates a five-site VHF public safety system under call sign WNGF606. The County "decided to implement mobile repeater technology" because "the poor coverage areas are not grouped together to allow for an easy, cost effective solution." The County states that "[m]obile repeaters are wireless devices that mount in each vehicle and are used to route signals to and from nearby portable (handheld) radios through the existing, higher-powered vehicle radio. The mobile repeaters significantly improve portable radio coverage within a half mile radius of an equipped vehicle." Further, Sandoval states that "such devices would relay critical radio messages to and from portable radios to the County's dispatch center and other Deputies."

1 File No. 0004902839 (filed Oct. 6, 2011, amended March 12, 2012), attached Request for Waiver (dated March 10, 2012) (Waiver Request). See also 47 C.F.R. § 90.35.

2 See Waiver Request at 5. See also 47 C.F.R. § 1.925.

3 Waiver Request at 1.

4 Id. at 2.

5 In the context of the Private Land Mobile Radio Service, "VHF" refers to the band 150-174 MHz. See, e.g., 47 C.F.R. § 90.187.

6 Waiver Request at 2.

7 Id.

8 Id.

3. Sandoval states that its engineering contractor investigated the required frequency specifications from two vendors of vehicular repeater devices.⁹ Both vendors require that the vehicular repeater frequency be separated from the existing transmit and receive frequencies of the collocated mobile radios, with the smallest separation being two megahertz.¹⁰ The County's mobile radios transmit and receive over several frequencies, which places significant limitations on what public safety VHF frequencies can be assigned to the vehicular repeaters.¹¹ However, the County operates on several other VHF frequencies pursuant to interoperability agreements with neighboring licensees.¹² As a result, the County avers that it must seek a frequency below 148.775 MHz or above 162.345 MHz for the vehicular repeaters.¹³ The County notes that the VHF spectrum below 148.775 MHz is allocated to amateur and Federal government users.¹⁴ In the VHF spectrum above 162.345 MHz, Sandoval avers that only 23 Public Safety frequencies exist, and all are unavailable due to co-channel incumbent licensees and technical limitations.¹⁵ The County obtained a notification from public safety frequency coordinator the Association of Public-Safety Communications Officials-International, Inc. (APCO) certifying that it can assign no Public Safety VHF High Band frequencies that will satisfy the requirements of the County's vehicular repeater equipment.¹⁶

4. The County selected I/B Pool frequency 173.325 MHz as the most appropriate candidate because it supports compatible mobile voice operations.¹⁷ Sandoval proposes to operate with a bandwidth of 11 kHz to avoid bandwidth overlap with adjacent frequencies 173.3375 and 173.3125 MHz.¹⁸ The County obtained a notification from I/B Pool frequency coordinator the Automobile Association of America (AAA) indicating that it has "no issues with the coordination."¹⁹

5. On May 24, 2013, the Public Safety and Homeland Security Bureau (Bureau) placed Sandoval's request on public notice.²⁰ The Bureau received no comments or reply comments.

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

⁹ *Id.* at 3.

¹⁰ *Id.* at Exhibits D and E. The County includes information from Pyramid Communications, Inc. and FUTURECOM. *Id.* We have noted the same spectral spacing requirement elsewhere. *See, e.g.,* Wayne County Sheriff Department, *Order*, 27 FCC Rcd 8167 (PSHSB PLD 2012) (*Wayne Order*).

¹¹ Waiver Request at 3.

¹² *Id.* at 3 and Exhibit C.

¹³ *Id.* at 3.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 4 and Exhibit F.

¹⁶ *See* File No. 0004902839, attached notification from APCO International, RE: Sandoval, County of, dated March 6, 2012 (APCO Letter).

¹⁷ Waiver Request at 4.

¹⁸ *Id.*

¹⁹ *See* File No. 0004902839, attached notification from AAA, RE: Sandoval, County of, dated March 7, 2012.

²⁰ *See* Public Safety and Homeland Security Bureau Seeks Comment on Sandoval County, New Mexico Request for Waiver to Operate Vehicular Repeater Units on an Industrial/Business Frequency, *Public Notice*, 28 FCC Rcd 7550 (PSHSB 2013) (*Public Notice*).

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.²¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²²

7. *Section 90.35.* We find that granting the waiver request for the specified frequency will not frustrate the underlying purpose of Section 90.35(a). The Commission consolidated the private land mobile radio services below 800 MHz into the I/B Pool and Public Safety Pools in 1997 in order to increase spectrum efficiency, increase licensee flexibility to manage the spectrum more efficiently, and reduce administrative burdens on users as well as the Commission.²³ The Commission maintained a separate Public Safety Pool (as opposed to a single pool covering all users) to maintain the integrity of the critical functions of the users included within this pool.²⁴

8. As part of our analysis, we note that in 2010, the Bureau's former Policy Division (now the Policy and Licensing Division) stated that "future non-I/B Pool eligible applicants seeking waivers to deploy multiple I/B Pool channels on a wide-area basis will be expected to demonstrate that a grant of their application(s) would not result in an inadequate supply of I/B channels in the relevant geographic areas for future I/B Pool eligible applicants."²⁵ We find that this requirement does not apply because Sandoval seeks only a single I/B Pool frequency. Moreover, since AAA has no issues with the County's use of the frequency, and no other I/B Pool frequency coordinator has objected to Sandoval's proposed use of these frequency,²⁶ we conclude that authorizing Sandoval's use of the frequency would not result in an inadequate supply of spectrum for the I/B Pool community, or otherwise result in spectrum inefficiencies.

9. Sandoval states, "[t]he underlying purpose of the rules for which a waiver is sought is to establish separate frequency pools for Industrial/Business and Public Safety licensees."²⁷ The County argues that "[t]he requested waiver would have little or no impact on the Industrial/[Business] Pool as the proposed repeaters operate with low power and have a very limited range."²⁸ "No base stations would operate on the requested frequency, and all mobile repeater use would be within [the] County's limited area of jurisdictions."²⁹ Regarding co-channel incumbent licensees, Sandoval states that "a co-channel analysis has been performed with all co-channel stations listed in Exhibit B, and while there are several continental and national incumbents, no interference is predicted."³⁰ We agree that vehicular repeaters

²¹ 47 C.F.R. § 1.925(b)(3)(i-ii).

²² *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).

²³ See Replacement of Part 90 By Part 88 To Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, *Second Report and Order*, 12 FCC Rcd 14307, 14315 ¶ 15 (1997).

²⁴ *Id.* at 14316 ¶ 16.

²⁵ See West Virginia Department of Health and Human Resources/State Trauma Emergency Care System, *Order*, 25 FCC Rcd 12566, 12568 at n.23 (PSHSB PD 2010).

²⁶ Under 47 C.F.R. § 90.176, coordination of these frequencies requires that all I/B Pool frequency coordinators be placed on notice of any proposed use of these frequencies.

²⁷ Waiver Request at 5.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Waiver Request at 4, Exhibits B, G.

have low impact on the I/B Pool spectrum and incumbent users of this frequency. However, we condition Sandoval's use of frequency 173.325 MHz on the County's cooperation with co-channel incumbent licensees to avoid interference.³¹ For a list of co-channel incumbent licensees, we direct Sandoval to refer to Exhibit B of its waiver request. Therefore, we conclude that, subject to this condition, the application of Section 90.35(a) to this case would not serve the underlying purpose of that rule. We note that this waiver is limited to the eligibility criteria set forth in Section 90.35(a). Sandoval's operations on the I/B Pool frequency will be subject to the same technical requirements that apply to all other users of this I/B Pool frequency.

10. *Public interest.* Sandoval states that "[t]he addition of the proposed mobile repeater system will enhance public safety communications for the County's public safety personnel and immediately improve coverage throughout the county, rural communities and Pueblos of the County's service area."³² We agree with the County that "grant of the waiver would be in the public interest as it would eliminate dangerous gaps in radio coverage for the County's public safety personnel."³³ We recognize that the public interest supports the County's goal to ensure that officers are able to communicate with hand-held radios outside of their vehicles.³⁴ We therefore find that grant of Sandoval's waiver request as conditioned herein is in the public interest.

11. In the *Public Notice*, the Bureau noted that Pyramid Communications, Inc. (Pyramid) filed a petition for rulemaking requesting that the Commission designate certain frequencies in the VHF band for vehicular repeater use by Public Safety licensees.³⁵ The Bureau sought comment on whether any grant to Sandoval should be conditioned on the outcome of any rulemaking proceeding resulting from the Pyramid Amended Petition; that is, whether Sandoval should be required to relocate from frequency 173.325 MHz to an available, newly-designated, vehicular repeater frequency. The Commission has since granted the Pyramid Amended Petition in part and initiated a rulemaking proceeding on vehicular repeaters.³⁶ The waiver request is premised on the lack of public safety VHF frequencies for vehicular repeater operation. If suitable public safety spectrum becomes available for vehicular repeaters through the rulemaking proceeding, then it appears that the waiver would no longer be necessary. Accordingly, in the event the Commission amends its rules to establish any additional vehicular repeater frequencies in that rulemaking proceeding, our grant of the waiver in the present proceeding is conditioned on Sandoval filing, upon the first opportunity for license renewal following such amendment of the rules, a renewal/modification application to delete its vehicular repeater operations from frequency 173.325 MHz and apply instead for an available public safety VHF vehicular repeater frequency. Notwithstanding this condition, Sandoval will be permitted to remain on frequency 173.325 MHz at renewal if it demonstrates

³¹ This includes, at a minimum, providing upon request sufficient information to enable co-channel incumbent licensees to determine the County's licensed area of operation. See, e.g., Letter, Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Warren C. Havens, 28 FCC Rcd 8456 (WTB June 13, 2013) (describing condition for incumbent AMTS licensees).

³² *Id.*

³³ Waiver Request at 6.

³⁴ See *Wayne Order*, 27 FCC Rcd at 8172 ¶ 14.

³⁵ See *Public Notice*, 28 FCC Rcd at 7552 citing Modification of Sections 90.20(d)(24) [sic] and 90.65 [sic] of the Commission's Rules to Facilitate the Use of Vehicular Repeater Units, Petition for Rule Making of the Pyramid Communications, Inc. (filed June 27, 2011); Modification of Sections 90.20(d)(34) and 90.265 of the Commission's Rules to Facilitate the Use of Vehicular Repeater Units, Petition for Rule Making of the Pyramid Communications, Inc. (amended Aug. 16, 2011) (Pyramid Amended Petition).

³⁶ See Amendment of Sections 90.20(d)(34) and 90.265 of the Commission's Rules to Facilitate the Use of Vehicular Repeater Units, PS Docket No. 13-229, RM-11635, *Order and Notice of Proposed Rulemaking*, FCC 13-121 (rel. Sept. 16, 2013).

that there is no available or suitable public safety VHF vehicular repeater frequency resulting from the rulemaking. To the extent specified in this paragraph, we condition our grant of Sandoval's Waiver Request on the outcome of the rulemaking proceeding.

IV. CONCLUSION

12. We find that Sandoval has met the criteria to obtain a conditional waiver of Section 90.35. Accordingly, we grant the waiver request and authority for Sandoval to use frequency 173.325 MHz for vehicular repeaters subject to the following conditions:

- a) Licensee must cooperate with co-channel incumbent licensees to avoid interference.
- b) This license is conditioned on the outcome of the rulemaking proceeding in PS Docket No. 13-229, to the extent specified in paragraph 11, *supra*. Authorization for frequency 173.325 MHz will not be renewed if the Commission designates VHF spectrum for public safety vehicular repeaters, unless licensee can demonstrate that no public safety VHF vehicular repeater frequency is available or suitable. This condition shall apply only to the first renewal after conclusion of the rulemaking proceeding in PS Docket No. 13-229.

V. ORDERING CLAUSES

13. Accordingly, WE ORDER that pursuant to Sections 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the Request for Waiver filed by the County Of Sandoval, New Mexico, on March 10, 2012, IS GRANTED, as conditioned herein.

14. WE FURTHER ORDER that application File No. 0004902839 SHALL BE PROCESSED consistent with this Order and the Commission's rules.

15. 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, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau