

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

In the Matter of
STATE OF MAINE -
MSCOMMNET PROJECT
Request For Waiver of Sections 90.20(d)(13) and
(45) of the Commission's Rules
File No. 0005722810

ORDER

Adopted: November 15, 2013

Released: November 15, 2013

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

I. INTRODUCTION

1. The State of Maine (Maine or the State) filed an application and waiver request seeking authority to operate Public Safety Pool frequency 157.450 MHz at its Huntoon Hill site as part of its VHF statewide public safety radio system. The Commission's rules restrict operations on frequency 157.450 MHz to one-way paging communications to mobile receivers, and limit the maximum transmitter output power (TPO) to 30 watts. Maine seeks a waiver to operate on this frequency in the voice mode with a maximum TPO of 110 watts. For the reasons detailed below, we grant Maine's waiver request.

II. BACKGROUND

2. Maine is implementing a new narrowband (12.5 kHz channel bandwidth) VHF Project 25 trunked radio system. In its ongoing effort to achieve statewide operability and interoperability on this system, Maine states that it "conducted a thorough search of Public Safety Pool frequencies for a site located at Huntoon Hill, which is needed to fill in system coverage along a portion of the Maine coastline," and concluded that 157.450 MHz is the only Public Safety Pool frequency available at this location. Maine submits that there are no incumbents in Maine, other than the State itself, licensed to

1 See Request for Waiver, dated April 1, 2013 (Waiver Request), attached to FCC File No. 0005722810 (filed Apr. 5, 2013).

2 47 C.F.R. §§ 90.20(d)(13) and (45).

3 Waiver Request at 3-4. In its application, Maine requests an output power of 110 watts, but its waiver request specified 85 watts. In evaluating Maine's waiver request, we rely on the 110 watt transmitter power output requested in Maine's application.

4 Maine also seeks a waiver of Section 90.20(d)(30) which limits operations on frequency 157.450 MHz to a maximum bandwidth of 25 kHz. Since Maine proposes to operate with a bandwidth less than 25 kHz no waiver of this rule is needed. See Waiver Request at 1, 4.

5 Id. at 1.

6 Id. at 3.

operate on frequency 157.450 MHz.⁷ Maine argues, however, that its statewide radio system is a “state-of-the-art” two-way voice communications system that is incompatible with the limitations, *supra*, that the Commission has imposed on the use of this frequency.⁸ Maine thus seeks waiver of Sections 90.20(d)(13) and (45) of the Commission’s rules to incorporate the channel into its statewide network.⁹

3. Maine states that, while frequency 157.450 MHz is designated as a one-way paging channel, it should be allowed to operate voice communications on the channel because “there is no longer a demand for public safety paging in Maine.”¹⁰ Maine notes that the Commission has previously granted waivers to allow public safety use of frequencies limited to paging-related operations for voice communications.¹¹ Maine seeks to pair frequency 157.450 MHz with frequency 161.340 MHz, which it obtained pursuant to waiver.¹²

4. Furthermore, Maine notes that the Commission has previously granted it waivers to “facilitate the modernization of the State’s sub-standard radio system” and acknowledged the State’s limited frequency options outside the VHF band due to its difficult terrain and proximity to Canada.¹³ Maine contends that a waiver of Sections 90.20(d)(13) and (45) would be in the public interest because “it would allow for Maine’s new statewide interoperability public safety communications network to extend into an otherwise underserved coastal area” without undermining the underlying purpose of the Commission’s rules.¹⁴ Maine notes that no incumbents operate on this channel within the state other than Maine itself, and that the State “obviously concurs with this new application.”¹⁵ Finally, Maine adds that it “has no reasonable alternative, as no other Public Safety Pool channel is available for its use at the site in question.”¹⁶

⁷ *Id.* Maine is licensed to operate on frequency 157.450 MHz at a site near Augusta, Maine under call sign WZX719. See Waiver Exhibit attached to FCC File No. 0005722810. Maine intends to relinquish call sign WZX719 once the migration to the new statewide system is complete. Waiver Request at 4 note 6.

⁸ *Id.* at 4.

⁹ *Id.* Section 90.20(d)(13) states that frequency 157.450 MHz will be assigned only for one-way paging communications while Section 90.20(d)(45) limits operations on 157.450 MHz to 30 watts transmitter output power. See 47 C.F.R. §§ 90.20(d)(13) and (45).

¹⁰ Waiver Request at 4.

¹¹ *Id.* Maine received a waiver to operate portions of its statewide network on Part 22 paging channels for which it obtained licenses. See State of Maine – MSCCommNet Project, Request for Waiver of Sections 90.35(a), 20.9(a)(6), 22.377, and 22.565(f) of the Commission’s Rules, *Order*, 27 FCC Rcd 8891 (PSHSB/WTB 2012) (*Maine I/B Waiver Order*).

¹² See Unpaired Trunking Frequency Justification attached to FCC File No. 0005722810. Maine obtained authorization to operate on frequency 161.340 MHz at the Huntoon Hill site pursuant to waiver. See State of Maine, *Order*, 28 FCC Rcd 988 Appendix (PSHSB 2013) (*Maine Railroad Waiver Order*); FCC File No. 0004980650 (filed Oct. 26, 2012) (WQQP270).

¹³ Waiver Request at 3. See also *Maine I/B Waiver Order*, 27 FCC Rcd 8894 at ¶ 11.

¹⁴ Waiver Request at 4.

¹⁵ *Id.* at 3.

¹⁶ *Id.* On May 1, 2013, the Bureau granted Maine Special Temporary Authority to operate on paging frequency 157.450 MHz at the Huntoon Hill site. See FCC File No. 0005725595 (filed Apr. 8, 2013) (WQRF320).

5. On July 9, 2013, the Public Safety and Homeland Security Bureau (Bureau) released a *Public Notice* seeking comment on Maine's request for a waiver of Sections 90.20(d)(13) and (45).¹⁷ In particular, the Bureau sought comment from any parties who would be impacted by Maine's voice operation on this frequency.¹⁸

6. The three commenting parties who responded to the *Public Notice* all support Maine's waiver request.¹⁹ The State of Wisconsin Department of Transportation (Wisconsin) contends that due to the power limitations imposed by the rules, frequency 157.450 MHz is typically underutilized, and that Maine's proposed use will put this frequency to valuable use without harm to others.²⁰ The Commonwealth of Virginia Department of State Police (Virginia) supports Maine's waiver request and urges the Commission to "liberally permit use of all of Part 90 paging frequencies for land mobile radio use by statewide public safety entities."²¹ Additionally, Virginia suggests that the Commission consider revising its rules to make all Part 90 paging frequencies available for public safety land mobile use, with a priority for statewide public safety entities, and with related modification to the bandwidth and power limitations.²² The Enterprise Wireless Alliance supports Maine's request for "repurposing" an unused public safety pool frequency through waiver as opposed to reallocating spectrum through rule making.²³

III. DISCUSSION

7. Section 1.925 states that 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;²⁴ 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.²⁵ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²⁶

¹⁷ See Public Safety and Homeland Security Bureau Seeks Comment on Application Filed by the State of Maine Seeking Waiver of One-way Paging Requirements on Public Safety Pool Frequency 157.450 MHz, *Public Notice*, 28 FCC Rcd 10002 (PSHSB 2013).

¹⁸ *Id.* at 10004.

¹⁹ See Comments of the Commonwealth of Virginia filed July 12, 2013 (Virginia Comments); Statement from the State of Wisconsin Department of Transportation, Division of State Patrol filed July 9, 2013 (Wisconsin Comments); and Comments of the Enterprise Wireless Alliance filed July 19, 2013 (EWA Comments).

²⁰ Wisconsin Comments at 1.

²¹ Virginia Comments at 2.

²² *Id.*

²³ EWA Comments at 2-3.

²⁴ 47 C.F.R. § 1.925(b)(3)(i).

²⁵ 47 C.F.R. § 1.925(b)(3)(ii).

²⁶ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969), *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). See, e.g., *County of Morgan, Order*, 21 FCC Rcd 11296 (PSHSB 2006) (dismissing waiver request to use frequency 157.450 MHz for mobile operations because the applicant failed to address the Commission's waiver standard).

8. The Commission allocated an exclusive frequency, 157.450 MHz, for limited area, hospital one-way paging systems.²⁷ The Commission allocated this channel because paging communications had been demonstrated to be disruptive to operations on regular two-way voice channels in the VHF band.²⁸ The Commission envisioned that medical paging operations that were conducted on regular VHF two-way voice channels in the Special Emergency Radio Service would shift to frequency 157.450 MHz if harmful interference to voice operations occurred.²⁹ To limit the possibility of adjacent channel interference, the Commission limited paging operations to 30 watts TPO.³⁰ Neither Maine nor the commenters provide evidence that the existing limitations no longer serve their primary purpose *i.e.* to prevent interference to two-way voice operations in the VHF band.

9. Applying the second prong of the waiver standard, however, we find that Maine has demonstrated that waiver of Sections 90.20(d)(13) and (45) of the Commission's Rules is warranted based on the specific circumstances presented. As we stated previously in granting Maine waivers to use Part 90 Industrial/Business and Part 22 two-way paging frequencies in implementing its statewide system: “we agree that there are insufficient Public Safety Pool frequencies available in the VHF band for Maine's statewide radio system [footnote omitted]. We acknowledge that Maine's terrain, with its heavily forested areas, is difficult to penetrate for adequate radio coverage using frequencies above the VHF band [footnote omitted].”³¹

10. We believe those conditions continue to limit Maine's spectrum options. Additionally, Maine is currently the only active licensee on frequency 157.450 MHz in the State. Maine seeks to pair this frequency with another frequency that it obtained pursuant to a waiver. Further, we reviewed Maine's instant application and find that Maine's proposal to operate at the Huntoon Hill site with 110 watts TPO and 141.3 watts ERP would result in only a *de minimis* extension of its currently licensed interference contour on this frequency.³² Thus, Maine's proposal to operate in excess of the TPO limits at the Huntoon Hill site will have minimal impact on the ability of potential applicants to operate on this frequency in the paging mode.³³

11. Based on the specific factual circumstances of the instant case, we find that Maine has no reasonable alternative but to repurpose paging frequency 157.450 MHz at the Huntoon Hill site and to integrate it into its MSCommNet system. Furthermore, we find it in the public interest for Maine to fill in

²⁷ Amendment of Parts 2 and 89 to Allocate 157.450 MHz to the Special Emergency Medical Radio Service for Medical Paging Systems in Hospitals, Docket No. 19643, RM-1884, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 38 FCC 2d 147, 149 ¶ 6 (1972); Amendment of Subpart P, Part 89 of the Commission's Rules (Eligibility of Comprehensive Health Services); Amendment of Parts 2 and 89 of the Commission's Rules to Allocate 157.450 MHz to the Special Emergency Radio Service for Medical Paging Systems in Hospitals; Amendment of Parts 2 and 89 of the Commission's Rules and Regulations Relating to Communications for Emergency Medical Services, Docket 19576 RM-2017; Docket 19643; Docket 19880, *Report and Order*, 47 FCC 2d 676, 687 ¶ 36 (1974).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ See *Maine Railroad Waiver Order*, 28 FCC Rcd at 990-91 ¶ 11; *Maine I/B Waiver Order*, 27 FCC Rcd at 8894 ¶ 11.

³² Maine is authorized under call sign WZX719 to operate on frequency 157.450 MHz at a location near the Huntoon Hill site with 30 watts TPO and 45 watts ERP. For our analysis we examined the 19 dBu F(50,10) contour.

³³ See Waiver Exhibit.

coverage in an otherwise unserved coastal area and, “thereby, to facilitate interoperability with federal, state and local public safety officials using predominantly VHF communications systems [footnote omitted].”³⁴

12. Finally, Virginia’s proposals fall outside the scope of this proceeding. Should Virginia seek to repurpose all Part 90 paging spectrum to expand statewide systems, it may file a petition for rule making pursuant to Section 1.401 of the Commission’s Rules.³⁵

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED pursuant to Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925, that the waiver request filed by the State of Maine – MSCCommNet Project IS GRANTED.

14. IT IS FURTHER ORDERED, that application, File No. 0005722810, SHALL BE GRANTED accordingly .

15. 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

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³⁴ See *Maine Railroad Waiver Order*, 28 FCC Rcd at 988.

³⁵ 47 C.F.R. § 1.401.