

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

In the Matter of
State of New Jersey, Office of Information
Technology
Request for Waiver of Section 90.531(b)(1)(iii) of
the Commission's Rules
File No. 0005264398

ORDER

Adopted: February 22, 2013

Released: February 22, 2013

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

I. INTRODUCTION

1. The State of New Jersey, Office of Information Technology (New Jersey) requests a waiver to permit licensing of a "deployable temporary [700MHz] trunked repeater system" to operate on eight 12.5 kHz narrowband interoperability channels. Specifically, New Jersey seeks a waiver of Section 90.531(b)(1)(iii) of the Commission's rules in order to use eight 12.5 kHz narrowband interoperability channels for its proposed temporary deployable trunked system (1) without any co-located general pool channels and (2) secondary to conventional, i.e. non-trunked, channel use. For the reasons set out below, we grant New Jersey's waiver request, subject to conditions.

II. BACKGROUND

2. In the Fourth Report and Order 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

1 See Request for Waiver of Section 47 C.F.R. Part 90.531(b)(1)(iii) of the Commission's Rules (Waiver Request) attached to FCC File No. 0005264398 (filed June 15, 2012). New Jersey is responsible for administering the 700 MHz interoperability channels and "has approved the use of these channels in a trunking configuration on a temporary basis in the deployable interoperable repeater system." Id. at 4.

2 47 C.F.R. § 90.531(b)(1)(iii). Section 90.531(b)(1)(iii) 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.

3 Waiver Request at 1.

4 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).

the NCC⁵] 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.⁶

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."⁷ To prevent a 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.⁸ The Commission adopted a modified version of the NCC 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.⁹

4. Here, New Jersey "is in the process of implementing a new statewide Project 25 (P25) digital trunked system in the 700 MHz frequency band," which will "provide interoperable communications between multiple jurisdictions and multiple Public Safety disciplines throughout the state."¹⁰ "To enhance interoperability between state and local public safety agencies, [New Jersey] plans to implement a deployable temporary trunked repeater system."¹¹ However, New Jersey states that "[i]nsufficient State assigned narrowband channels exist to support both the system's fixed infrastructure and the deployable system."¹² Specifically, "[b]ecause of the large number of neighboring states," New Jersey claims that "the pool of State assigned 700 MHz spectrum is greatly depleted."¹³

5. Additionally, New Jersey claims that, in the event of a large scale disaster, "on-scene portable coverage will be necessary to support incoming state and local on-scene agencies."¹⁴ To provide the necessary coverage, New Jersey plans to implement a trunked deployable system.¹⁵ Given high

⁵ 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.

⁶ *Fourth Report and Order*, 17 FCC Rcd at 2036 ¶ 42.

⁷ *Id.* at 2034 ¶ 37.

⁸ *Id.*

⁹ 47 C.F.R. § 90.531(b)(1)(iii).

¹⁰ Waiver Request at 1. New Jersey states that the system "has been constructed to essentially overlay the current state 800 MHz system, with enhanced coverage and capacity in the northern New Jersey Urban Area Security Initiative (UASI) counties adjacent to New York City." *Id.* at 1-2. New Jersey notes that this P25 system "has been funded with a Public Safety Interoperable Communications (PSIC) grant and other State funds." *Id.* at 2.

¹¹ *Id.* at 1.

¹² *Id.*

¹³ *Id.* at 2. New Jersey states "[it] must share State spectrum with the states of Pennsylvania, Delaware, Maryland, New York, and Connecticut." *Id.* New Jersey adds that "the Philadelphia and New York markets lie immediately outside of the New Jersey border and dominate much of the 700 MHz border sharing agreements." *Id.*

¹⁴ *Id.*

¹⁵ *Id.* New Jersey states that "[t]he PSIC grant program required that an investment be made by the State in a

population density, New Jersey “envisions that a very large multi-discipline response force could arrive on-scene during a major disaster.”¹⁶ To accommodate the potentially large number of responders, “trunking will be implemented in order to optimize spectrum efficiency and reduce the number of deployable repeater systems necessary.”¹⁷ Because the deployable system will be used during interoperable events, New Jersey states that “usage between the deployable trunking system and conventional usage can be better coordinated by the on-scene Communication Leader (COML).”¹⁸

6. In support of its waiver request, New Jersey states that “[t]he [interoperability] channels could be deactivated by fixed system users in the event that the channels are needed for on-scene conventional operation.”¹⁹ New Jersey states that because the deployable system will only be active during interoperable events, it will permit continued fixed trunking operations consistent with Section 90.531(b)(1)(iii).²⁰ New Jersey adds that “[t]he channels will be coordinated on-scene with conventional simplex channel deployments in order to mitigate the potential for interference to usage of the channels in the conventional mode.”²¹ New Jersey argues that the underlying purpose of the rule would not be frustrated as the proposed use “will not likely interfere with interoperability traffic.”²² In addition, New Jersey argues grant of the waiver will serve the public interest as the system will provide greater spectral efficiency and increased on-scene communications capabilities.²³ Finally, New Jersey states that grant of its waiver request would be consistent with a similar waiver granted to the State of Florida and that New Jersey will comply with the special conditions imposed in the State of Florida waiver order.²⁴

III. DISCUSSION

7. 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.²⁵

Strategic Technology Reserve (STR), a deployable communications system that could be used to restore communications in the event a major disaster disabled normal communications resources.” *Id.* New Jersey’s “STR includes a deployable communications site on wheels.” *Id.* “This unit is equipped with a complete 700 MHz P25 Phase 1 trunked radio system; a radio cache with over 100 deployable portable radios; an interoperable gateway device; and repeaters and base stations operating on National VHF, UHF and 800 MHz Mutual Aid frequencies.” *Id.*

¹⁶ *Id.* New Jersey states that “[t]he deployable site will have a 95-foot tower to provide significantly improved on-scene repeater coverage compared to unit-to-unit simplex communications typically utilized during a National Incident Management System (NIMS) event.” *Id.*

¹⁷ *Id.* New Jersey observes that “the deployable site will support up to 275 active responders with a grade of service of 1 percent.” *Id.* New Jersey adds that “[t]he deployable site will have the capability to pass traffic into the statewide radio network, which will permit critical communications to be passed from the incident to public safety answering points (PSAPs) and emergency operations centers throughout the state.” *Id.*

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 4.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 5 citing State of Florida, *Order*, 26 FCC Rcd 7730 (PSHSB 2011) (*Florida Order*).

²⁵ 47 C.F.R. 1.925(b)(3)(i-ii).

8. As an initial matter, we note that we previously have waived the requirements of Section 90.531(b)(1)(iii) pursuant to the first prong of the waiver standard. Specifically, we have waived Section 90.531(b)(1)(iii) and approved deployable trunked systems proposed by the States of Florida and Colorado and the City of Mesa, Arizona, subject to certain conditions.²⁶ In those instances, we found 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.²⁷ We also found that “the public interest will be served by grant of the waiver because the deployable system operated in the trunked mode, will provide greater spectrum efficiency – and hence enhanced communications capability – at incident scenes.”²⁸

9. However, as noted in our previous waiver grants, the Bureau has sought comment on a proposal by the National Public Safety Telecommunications Council’s (NPSTC) to designate the narrowband reserve channels “to promote deployment of mobile trunked infrastructure that can be transported into [an] incident area.”²⁹ Accordingly, we conditioned the prior waiver grants on the disposition of the NPSTC petition. Thus, should the NPSTC petition be granted, existing waivers allowing mobile trunked infrastructure using interoperability channels will automatically expire without further Commission action and:

- deployable repeaters authorized by waiver must be reprogrammed to operate on the re-designated narrowband reserve channels.
- the waiver recipients must bear the cost of reprogramming their repeaters and shall not be eligible for reimbursement of any costs associated with modifying their repeaters in order to migrate to the narrowband reserve channels.
- the waiver recipients must comply with the technical and licensing rules applicable to the re-designated reserve channels.³⁰

10. Finally, in the prior waivers, we required that “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.”³¹

11. Based on the particular factors presented here, we find New Jersey’s request sufficiently similar to our precedent to warrant a waiver. Specifically, we conclude that grant of the requested waiver will not frustrate the intent of Section 90.531(b)(1)(iii) of the Commission’s rules and will be in the public interest. Consequently, subject to the conditions specified above, we grant New Jersey a waiver of

²⁶ *Id.* See also City of Mesa, Police Department, *Order*, 26 FCC Rcd 8466 (PSSB 2011); State of Colorado, *Order*, 27 FCC Rcd 6051 (PSSB 2012).

²⁷ See, e.g., *Florida Order*, 26 FCC Rcd at 7731-32 ¶ 4.

²⁸ *Id.* 7732 ¶ 6.

²⁹ 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 (PSSB 2008).

³⁰ See, e.g., *Florida Order*, 26 FCC Rcd at 7732 ¶ 8.

³¹ *Id.* at 7732 ¶ 9.

Section 90.531(b)(1)(iii) that limits the number of narrowband interoperability channels that may be trunked.³²

IV. ORDERING CLAUSES

12. 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 New Jersey, Governor's Office of Information Technology IS GRANTED to the extent discussed herein and SUBJECT TO THE CONDITIONS in Paragraphs 9, 10 and 11 *supra*.

13. IT IS FURTHER ORDERED, that the Application, FCC File No. 0005264398, SHALL BE PROCESSED.

14. 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

Michael J. Wilhelm
Deputy Chief - Policy and Licensing Division
Public Safety and Homeland Security Bureau

³² 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, New Jersey must advise all potential authorized users of the system of the frequencies and other parameters of the deployable system.