

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

In the Matter of
State of Idaho, Bureau of Homeland Security
Request for Waiver of Section 90.531(b)(1)(iii) of
the Commission's Rules
FCC File No. 0004963475

ORDER

Adopted: March 26, 2013

Released: March 26, 2013

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

I. INTRODUCTION

1. Before us is a request for waiver filed by the State of Idaho, Bureau of Homeland Security (Idaho). Idaho requests a waiver to permit the licensing of a mobile 700 MHz trunked system to operate on six 12.5 kHz channel pairs. It seeks a waiver of Section 90.531(b)(1)(iii) of the Commission's rules to exceed the maximum number of interoperability channels that may be trunked. We grant Idaho's waiver request, subject to conditions, because the underlying purpose of Section 90.531(b)(1)(iii) would not be served by application to this case, and because it is in the public interest to do so.

1 The Region 12 700 MHz Regional Planning Committee (Region 12) administers the 700 MHz interoperability spectrum within Idaho. See Letter from Robert E. Hugi, Technical Coordinator, State of Idaho, Bureau of Homeland Security, Public Safety Communications, to the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (dated April 23, 2012) (Waiver Request) at 1. We further note that in 2001, the Commission decided that the states should be responsible for administration of the interoperability channels. See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Dockets No. 96-86, Fourth Report and Order and Fifth Notice of Proposed Rulemaking, 16 FCC Rcd 2020, 2025-26 ¶¶ 11-13 (2001). Each state was required to notify the Commission by December 31, 2001, of its decision to administer the interoperability spectrum. See 700 MHz Public Safety Band – Announcement of Updates of Interoperability Spectrum Administration Decisions, WT Docket No. 96-86, Public Notice, 17 FCC Rcd 16535 (WTB 2002). If a state did not notify the Commission of a decision by December 31, 2001, then effective January 1, 2002, the 700 MHz Regional Planning Committee(s) (RPC) would assume the responsibility for administering the interoperability spectrum. Id. The Commission received no response from Idaho, id. at n.8; hence, the administration of the interoperability channels defaulted to Region 12. We note that Region 12 concurs with Idaho's request. See Letter from Todd Herrera, Chair, Region 12, 700 MHz Regional Planning Committee, to Mr. Robert Hugi, State of Idaho, Bureau of Homeland Security (filed Nov. 21, 2011) (attached to FCC File No. 0004963475).

2 See FCC File No. 0004963475 (filed Nov. 21, 2011; amended April 24, 2012). The proposed facility incorporates a "FB2T station class to operate mobile repeater systems on all six 12.5 kHz channel pairs for trunking on a secondary basis." Waiver Request at 1.

3 47 C.F.R. § 90.531(b)(1)(iii).

4 See Waiver Request at 1.

## II. BACKGROUND

2. In the *Fourth Report and Order*<sup>5</sup> 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 the NCC<sup>6</sup> 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.<sup>7</sup>

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."<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

4. Here, Idaho submits that (1) the proposed mobile trunked system will operate "on a secondary basis, in addition to primary conventional mode";<sup>11</sup> (2) the system "will be under the control of [. . .] the Idaho Bureau of Homeland Security's Public Safety Communications (PSC) Branch," which

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<sup>5</sup> 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).

<sup>6</sup> 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.

<sup>7</sup> *Fourth Report and Order*, 17 FCC Rcd at 2036 ¶ 42.

<sup>8</sup> *Id.* at 2034 ¶ 37.

<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. § 90.531(b)(1)(iii).

<sup>11</sup> Waiver Request at 1.

will deploy qualified COML<sup>12</sup> technical personnel to “operate and modify the system for conventional operation” as needed;<sup>13</sup> and (3) the trunked channels will be preprogrammed into mobile and portable radios, allowing for quick access during an emergency.<sup>14</sup> Idaho further notes that the mobile trunked system “will be deployed only on incident scenes, emergencies, catastrophic events,” and during “routine training” and “planned large scale events.”<sup>15</sup> Idaho adds that the system is intended to provide coverage during incidents where “the fixed system is overburden[ed]” or where coverage is absent.<sup>16</sup> Noting that “[m]any parts of Idaho are rural” and that its fixed sites rely on “low power solar applications,”<sup>17</sup> Idaho contends that the proposed mobile trunked system will support its ability to “promote efficient and effective interoperable communications on behalf of all public agencies statewide.”<sup>18</sup> Finally, Idaho states that “it will not use, or authorize use of the equipment within 100 km of the United States and Canadian Border for the three frequencies primary to Canada.”<sup>19</sup>

### III. DISCUSSION

5. 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.<sup>20</sup>

6. 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, Colorado and New Jersey and the City of Mesa, Arizona, subject to certain conditions.<sup>21</sup> 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.<sup>22</sup> We also found that “the public interest will be served by grant of the waiver because the

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<sup>12</sup> Communications Unit Leader (COML).

<sup>13</sup> See Email from Robert Hugi, State of Idaho, Bureau of Homeland Security to John Evanoff, Attorney-Advisor, Public Safety and Homeland Security Bureau (dated July 25, 2012).

<sup>14</sup> *Id.*

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

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Waiver Request at 1.

<sup>19</sup> These three frequencies are 769.14375 MHz, 773.10625 MHz, and 773.60625 MHz. See Waiver Request at 1. Idaho also requests a special condition be added to these frequencies primary to Canada to restrict operation within 100 km of the US/Canada border. *Id.* at 2.

<sup>20</sup> 47 C.F.R. § 1.925(b)(3)(i)-(ii).

<sup>21</sup> State of Florida, *Order*, 26 FCC Rcd 7730 (PSHSB 2011) (*Florida Order*); City of Mesa, Police Department, *Order*, 26 FCC Rcd 8466 (PSHSB 2011); State of Colorado, *Order*, 27 FCC Rcd 6051 (PSHSB 2012); State of New Jersey, *Order*, 28 FCC Rcd 1358 (PSHSB 2013).

<sup>22</sup> See, e.g., *Florida Order*, 26 FCC Rcd at 7731-32 ¶ 4.

deployable system operated in the trunked mode, will provide greater spectrum efficiency – and hence enhanced communications capability – at incident scenes.”<sup>23</sup>

7. 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.”<sup>24</sup> 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.<sup>25</sup>

8. 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.”<sup>26</sup>

9. Based on the particular factors presented here, we find Idaho’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 Idaho a waiver of Section 90.531(b)(1)(iii) that limits the number of narrowband interoperability channels that may be trunked.<sup>27</sup>

#### IV. ORDERING CLAUSES

10. 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.

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<sup>23</sup> *Id.* 7732 ¶ 6.

<sup>24</sup> 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 (PSHSB 2008).

<sup>25</sup> See, e.g., *Florida Order*, 26 FCC Rcd at 7732 ¶ 8.

<sup>26</sup> *Id.* at 7732 ¶ 9.

<sup>27</sup> 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, Idaho must advise all potential authorized users of the system of the frequencies and other parameters of the deployable system.

§ 1.925, the waiver request filed by the State of Idaho, Bureau of Homeland Security IS GRANTED to the extent discussed herein and SUBJECT TO THE CONDITIONS in Paragraphs 7 and 8 *supra*.

11. IT IS FURTHER ORDERED, that Application, FCC File No. 0004963475, SHALL BE PROCESSED. Any resultant license SHALL SPECIFY that frequencies 769.14375 MHz, 773.10625 MHz, and 773.60625 MHz shall not be used within 100 km of the United States/Canada border.

12. 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

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