

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

In the Matter of
CITY OF AUGUSTA, MAINE
Request For Waiver Section 90.35(a) of the
Commission's Rules
File No. 0004688406

ORDER

Adopted: April 16, 2013

Released: April 16, 2013

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

I. INTRODUCTION

1. On April 13, 2011, the City of Augusta, Maine (Augusta or the City) filed an application to expand the radio coverage and add additional channels to its existing private land mobile radio (PLMR) system licensed under call sign WPMM632. Since the channels Augusta seeks to add are frequencies from the Industrial/Business Pool, Augusta also seeks a waiver of Section 90.35(a) of the Commission's rules. For the reasons detailed below, we grant Augusta's waiver request.

II. BACKGROUND

2. Augusta currently operates PLMR Station WPMM632 on two VHF Public Safety Pool frequencies at three base station locations in the County of Kennebec, Maine—which includes the City of Augusta. Augusta states that for many years it has also shared VHF band frequencies with Maine Mobile Communications (MMC) the licensee of PLMR Station WPRF740 in Augusta. MMC not only shared VHF frequencies with Augusta but also provided it with equipment capable of operating in the VHF band. Augusta claims that, although its shared use of MMC's channels has been "somewhat adequate," the current arrangement fails to provide Augusta with the necessary security and flexibility Augusta desires.

3. As part of a system upgrade, Augusta seeks to add six frequencies to its PLMR system (creating three channel pairs) but claims there are insufficient frequencies available in the Public Safety Pool to accommodate this upgrade. In this regard, Augusta includes with its application a study

1 See File No. 0004688406 (filed Apr. 13, 2011, amended Apr. 14, 2011, May 5, 2011, Jan. 11, 2012, Mar. 13, 2012, Mar. 14, 2012, Dec. 19, 2012 and Apr. 4, 2013).

2 See Request for Waiver attached to application no. 0004688406 (Waiver Request).

3 See license WPMM632.

4 Waiver Request at 1.

5 Id.

6 Id. at 2.

7 Id.

purporting to demonstrate that there are no Public Safety Pool channels available in the VHF band.<sup>8</sup> Consequently, Augusta seeks to license the frequencies it currently shares with MMC—an Industrial/Business Pool licensee—and operate those frequencies “under the control and security of the City.”<sup>9</sup> Augusta states that licensing MMC’s frequencies, will “preserve its existing investment in VHF equipment, while taking a vital step to improving the City’s communications capacity.”<sup>10</sup> Augusta claims it is in the “mutual best interests” of MMC and Augusta for Augusta to become the licensee of the frequencies.<sup>11</sup> In support of its claim, Augusta obtained a letter from MMC concurring with its proposal to license the frequencies.<sup>12</sup>

4. Augusta, however, requires a waiver of Section 90.35(a) of the Commission’s rules<sup>13</sup> to license MMC’s current frequencies for which it is otherwise ineligible under Section 90.35(a) of the Commission’s rules. Augusta states it “appreciates the reason why the Commission has two allocations, Public Safety and Industrial/Business”<sup>14</sup> but notes the limited availability of public safety channels in Maine due to proximity to the border with Canada.<sup>15</sup> Augusta argues that it is seeking frequencies in the VHF band because these frequencies would “enable the City to preserve its investment in VHF equipment”<sup>16</sup> and because Maine’s geography is “not conducive to operation at higher frequency ranges” due to hilly terrain, thick forests, and foliage.<sup>17</sup>

### III. DISCUSSION

5. As an initial matter we note that the fact that Augusta obtained concurrence from MMC the current licensee of the frequencies is highly persuasive.<sup>18</sup> However, that alone does not obviate the need for Augusta to obtain a waiver of the eligibility requirements of Section 90.35(a).

6. Section 1.925 of the Commission’s rules<sup>19</sup> states that to obtain a rule waiver, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be

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<sup>8</sup> See attachment to application no. 0004688406 entitled “Showing No Public Safety Freqs Available” (Augusta Frequency Search).

<sup>9</sup> *Id.* Augusta seeks to add the following Industrial/Business Pool frequencies to its license: 152.2925 MHz (FB8) / 157.5525 MHz (MO), 152.9225 MHz (FB8) / 159.9525 MHz (MO) and 153.6725 MHz (FB8) / 158.2875 MHz (MO).

<sup>10</sup> *Id.* at 3.

<sup>11</sup> Waiver Request at 4.

<sup>12</sup> See Letter from Kenneth R. Knight, Owner, Maine Mobile Communications to Ralph St. Pierre, City of Augusta, Maine (Feb 1, 2011) (attached to application no. 0004688406) (MMC Concurrence Letter).

<sup>13</sup> 47 C.F.R. § 90.35(a).

<sup>14</sup> Waiver Request at 3.

<sup>15</sup> *Id.* at 2. Channels in the VHF band along the border with Canada are licensed on a first-come, first-served basis with licensees in Canada. See Agreement between the Government of the United States of America and the Government of Canada Concerning the Coordination and Use of Radio Frequencies Above Thirty Megacycles per Second, with Annexes.

<sup>16</sup> Waiver Request at 3.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> See MMC Concurrence Letter.

frustrated by application to the present case, and that a grant of the waiver would be in the public interest;<sup>20</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>21</sup> We find that Augusta satisfies the first prong of the waiver standard.

7. The underlying purpose of maintaining two pools of PLMR frequencies with separate eligibility requirements is to maximize spectrum efficiency in the PLMR bands without compromising safety of the general public. In 1997, the Commission consolidated multiple PLMR services below 800 MHz (and their attendant channel allocations) into the Industrial/Business and Public Safety Pool to increase licensee flexibility, manage spectrum more efficiently and reduce administrative burdens on both the licensees and the Commission.<sup>22</sup> The Commission did not, however, create a single pool for all PLMR users—it maintained a separate Public Safety Pool to maintain the integrity of the critical functions of the public safety licensees.<sup>23</sup>

8. We have reviewed Augusta's frequency showing and agree with Augusta that the Public Safety Pool in Augusta's area includes too few viable VHF frequencies to accommodate Augusta's upgrade.<sup>24</sup> We find, however, that allowing Augusta to license MMC's frequencies will in no way frustrate the goal of maximizing spectral efficiency in the PLMR bands because Augusta's application—which involves frequencies already in use—will have little to no impact on the availability of Industrial/Business Pool frequencies in Maine.

9. Specifically, our analysis reveals Augusta's proposed operations on the six Industrial/Business frequencies it seeks to license will result in only *de minimis* extension of MMC's currently licensed interference contour on these frequencies.<sup>25</sup> Furthermore, Augusta's application includes a letter from an applicable Industrial/Business frequency coordinator certifying that Augusta's application was properly coordinated on these Industrial/Business Pool frequencies.<sup>26</sup> Therefore, we also conclude Augusta's proposal to license the MMC frequencies and integrate them into an expanded PLMR system will create no additional interference concerns for other Industrial/Business Pool users of these frequencies. Consequently, we conclude Augusta's proposal to license the frequencies it currently shares with MMC will in no way frustrate the underlying purpose of the eligibility requirements of Section 90.35(a).

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<sup>19</sup> 47 C.F.R. § 1.925.

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

<sup>21</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>22</sup> 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).

<sup>23</sup> *Id.* at 14316 ¶ 16. See also West Virginia Department of Health and Human Resources/State Trauma Emergency Care System, *Order*, 25 FCC Rcd 12566, 12568 at ¶ 9 (PSHSB 2010) (*West Virginia Order*).

<sup>24</sup> We find only one frequency which appears to be unblocked by co-channel or adjacent channel licensees: 159.4575 MHz. There appear to be no other viable VHF frequencies in the Public Safety Pool to pair with this frequency in order to form a single channel pair. See Augusta Frequency Search.

<sup>25</sup> We examined the 19 dBu F(50,10) contour.

<sup>26</sup> See letter from RS/AAA to the Federal Communications Commission (Mar 1, 2012) (attached to File No. 0004688406).

10. Finally, we find granting Augusta a waiver of the eligibility requirements of Section 90.35(a) in this instance is in the public interest. Specifically, we believe the public interest is served by allowing Augusta to “augment and improve its communications capacity” while preserving its “considerable investment in VHF equipment” and gain “greater security” over the frequencies used in its PLMR system.<sup>27</sup>

#### IV. CONCLUSION

11. Based on the foregoing, we conclude Augusta has made a sufficient showing for a waiver under Section 1.925 of the Commission’s rules of the eligibility requirements listed in Section 90.35(a). Consequently, we grant Augusta a waiver of the eligibility requirements of Section 90.35(a) of the Commission’s rules to permit Augusta to license the Industrial/Business Pool frequencies listed in its application.

#### V. ORDERING CLAUSES

12. Accordingly, the Waiver Request associated with the captioned application filed by the City of Augusta, Maine, IS GRANTED pursuant to Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925, and the associated application, Federal Communications Commission File No. 0004688406, as amended, SHALL BE PROCESSED accordingly.

13. 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

Michael J. Wilhelm  
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<sup>27</sup> Waiver Request at 3.