

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

In the Matter of
Del Norte County, California
Request for Waiver of Section 90.209(b) of the
Commission's Rules
WT Docket 99-87

ORDER

Adopted: July 28, 2014

Released: July 28, 2014

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. We have before us a request for a permanent waiver of the Commission's VHF/UHF narrowbanding rule filed by Del Norte County, California (Del Norte or the County). The narrowbanding rule requires private land mobile radio licensees operating in the 150-174 MHz and 450-512 MHz bands to operate using channel bandwidth of no more than 12.5 kHz or equivalent efficiency after January 1, 2013. By this Order, we deny the waiver request.

II. BACKGROUND

2. Del Norte County is located in Northern California at the Oregon border along the Pacific coast. It has a land area of approximately 1007 square miles with a population of about 30,000 people. In 2012, Del Norte converted its VHF system to narrowband operation, and it is currently in compliance with the rule. However, Del Norte states that as a result of narrowbanding its system, it has experienced a 40 percent loss of coverage in its operational area. The County states it has worked with its vendor and Commission staff to ensure that its existing equipment is operating at optimum efficiency, but that these improvements have not restored the system's coverage that existed prior to narrowbanding. Del Norte states that the lack of coverage caused by narrowband operation in compliance with the Commission's

1 Letter, dated June 19, 2013, from Sheriff Dean D. Wilson (Waiver Request).

2 47 C.F.R. § 90.209(b). See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Second Report and Order and Second Further Notice of Proposed Rulemaking, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034 (2003); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Order, WT Docket No. 99-87, RM-9332, 25 FCC Rcd 8861 (2010) (Narrowbanding Waiver Order).

3 Waiver Request.

4 Id.

5 Id.

rules places its first responders at risk.<sup>6</sup> Accordingly, Del Norte asks for a permanent waiver of the narrowbanding rule allowing it to resume wideband operations and to operate in wideband mode indefinitely.

3. In support of its waiver request, Del Norte states that the only way for it to restore system coverage while continuing to comply with the narrowbanding rule would be to construct between three to five additional towers to augment its existing two-tower system.<sup>7</sup> Del Norte states that it lacks the funding to undertake such an endeavor.<sup>8</sup> Del Norte also claims that it did not need to convert from wideband to narrowband operations because there is no spectrum congestion in the County.<sup>9</sup>

### III. DISCUSSION

4. The Commission initiated the narrowbanding process in 1995 to remedy congestion in the UHF and VHF frequency bands, which limited the amount of spectrum available for system expansion or implementation of new systems.<sup>10</sup> The migration to 12.5 kHz efficiency technology requires licensees to operate with greater spectral efficiency, either on narrower channel bandwidths or increased voice paths on existing channels. This allows creation of additional channels within the same spectrum, thereby supporting more users. The efficient use of scarce VHF/UHF spectrum and freeing of capacity for potential new spectrum uses are key goals of the narrowbanding program.<sup>11</sup>

5. Del Norte seeks permanent relief from the narrowbanding rule pursuant to Section 1.925 of the Commission's rules, which provides 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;<sup>12</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>13</sup> Applying this standard to narrowbanding, we have stated in the *Narrowbanding Waiver Guidance Notice*, jointly issued by the Wireless Telecommunications Bureau, the Public Safety and Homeland Security Bureau, and the Office of Engineering and Technology that narrowbanding waiver requests "will be subject to a high level of scrutiny" under the waiver standard.<sup>14</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

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

<sup>10</sup> See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 10 FCC Rcd 10076, 10077 ¶2 (1995). Narrowbanding is one of several initiatives the Commission instigated as part of its efforts to address frequency congestion. See Spectrum Efficiency in the Private Land Mobile Radio Bands In Use Prior to 1968, *Notice of Inquiry*, PR Docket No. 91-170, 6 FCC Rcd 4126, 4131-32 ¶¶40-44 (1995).

<sup>11</sup> *Id.*

<sup>12</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>13</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>14</sup> Wireless Telecommunications Bureau, Public Safety And Homeland Security Bureau, And Office Of Engineering And Technology Provide Reminder Of January 1, 2013 Deadline For Transition To Narrowband Operations In The 150-174 MHz And 421-512 MHz Bands And Guidance For Submission Of Requests For Waiver And Other Matters, *Public Notice*, 26 FCC Rcd 9647 (2011) (*Narrowbanding Waiver Guidance Notice*).

6. The Bureau has granted temporary waivers of the narrowbanding rule to licensees that have been able to demonstrate that “(i) they have worked diligently and in good faith to narrowband their systems expeditiously; (ii) their specific circumstances warrant a temporary extension of the deadline; and (iii) the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process.”<sup>15</sup> However, Del Norte seeks a permanent waiver of the rule, not a temporary waiver.

7. We conclude that Del Norte has not presented sufficient facts to support its request for a permanent waiver. We recognize the financial constraints Del Norte faces to construct additional towers, but this circumstance is not unusual or unique among licensees that have been subject to the narrowbanding requirement. Thousands of public safety licensees have converted their systems to narrowband operation, and many of them have had to enhance system infrastructure as part of their conversion. While Del Norte’s financial constraints could weigh in favor of a temporary waiver to afford the County additional time to upgrade its system, they do not justify a permanent waiver.

8. Similarly, we are not persuaded by Del Norte’s argument that a permanent waiver is justified because it is not in a spectrally congested area. This argument presupposes that the lack of spectral congestion is a permanent condition and that other parties will never seek access to spectrum there. We are not prepared to make this assumption, which would undermine the underlying purpose of the narrowbanding rules to ensure that additional spectrum is available for future use – including for use that may not be anticipated.

9. Del Norte also fails to demonstrate how a permanent waiver would serve the public interest, in light of the fact that the Commission’s rules prohibit the manufacture, marketing and sale of wideband-capable equipment.<sup>16</sup> The Commission adopted these equipment restrictions to prevent the development and sale of equipment whose use would negate any spectral efficiencies gained through narrowbanding. Even if we were to allow Del Norte to operate in wideband mode indefinitely, these restrictions would prevent the County from being able to properly maintain or replace its equipment, and as a result its system would become increasingly less reliable as well as progressively more obsolete. We fail to see how such a situation would serve the public interest. For all of the above reasons, we deny the request for a permanent waiver.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3) of the Commission’s rules, 47 C.F.R. § 1.925(b)(3), that the Request for Waiver, filed by the Del Norte County, California IS DENIED.

11. 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

David G. Simpson, Rear Admiral, USN (Ret.)  
Chief, Public Safety and Homeland Security Bureau

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<sup>15</sup> *Id.* at 9649.

<sup>16</sup> *See* 47 C.F.R. § 90.203(j)(10).