

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

In the Matter of)
)
MISSOURI DEPARTMENT OF PUBLIC)
SAFETY)
)
Request for Waiver of Section 90.559(b) of the)
Commission's Rules)

ORDER

Adopted: December 4, 2014

Released: December 4, 2014

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

I. INTRODUCTION.

1. On October 10, 2014 the Missouri Department of Public Safety (Missouri) filed a request for waiver of Section 90.559(b) of the Commission's Rules¹ which requires station identification be made on the lowest frequency utilized in a group of trunked channels.² For the reasons stated below, we grant Missouri's request.

II. BACKGROUND.

2. In an April 2013 *Report and Order*, the Commission adopted Section 90.559 of the rules to permit 700 MHz narrowband licensees to transmit their station identifications digitally when their transmitters normally operate in a digital mode.³ Section 90.559(b) of the Commission's rules provides that trunked systems shall be identified through the use of an automatic device which transmits the call sign of the base station facility at 30 minute intervals and that such station identification shall be made "on the lowest frequency in the base station trunk group assigned the licensee."⁴ Thus, Section 90.559(b) requires digital base station identification (BSI) be made on the lowest frequency.⁵

¹ 47 C.F.R. § 90.559(b).

² Request for Waiver, Missouri Department of Public Safety, MOSWIN Network, WT Docket 96-86 and PS Docket 13-87 (filed Oct. 10, 2014) (Waiver Request).

³ See Development of Operational, Technical and Spectrum Requirements for Meeting Federal State and Local Public Safety Communication Requirements Through the Year 2010, WT Docket No. 96-86, *Seventh Report and Order and Notice of Proposed Rulemaking*, 28 FCC Rcd 4783, ¶ 24 (2013) (*Seventh Report and Order* and *NPRM*). Section 90.559 was published in the Federal Register on July 10, 2014. See 79 FR 39341.

⁴ 47 C.F.R. § 90.559(b).

⁵ Section 90.559 of the rules provides that stations operating in the 769-775/799-805 MHz band that are licensed on an exclusive basis, and normally employ digital signals for the transmission of data, text, control codes, or digitized voice may also be identified by digital transmission of the call sign. See 47 C.F.R. § 90.559(c).

3. Missouri requests a waiver of Section 90.559(b) of the Commission's rules.⁶ It states that the Missouri Statewide Interoperability Network (MOSWIN) is a "Project 25 trunked multi-band hybrid VHF/700/800 MHz statewide public safety network that provides state, local and federal interoperable communications capabilities amongst Missouri's First Responder community currently supporting over 21,000 individual radios and over 800 agencies."⁷ Missouri indicates that in late 2012 it developed a list of control channels for the MOSWIN network and that its user agencies programmed this list "into all radios that support multi-band operation."⁸

4. Missouri states that while some sites use a control channel from the master list that is not the lowest frequency at the site, "several sites designate the lowest channel as [the] control channel in the site channel plan."⁹ Missouri argues that the control channel cannot be designated as the BSI since it is "constantly broadcasting and sending messages to subscriber units in the field" and that the periodic station identification function would "interrupt the constant service" provided to the subscriber units by the control channel.¹⁰

5. Thus Missouri believes "relief from 90.559(b) is warranted as complying with the rule, in this instance, would be burdensome to the user community as it would feel compelled to reprogram thousands of new radios with newly assigned Control Channels in order to ensure their users have unfettered access to the MOSWIN network, as necessary, to facilitate necessary communications with little return from the resources committed."¹¹

6. In future 700 MHz implementations, Missouri states that the "MOSWIN System Administration will seek to strike a balance between utilizing channels other than the lowest channel at each 700 MHz [site] for control channels thereby enabling Station Identification to be used on the lowest channel when possible and minimizing the need for user agencies to reprogram radios to ensure effective system access."¹²

III. DISCUSSION.

7. We may grant a waiver request if the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹³ For the reasons set forth below, we conclude that, in this case, the underlying purpose of the rule – allowing ready identification of a trunked station's call sign – would not be served by applying the rule. Moreover, to do so would be unduly burdensome to Missouri. We also conclude that grant of the requested waiver is in the public interest. Accordingly, we grant Missouri's Request to the extent indicated below.

⁶ Waiver Request at 3.

⁷ *Id.*

⁸ *Id.* at 3-4.

⁹ *Id.* at 4.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 4.

¹² *Id.*

¹³ See 47 C.F.R. § 1.925(b)(3).

8. As an initial matter, we find that Missouri has demonstrated that unusual circumstances prevent it from transmitting its station identification on the lowest channel at each of its base station locations. Specifically, Missouri established its MOSWIN channel plan in 2012 prior to the adoption of Section 90.559. Thus, we agree with Missouri that it would be unduly burdensome to require MOSWIN user agencies to “reprogram their radios with new control channel lists” solely to ensure that each base station in the system can use the lowest channel for BSI rather than as a control channel.¹⁴

9. Furthermore, we observe that the principal underlying purpose of the station identification rule is to assist in identifying sources of interference.¹⁵ The underlying purpose of the rule will not be undermined by this waiver because Missouri will continue to transmit its station identification at each of its base station locations albeit at some sites the BSI will be transmitted on a channel other than the lowest channel. Missouri states that it will endeavor to transmit the BSI on the lowest channel at each site in future deployments.¹⁶ Further, Missouri states that it has made its licensing plan available to the Commission and will continue to make it available as requested to assist Commission personnel investigating interference from a specific site.¹⁷

10. Finally, Missouri states that its use of a master control channel plan should minimize reprogramming subscriber fleets while allowing for network enhancements.¹⁸ In that connection, we find that the requested relief is consistent with the flexible licensing policies that the Commission established for 700 MHz state-based geographic licensees like MOSWIN.¹⁹

IV. CONCLUSION.

11. For the reasons stated above, we conclude that, given the concessions by Missouri, allowing Missouri to transmit the BSI on a channel other than the lowest frequency channel in a trunked group does not frustrate the purpose of Section 90.559(b) of the Commission’s rules and that applying the rule to Missouri would be unduly burdensome, and contrary to the public interest. Accordingly, we grant the waiver request.

V. ORDERING CLAUSES.

12. Accordingly, IT IS ORDERED that, pursuant to Sections 4(f) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(f), 154(i), and Section 1.925 of the Commission’s Rules, 47 C.F.R. § 1.925, the Request for Waiver filed by the Missouri Department

¹⁴ Waiver Request at 4.

¹⁵ Amendment of Parts 2 and 90 of the Commission’s Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *First Report and Order and Further Notice of Proposed Rulemaking*, PR Docket No. 89-553, 8 FCC Rcd 1469, 1481 ¶ 49 (1993).

¹⁶ Waiver Request at 5.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See Development of Operational, Technical and Spectrum Requirements for Meeting Federal State and Local Public Safety Communication Requirements Through the Year 2010, WT Docket No. 96-86, *Third Memorandum Opinion and Order and Third Report and Order*, 15 FCC Rcd 19844, 19864-70 ¶¶ 47-59 (2000).

of Public Safety on October 10, 2014, IS GRANTED to the extent indicated above.

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

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