

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

In the Matter of
SKAGIT COUNTY FIRE PROTECTION
DISTRICT 5
Request for Waiver to Operate Vehicular
Repeaters on Federal Frequency 170.150 MHz
File No. 0005632141

ORDER

Adopted: April 17, 2014

Released: April 18, 2014

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

I. INTRODUCTION

1. On February 4, 2013, Skagit County Fire Protection District 5 (Skagit) in the State of Washington filed an application and a Request for Waiver to use frequency 170.150 MHz for vehicular repeaters. Skagit requests waiver of the Commission’s rules because the allocation for the frequency band that contains 170.150 MHz does not support Skagit’s proposed use. For the reasons below, we deny the Waiver Request.

II. BACKGROUND

2. Skagit states it “has a variety of terrain challenges that hamper effective public safety communications.” Skagit argues that a vehicular repeater “is the most reasonable and cost effective solution to overcome these challenges and provide the best protection for [Skagit’s] personnel and community.” Skagit asserts that “the public safety frequency pool in the Puget Sound area is extremely congested.” Skagit County operates a public safety radio system on frequencies 153.830 to 159.150 MHz. Skagit argues that “[o]pen frequencies with the necessary 2 MHz separation are not available in the 150-159 range due to harmful co-channel and adjacent interference to not only the applicant, but to incumbent licensees as well.” Skagit states that its “proximity to British Columbia, Canada further limits

1 File No. 0005632141 (filed Feb. 4, 2013), attached Skagit County Fire Protection District 5 Waiver Request (Waiver Request).

2 Waiver Request at 1.

3 Id.

4 Id.

5 Id.

6 Id. According to Pyramid Communications Inc., a manufacturer of vehicular repeaters, current filter technology requires vehicular repeaters to operate on frequencies that are separated by at least two megahertz from the system’s main licensed frequencies. See Modification of Sections 90.20(d)(34) and 90.265 of the Commission’s Rules to Facilitate the Use of Vehicular Repeater Units, Petition for Rule Making of Pyramid Communications, Inc. (filed Aug. 16, 2011) at 2, RM-11635.

the frequency pool.”⁷ Skagit seeks to operate low power vehicular repeaters on frequency 170.150 MHz because “[f]requencies in the 170 or 172 [MHz] ranges offer the best opportunities to meet the needs of Skagit County Fire Protection District 5, avoid harmful interference issues in the 150-160 [MHz] range, and avoid coordination issues with Industry Canada.”⁸ Therefore, Skagit argues it “can find no other reasonable alternative than to request this waiver for the use of frequency 170.150 MHz.”⁹ Skagit “requests a waiver of the Federal Communications Commission rules seeking authorization to use frequency 170.150 ...” and notes that “[t]his frequency falls under section 90.265, Assignment and Use of Frequencies in the Bands allocated for Federal use.”¹⁰

3. The 162.0375-173.2 MHz frequency band, which includes the frequency 170.150 MHz, is allocated to fixed and mobile services on a primary basis for Federal users.¹¹ In addition, numerous United States (US) footnotes to the Table of Frequency Allocations also permit specific non-Federal uses in the band. Notably, Footnote US11 makes the frequency 170.150 MHz available for non-Federal public safety use only within 241.4 kilometers (150 miles) of New York City.¹² Section 90.265(d) reflects this same non-Federal geographic designation. However, Skagit is not located within this dedicated geographic area. While Skagit does not specify the rules it requests to be waived, we will consider Skagit’s petition as a request for waiver of Section 90.265(d).

4. On March 7, 2014, the National Telecommunications and Information Administration (NTIA) filed a letter recommending that the Commission deny the Waiver Request.¹³ In a letter, NTIA stated, “NTIA urges the FCC to deny the applicant’s waiver request to operate up to 20 vehicular repeaters over a large geographic area at this frequency, which is allocated to the Federal Government on a primary basis.”¹⁴ NTIA states that “[s]ince the applicant proposes to operate the vehicular repeater over a large geographic area, coordination with federal operations is not practical.”¹⁵ NTIA argues that “[n]on-federal and federal public safety services should not routinely be placed at risk by creating potential conflicts with each other’s operations.”¹⁶

III. DISCUSSION

5. Section 1.925 of the Commission’s rules states 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 waiver would be in the public interest;¹⁷ or (ii) in view of unique or unusual factual circumstances of the instant

⁷ Waiver Request at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ 47 C.F.R. § 2.106, Table of Frequency Allocations.

¹² 47 C.F.R. § 2.106, footnote US11. *See also* 47 C.F.R. § 90.265(d).

¹³ *See* Letter from Karl B. Nebbia, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, to Julius Knapp, Chief, Office of Engineering and Technology, Federal Communications Commission, RE: Skagit County Fire Protection District 5 Waiver Request (ULS File No. 0005632141) (dated March 7, 2014) (NTIA Letter) at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ 47 C.F.R. § 1.925(b)(3)(i).

case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁸ The applicant faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁹

6. We first analyze Skagit's request under the first prong of Section 1.925(b)(3). Section 90.265(d) reflects Section 2.106 footnote US11, which states that frequency 170.150 MHz is available for non-Federal public safety use only within 241.4 kilometers (150 miles) of New York City on a secondary basis to any Federal station. In 2005, the Commission established Section 90.265(d) "to accurately reflect non-Federal licensee[s'] role in this shared band by, *inter alia*, moving the rules pertaining to these channels into a new subpart to Section 90.265 of our Rules and more plainly stating the secondary nature of non-Federal operations on the band."²⁰ The Commission inserted the secondary basis provision "to give effect to the restriction embodied in footnote US11 that non-Federal operations on 166.250 MHz and 170.150 MHz operate on the condition that no harmful interference is caused to 'present or future' Federal stations."²¹

7. To determine the purpose of this rule, we note that Section 90.265(d) is analogous to Section 90.305(a) of the Commission's rules, which also limits the geographic areas where public safety entities may use certain frequencies. Section 90.305(a) provides that private land mobile radio (PLMR) base stations operating in the 470-512 MHz band (TV channels 14-20) may be located not more than fifty miles (eighty kilometers) from the geographic centers of urbanized areas listed in Section 90.303 of the Commission's rules.²² The purpose of this rule is to protect over-the-air broadcast operations on TV Channels 14-21 located outside of these cities from harmful interference from PLMR systems operating in the 470-512 MHz band.²³ Likewise, we can infer that the underlying purpose of Section 90.265 is to protect Federal stations on frequency 170.150 MHz located outside 150 miles of New York City from harmful interference from co-channel public safety systems operating within that zone. The area of Skagit County, Washington could not be considered a *de minimis* expansion of that area due to its location on the opposite side of the country from New York.

8. We find that application of Section 90.265(d) would serve the purpose of the rule in this instance because it would prevent Skagit from causing harmful interference to Federal operations operating in accordance with the Table of Frequency Allocations, as illustrated in the March 7, 2014 NTIA Letter. Skagit has offered no information or analysis that would suggest otherwise and we derive none on our own analysis. We conclude that Skagit has not shown that the underlying purpose of the rule would not be served or would be frustrated by application to the instant case.

9. Next, we analyze Skagit's request under the second prong of Section 1.925(b)(3). Skagit has not shown that in view of the unique or unusual factual circumstances of the existing case, application

¹⁸ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

²⁰ Amendment of Parts 2 and 90 of the Commission's Rules to Provide for Narrowband Private Land Mobile Radio Channels in the 150.05-150.8 MHz, 162-174 MHz, and 406.1-420 MHz Bands that are Allocated for Federal Government Use, ET Docket No. 04-243, *Report and Order*, 20 FCC Rcd 5793, 5816 ¶ 59 (2005).

²¹ *Id.* at 5817 ¶ 62.

²² 47 C.F.R. § 90.305(a).

²³ *See Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, Notice of Proposed Rulemaking*, Gen. Docket No. 85-172, 101 F.C.C. 2d 852 (1985). One notable difference in this comparison is that public safety stations under Section 90.305(a) are not secondary to over-the-air broadcast stations.

of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or that Skagit has no reasonable alternative. Rather, we find Skagit has the alternative to apply for any non-Federal Part 90 frequency in the VHF band and seek waiver of applicable rules if necessary. Moreover, given NTIA's opposition, we find application of the rule would not be contrary to the public interest because it would avoid causing interference to Federal operations, which include public safety operations.²⁴ For these reasons, we conclude that Skagit has failed to justify a waiver of pursuant to the Commission's waiver standard, Section 1.925 of the Commission's rules.

IV. CONCLUSION

10. We find that Skagit fails to meet both prongs of Section 1.925(b)(3) of our rules to obtain a waiver of Section 90.265(d). Accordingly, we deny the waiver request.

V. ORDERING CLAUSES

11. Accordingly, WE ORDER that pursuant to Sections 4(i) of the Communications Act of 1934, 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), the Request for Waiver filed by Skagit County Fire Protection District 5, on February 4, 2013, IS DENIED.

12. WE FURTHER ORDER that application File No. 0005632141 SHALL BE DISMISSED consistent with this Order and the Commission's rules.

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

Thomas J. Beers
Chief, Policy and Licensing Division
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²⁴ See NTIA Letter at 2.