

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
CITY OF SUFFOLK, VIRGINIA)
)
Request For Waiver of Section 90.621(b)(4)) File No. 0006441843
of the Commission's Rules)
)
)
)

ORDER

Adopted: January 8, 2015

Released: January 8, 2015

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

I. INTRODUCTION

1. The City of Suffolk, Virginia (Suffolk) filed an application seeking to add base station locations and channels to its 800 MHz trunked private land mobile radio (PLMR) system licensed under call sign WNMJ688.¹ For a subset of the channels Suffolk proposes to add, it seeks a waiver of Section 90.621(b)(4) of the Commission's rules² so that it can operate on these channels at locations less than the minimum required separation distance from several co-channel PLMR licensees.³

2. For the reasons detailed below we partially grant and partially deny Suffolk's waiver request. We also grant all channels on the application for which Suffolk did not request a waiver. Attachment I lists which channels on the application we are granting and which we are dismissing.

II. BACKGROUND

3. Suffolk is currently licensed to operate PLMR station WNMJ688 in the City of Suffolk at three base station locations with associated mobile units on twelve channels from the 800 MHz band.⁴ In order to provide radio coverage into what it characterizes as "no coverage" areas, Suffolk seeks to add three base station locations with associated mobile units.⁵ It also seeks to license five "vacated spectrum"⁶ channels along with five Public Safety Pool channels at its proposed three new base station locations and add five "vacated spectrum" channels to its existing base station locations.

4. Suffolk seeks to license several of the Public Safety Pool channels at locations separated by fewer than 110 kilometers from co-channel base stations licensed to the City of Hopewell, Virginia, the

¹ See ULS File No. 0006441843.

² 47 C.F.R. §90.621(b)(4).

³ See waiver request attached to application 0006441843 (Suffolk Waiver Request).

⁴ See call sign WNMJ688.

⁵ Suffolk Waiver Request at 1. See also ULS File No. 0006441843.

⁶ Suffolk Waiver Request at 1. Channels vacated by ESMR licensees during reconfiguration of the 800 MHz band are reserved exclusively for three years to public safety eligible entities. See 47 C.F.R. § 90.617(g).

County of Chesterfield, Virginia and Henrico County, Virginia (collectively the Virginia Co-Channel Licensees).⁷ The Commission’s rules provide that Suffolk may operate at locations fewer than 110 kilometers from co-channel licensees provided it satisfies the separation distances listed in a short-spacing table.⁸ The distances listed in the short-spacing table are based upon non-overlap of an applicant’s proposed 22 dBu F(50,10) interference contour with the 40 dBu F(50,50) coverage contour of the incumbent co-channel licensee.⁹ Applicants seeking to operate at distances less than those listed in the short-spacing table must either seek a waiver of the short-spacing table or obtain consent from the short-spaced co-channel licensee.¹⁰ Any applicant seeking a waiver must provide an engineering showing which demonstrates that co-channel licensees would receive the same or greater interference protection than that provided by the short-spacing table.

5. Suffolk indicates it was unable to obtain a consent letter from any of the short-spaced Virginia Co-Channel Licensees.¹¹ Consequently, it seeks a waiver of the short-spacing table.¹² Suffolk states that, due to a lack of available channels in the 800 MHz band, it is unable to enhance the coverage of its PLMR system while maintaining the required co-channel short-spacing separation distance. In support of its waiver request, Suffolk includes a contour overlap study which purports to demonstrate that the Virginia Co-Channel Licensees “would receive the same or greater interference protection than [that] provided in the Short Spacing Table.”¹³

III. DISCUSSION

6. Section 1.925 of the Commission’s Rules states that in order 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;¹⁴ 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.¹⁵

7. As noted above, the distances listed in the short-spacing table of Section 90.621(b)(4) are based upon preventing the proposed station’s 22 dBu F(50,10) interference contour from overlapping the 40 dBu F(50,50) coverage contour of the short-spaced co-channel incumbent station.¹⁶ A footnote to the

⁷ See contour and DHAAT study attached to ULS File No. 0006441843.

⁸ 47 C.F.R. § 90.621(b)(4).

⁹ See n.2 to Short-Spacing Separation Table in 47 C.F.R. § 90.621(b)(4).

¹⁰ 47 C.F.R. §§ 90.621(b)(4) and (5).

¹¹ See letter from Kay Orndorff, Licensing Representative to Federal Communications Commission (Dec. 8, 2014)(attached to ULS File No. 0006441843).

¹² Suffolk Waiver Request at 1.

¹³ *Id.* See also attachment to ULS application 0006441843 labeled “contour and DHAAT” (Suffolk Contour Overlap Study).

¹⁴ 47 C.F.R. § 1.925(b)(3)(i).

¹⁵ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁶ See *supra* ¶ 4.

table specifies that all existing stations are assumed to be operating with 1000 watts effective radiated power (ERP).¹⁷

8. Suffolk includes a contour overlap study with its application which purports to demonstrate that its proposed base stations would provide the requisite contour protection to the short-spaced base stations of the Virginia Co-Channel Licensees.¹⁸ Suffolk, however, performed its contour study with only one licensee operating at 1000 watts ERP (County of Chesterfield).¹⁹ For the other short-spaced licensees, Suffolk performed its study with the incumbent licensees operating at their licensed power.²⁰

9. Bureau staff re-ran Suffolk's contour study with all incumbent licensees operating at 1000 watts ERP in accordance with the short-spacing table. Staff determined that two of Suffolk's three proposed base stations' interference contours would overlap the coverage contours on a number of channels licensed to the Virginia Co-Channel Licensees when those licensees are presumed to operate at 1000 watts ERP.²¹

10. Thus, we deny Suffolk's request for a waiver of the short-spacing table for channels at locations which create contour overlap. In the instance of contour overlap, we find Suffolk's proposal contrary to the underlying purpose of the short-spacing table (*i.e.* to prevent an applicant's 22 dBu F(50,10) contour from overlapping an incumbent operator's 40 dBu F(50,50) contour). We also find that the lack of available channels in the band is neither an unusual nor unique factual circumstance.

11. For those channels at the location which passes the Bureau Staff's contour analysis, we grant Suffolk's waiver request under the first prong of the waiver standard. We find Suffolk's proposal to license channels at a location which creates no contour overlap with the Virginia Co-Channel Licensees would not frustrate the underlying purpose of the short-spacing table. In this instance, we also find it in the public interest to grant Suffolk a waiver of the short-spacing table so that it may improve the coverage of its PLMR system at this location.²²

12. We note that, for one frequency on the application, Suffolk passes our contour analysis but that the proposed location is fewer than 88 kilometers from co-channel licensee the City of Hopewell, Virginia.²³ Accordingly, we deny Suffolk's waiver request. Section 90.621(b)(4) of the Commission's rules requires that any applicant proposing a co-channel separation of less than 88 kilometers must include with its application an analysis of the interference potential from its proposed mobile units to existing co-channel base station receivers. Suffolk includes no such analysis with its application, thus we deny its request for a waiver of the short-spacing table for this channel.

¹⁷ See n.3 to Short-Spacing Separation Table in 47 C.F.R. § 90.621(b)(4).

¹⁸ See Suffolk Contour Overlap Study.

¹⁹ *Id.* at 12.

²⁰ *Id.* at 13-24.

²¹ Staff's contour study with all incumbents operating at 1000 watts ERP resulted in contour overlap to the Virginia Co-Channel Licensees from proposed base station locations 7 and 8 but none from proposed base station location 6.

²² Suffolk Waiver Request at 1.

²³ Suffolk proposes to operate frequency 858.4375 MHz at Location 7 which is located only 85.4 kilometers from PLRM station call sign KNNR257, City of Hopewell. See Suffolk Contour Overlap Study at 2.

13. Finally, we note that there are channels at each location on Suffolk's application which require no waiver request. We grant the application with respect to these channels. Attachment I lists which channels on the Suffolk application we are granting and which we are dismissing.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED pursuant to Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, that the waiver request filed by the City of Suffolk, Virginia IS GRANTED IN PART and DENIED IN PART.

15. IT IS FURTHER ORDERED that license application ULS File No. 0006441843 filed by City of Suffolk, Virginia, SHALL BE PROCESSED in accordance with Attachment I.

16. This action is taken under delegated authority pursuant to Sections 0.131, 0.191, 0.331 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.191, 0.331, 0.392

FEDERAL COMMUNICATIONS COMMISSION

Michael J Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

Attachment I**City of Suffolk, Virginia – ULS File No. 0006441843**

Frequencies added to call sign WNMJ688 by waiver of the short-spacing table in Section 90.621(b)(4).

Location No.	Station Class Code	Latitude, Longitude	Address/ Area of Operation	Frequency (MHz) (granted with waiver)
6	FB2	36° 43' 59.8" (N) 76° 35' 20.9" (W)	300 Kings Fork Road, Suffolk, VA	858.9375 859.4375 859.9375
9	MO	--	60 km radius around Location 6	813.9375 814.4375 814.9375

Frequencies added to call sign WNMJ688 without need for a waiver.

Location No.	Station Class Code	Latitude, Longitude	Address/ Area of Operation	Frequency (MHz) (granted without need for waiver)
1	FB2	36° 43' 50.0" (N) 76° 35' 21.0" (W)	441 Market St, Suffolk, VA	856.1125 856.5625 857.5625 858.1125 859.6125
2	FB2	36° 35' 41.0" (N) 76° 40' 56.0" (W)	US Rt 13 at Mineral Springs Rd, Suffolk, VA	856.1125 856.5625 857.5625 858.1125 859.6125
3	FB2	36° 49' 56.0" (N) 76° 29' 08.0" (W)	1.77 km N of SR 337 Suffolk, VA	856.1125 856.5625 857.5625 858.1125 859.6125
4	FX1	--	State of Virginia	811.1125 811.5625 812.5625 813.1125 814.6125
5	MO	--	64 km radius around Location 1	811.1125 811.5625 812.5625 813.1125 814.6125
6	FB2	36° 43' 59.8" (N) 76° 35' 20.9" (W)	300 Kings Fork Rd, Suffolk, VA	856.1125 856.5625 857.5625 857.9375 858.1125 858.4375 859.6125

Location No.	Station Class Code	Latitude, Longitude	Address/ Area of Operation	Frequency (MHz) (granted without need for waiver)
7	FB2	36° 38' 12.5" (N) 76° 48' 06.4" (W)	Greenwood Rd, Suffolk, VA	856.1125 856.5625 857.5625 858.1125 859.6125
8	FB2	36° 47' 07.3" (N) 76° 39' 17.3" (W)	4441 Pruden Rd, Suffolk, VA	856.1125 856.5625 857.5625 858.1125 859.6125
9	MO	--	60 km radius around Location 6	811.1125 811.5625 812.5625 813.1125 814.6125

Frequencies DISMISSED because waiver of the short-spacing table in Section 90.621(b)(4) is DENIED.

Location No.	Station Class Code	Latitude, Longitude	Address/ Area of Operation	Frequency (MHz) (dismissed because waiver request denied)
7	FB2	36° 38' 12.5" (N) 76° 48' 06.4" (W)	Greenwood Rd, Suffolk, VA	857.9375 858.4375 858.9375 859.4375 859.9375
8	FB2	36° 47' 07.3" (N) 76° 39' 17.3" (W)	4441 Pruden Rd, Suffolk, VA	857.9375 858.4375 858.9375 859.4375 859.9375
9	MO	--	60 km radius around Location 6	812.9375 813.4375