

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

In the Matter of
Application of Joint Communications Task Force
for a PW-Public Safety Pool Conventional License
on Frequency 458.4625 MHz.
File No. 0007248315

ORDER

Adopted: December 5, 2016

Released: December 5, 2016

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

I. INTRODUCTION

1. On April 29 2016 the Joint Communications Task Force (JCTF) filed an application for a mobile license on public safety interoperability frequency 485.4625 MHz. JCTF filed five amendments to that application, the latest filed October 31, 2016. Responding to the eligibility question in FCC license application Form 601, JCTF entered "90.20(a) - Nationwide Emergency Communications Including but not Limited to Stafford Act Response and at the Behest of Certain Federal Agencies Such as FEMA (MOU) and the U.S. Coast Guard."

2. Section 90.20(a)(2) of the Commission's rules provides in pertinent part that a non-governmental organization (NGO) such as JCTF is eligible for a public safety license only if its application is "accompanied by a statement from the governmental entity having legal jurisdiction over the area to be served, supporting the request." In purported compliance with that requirement, JCTF provided a October 31, 2016 letter of support from the West Metro Fire Protection District. In the letter, the West Metro Fire Protection District described itself as serving "more than 110 square miles in two Colorado counties." The West Metro Fire Protection District, therefore, is not a "governmental entity having legal jurisdiction over the area to be served," i.e. the "nationwide" area described by JCTF in its response to the eligibility inquiry, supra. Accordingly, the Public Safety and Homeland Security Bureau dismissed the JCTF application on December 2, 2016. However, the dismissal of the application left unaddressed a request for waiver contained in a July 14, 2016 letter from JCTF to the Commission. This Order addresses the waiver request.

II. DISCUSSION

3. The July 14, 2016 letter from JCTF, supra, recited "[a]n alternative request, should this

1 FCC File No. 0007248315 (filed Apr. 29, 2016, amended Jul. 8, 2016; Jul. 20, 2016; Aug. 12, 2016; Aug. 23, 2016; and Oct. 31, 2016).

2 The reference to 90.20(a) is to Section 90.20(a) of the Commission's rules, 47 CFR § 90.20(a).

3 47 CFR § 90.20(a)(2).

4 Letter from Bob Olme, Communications Chief, West Metro Fire Protection District, to Federal Communications Commission, October 31, 2016.

5 Id.

6 Letter from Steve Cohan, JCTF, to Federal Communications Commission, July 14, 2016 re FCC File No. 0007248315.

license application not, in the opinion of the Commission, fall within the rules, guidelines, or standards as outlined above a request for WAIVER is hereby made.”⁷ JCTF then went on to recite the Commission’s waiver standard contained in Section 1.925 of the rules,⁸ *i.e.*, the Commission will waive a rule if:

The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

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.

According to JCTF, its requested waiver is warranted because: “it is in the public interest to grant the JCTF’s waiver request in terms of potential interoperability with other Public Safety agencies and more particularly interoperability during an emergency response.”⁹

4. Although JCTF has not specified the rule it wants waived to enable grant of its application, it is fairly inferable that JCTF is asking for waiver of that portion of Section 90.20(a)(2) of the Commission’s rules that requires NGO applicants to furnish a supporting statement “from the governmental entity having legal jurisdiction over the area to be served.” We reach this inference because the West Metro Fire Protection District does not have “legal jurisdiction over the area to be served.” Accordingly, we analyze the JCTF waiver request under both prongs of the Commission’s waiver standard, *supra*.

5. First, we find that the underlying purpose of Section 90.20(a)(2) would not be served and would be frustrated were we to grant the JCTF waiver request. The underlying purpose of the rule is to prevent non-public safety applicants from having access to public safety frequencies unless they have the approval of the public safety entity with jurisdiction over the service area. This prophylactic provision ensures that non-public safety licensees will not interfere with public safety operations by making unpermitted and unwanted transmissions on public safety frequencies, a particularly important consideration when, as here, the requested frequency is used for interoperability. Second, we find no unusual factual circumstances here because we would reject any such application filed without support from a governmental agency having jurisdiction over the proposed service area. Third, we cannot find that enforcing the rule would be inequitable, burdensome, or contrary to the public interest. To the contrary, granting the waiver request would be inequitable and burdensome to governmental public safety agencies that, were the waiver granted, could have to contend with unwanted transmissions on an interoperability frequency from a licensee they have not approved. For that reason alone, it would be contrary to the public interest to grant the waiver. Fourth, as for JCTF not having a reasonable alternative, it is obvious that its alternative is to have approval of a governmental public safety agency with jurisdiction over the proposed service area, and to meet the other requirements imposed on an NGO seeking access to public safety frequencies.

III. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED, that the waiver request filed July 14, 2016 by the Joint Communications Task Force, IS DENIED.

⁷ *Id.* at 3 (emphasis in original).

⁸ 47 CFR § 1.925.

⁹ *Id.*

7. This action is taken under delegated authority pursuant to Sections 0.191(a), 0.392 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 0.191(a), 0.392, 1.925.

FEDERAL COMMUNICATIONS COMMISSION

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