

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

In the Matter of
State of North Dakota
Request for Waiver of Section 90.20(d)(41)
of the Commission's Rules
File No. 0007016716

ORDER

Adopted: March 8, 2017

Released: March 8, 2017

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

I. INTRODUCTION

1. On November 5, 2015, the State of North Dakota (North Dakota) submitted an application whereby it seeks to expand the use of frequency 155.4750 MHz (VLAW31) licensed under call sign KO5210 for interagency coordination along the U.S.-Canada border. Specifically, North Dakota requests a waiver of Section 90.20(d)(41) of the Commission's rules to use VLAW31 for multi-discipline (e.g., law enforcement, fire and emergency medical services, mutual aid) communication within 25 km of the border. By this Order, we grant the requested waiver subject to conditions.

II. BACKGROUND

2. North Dakota is licensed to operate on frequency 155.4750 MHz for transmissions from mobile or portable units throughout the entire state via Private Land Mobile Radio (PLMR) license call sign KO5210. It also holds several additional PLMR licenses permitting it to operate numerous base stations throughout the state on frequency 155.4750 MHz.

3. On November 5, 2015, North Dakota filed an application seeking a waiver of Section 90.20(d)(41) so it can use VLAW31 for general interagency border communications during an emergency under its call sign KO5210. Specifically, North Dakota would allow state, local, tribal, provincial and Canadian first responders to communicate on VLAW31 for mutual U.S./Canadian operations at or within 25 km of the border.

4. Pursuant to Section 90.20(d)(41) of the Commission's rules, VLAW31 is reserved nationwide for use in police emergency communications networks operated under statewide law enforcement emergency communications plans. Therefore, North Dakota needs a waiver to expand use of the channel

1 State of North Dakota, State Radio Communications Application, ULS File no. 0007016716 (dated Nov. 5, 2015) (North Dakota Application). See also attachment to North Dakota Application labeled "waiver on Canadian border for VLAW31" (Nov. 5, 2015) (North Dakota Waiver Request).

2 Call sign KO5210.

3 See e.g., call sign WQDA865.

4 North Dakota Waiver Request at 2.

5 Id.

6 47 CFR § 90.20(d)(41).

to communications during all types of emergencies rather than just police emergencies.

5. In support of its waiver request, North Dakota submits that its plan would achieve the following objectives:

- a) Improve day-to-day interoperable emergency communications among local, state, provincial, tribal, and federal entities along the Canada border;
- b) Improve communications interoperability among emergency response providers responding to threats and natural disasters on or near the border; and
- c) Facilitate communications interoperability among emergency response providers in border communities of varying population densities.⁷

6. North Dakota also argues that expanded use of the VLA31 serves the best interest of the public as well as law enforcement and other response organizations (including Canadian responders on the U.S. side of the border) by “expanding common use of the frequency for consistent communications interoperability in all-hazards incident management.”⁸ North Dakota believes it would be “inequitable” to deny its waiver request “given the limited use of the frequency anticipated, sparsely populated area affected, and interdependence of emergency response agencies in the area.”⁹

7. On December 28, 2016, the Public Safety and Homeland Security Bureau (Bureau) issued a *Public Notice* seeking comment on North Dakota’s Waiver Request.¹⁰

8. In response to the Bureau’s public notice, the National Public Safety Telecommunications Council (NPSTC) notes that “the State of Montana requested and received a similar waiver grant from the Commission to allow multi-discipline public safety use of VLA31 in proximity to the U.S.-Canada border.”¹¹ It also states that it believes “a grant of North Dakota’s waiver request will help spur additional actions that will extend similar benefits to a greater portion of the U.S.- Canada border.”¹² For instance, NPSTC states the “Province of Saskatchewan and the State of North Dakota already have held some preliminary discussions on options for extending the VLA31 solution across their common border to support law enforcement, fire and EMS operations.”¹³ Consequently, NPSTC argues that the Bureau granting North Dakota a waiver to expand operations on VLA31 “is a necessary step to implement those benefits.”¹⁴

III. DISCUSSION

9. The Commission will grant a waiver request if the waiver proponent shows that: “(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant

⁷ North Dakota Waiver Request at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ See *Public Safety and Homeland Security Bureau Seeks Comment on Request by State of North Dakota to Use Frequency 155.4750 MHz for Multi-Discipline Mutual Aid Communication Within 25 km of the U.S.-Canada Border*, Public Notice, 31 FCC Rcd 13478 (PSHSB 2016).

¹¹ Comments of the National Public Safety Telecommunications Council attached to North Dakota Application (Jan. 28, 2017) at 4 (NPSTC Comments).

¹² *Id.* at 5.

¹³ *Id.*

¹⁴ *Id.*

case, and that a grant of the requested waiver would be in the public interest; 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 Here, we analyze North Dakota’s waiver request with reference to the second prong of the waiver standard, *i.e.*, we examine whether there are unique or unusual factual circumstances that would make strict application of Section 90.20(d)(41) inequitable, unduly burdensome or contrary to the public interest.

10. Given that North Dakota borders Canada, we find it unusually situated for engaging in interoperable communications to coordinate cross-border incidents. We believe expanding interoperability in North Dakota among state, local, provincial, federal, tribal and Canadian emergency responders in rural parts of the state serves the public interest. Specifically, grant of this waiver would advance important homeland security goals.¹⁶

11. For example, in 2007 Congress directed that the Department of Homeland Security (DHS) to establish demonstration projects in communities along the Canada and Mexico border with the express intent of fostering “local, tribal, State, and Federal interoperable emergency communications, as well as interoperable emergency communications with appropriate Canadian and Mexican authorities.”¹⁷ Furthermore, Congress directed DHS to “establish mechanisms to ensure that the information and knowledge gained by participants in the demonstration project are transferred among the participants and to other interested parties.”¹⁸ In this regard, North Dakota’s request is a direct outgrowth of Montana’s participation in the demonstration project and its use of VLA31 to promote “multi-discipline, mutual aid communications” along the Canada border within the State of Montana.¹⁹

12. Additionally, grant of this waiver is consistent with our precedent promoting cross-border communications.²⁰ Based on the record before us, we find that permitting North Dakota to expand operations on VLA31 for multi-discipline, mutual aid communications will improve interoperable communications among all first responders responding to threats and natural disasters along the border including Canadian first responders who need to communicate with first responders operating on the U.S. side of the border.

13. Furthermore, we find it unduly burdensome to restrict North Dakota’s operations on VLA31 to only police communications since the frequency is already licensed to it and available for use in the coordination zone with Canada.²¹ Requiring North Dakota to find an alternative frequency in

¹⁵ 47 C.F.R. § 1.925(b)(3)(i)-(ii). On waiver standards generally, *see Northeast Cellular Telephone Co. v. FCC.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”) *citing WAIT Radio v. FCC.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969).

¹⁶ Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. No. 110-53), 121 Stat. 300.

¹⁷ *Id.* § 1810(c).

¹⁸ *Id.* § 1810(f).

¹⁹ *See State of Montana*, Order, 27 FCC Rcd 15249, 15250, para. 9 (PSHSB 2012) (granting the State of Montana a waiver to use a frequency designated for police communications to be used to coordinated cross-border incidents with Canada). *See also*, NPSTC comments at 5, (stating “a grant of North Dakota’s waiver request will help spur additional actions that will extend similar benefits to a greater portion of the U.S.-Canada border.”)

²⁰ *See State of Washington*, Order, 22 FCC Rcd 10121 (PSHSB 2007) (granting the State of Washington a waiver to use a frequency designated for paging operations to be used to coordinate cross-border incidents with Canada).

²¹ “Line A” defines the coordination zone in the U.S. along the border between Canada and the lower 48 states of the U.S. for licensees operating on frequencies below 470 MHz. *See* 47 CFR § 1.928(e).

the 150 MHz band for multi-discipline, mutual aid communications along the border with Canada could be difficult since channels in this frequency band are available to U.S. licensees in the coordination zone only on a first-come, first-served basis.²²

14. In granting the Waiver Request, we must ensure that our decision does not impede existing or future state police communications plans in North Dakota and adjacent states. Accordingly, we grant the Waiver Request, subject to the condition that North Dakota shall restrict the use of for multi-discipline, mutual aid communications among public safety personnel operating within 25 km (15 miles) of the border with Canada. Additionally, within 30 days of the release of this *Order*, we require North Dakota to notify the State Police in Montana, South Dakota and Minnesota of its multi-discipline, mutual aid plans in order to ensure that frequency 155.4750 MHz remains available nationwide for use in police emergency communications networks operated under statewide law enforcement emergency communications plans.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), and Section 1.925(b)(3)(ii) of the Commission's rules, 47 C.F.R. § 1.925(b)(3)(ii), that the waiver request associated with ULS File No 0007016716 filed by the State of North Dakota IS GRANTED and the associated application SHALL BE PROCESSED accordingly.

16. 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 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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

²² 47 CFR § 1.928(a).