

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

In the Matter of
TEXAS DEPARTMENT OF PUBLIC SAFETY,
STATE OF TEXAS
Request for Waiver of Section 90.175 of the
Commission's Rules
File No. 0007866309

ORDER

Adopted: August 2, 2018

Released: August 2, 2018

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

I. INTRODUCTION

1. On July 26, 2017, Texas Department of Public Safety, State of Texas (Texas DPS) filed an application and request for waiver of Section 90.175 of the Commission's rules, seeking to use the 700 MHz air-ground frequencies, statewide, without obtaining prior frequency coordination. We address the application and waiver request below.

II. BACKGROUND

2. In 2014 the Commission adopted rules to facilitate public safety air-ground communications in the 700 MHz public safety narrowband spectrum (769-775/799-805 MHz). Specifically, the Commission re-designated 700 MHz secondary trunking channels and reserved them for air-ground communications between low-altitude aircraft and associated ground stations, e.g., between medevac helicopters and first responders. To minimize the risk of interference, the Commission: (a) imposed technical restrictions on the air-ground channels; (b) assigned responsibility for coordinating

1 See File No. 0007866309 and accompanying Letter from Todd M. Early, Deputy Director, Texas Dept. of Public Safety, to FCC (filed Jul. 26, 2017) (Waiver Request). Specifically, Texas DPS requested a waiver from frequency coordination in order to process its application to license air-ground channels.

2 47 CFR § 90.175.

3 Waiver Request at 1.

4 See Proposed Amendments to the Service Rules Governing Public Safety Narrowband Operations in the 769-775/799-805 MHz Bands, et al., Report and Order, 29 FCC Rcd 13283, 13291-92 paras. 18-21 (2014) (Report and Order).

5 Id. at 13291 para. 18.

6 The Commission imposed a two-watt Effective Radiated Power (ERP) limit and restricted airborne use to altitudes at or below 457 meters (1500 feet) above ground level, in order to limit the geographic area impacted by aeronautical transmissions. 47 CFR § 90.531(b)(7)(i-ii).

these channels to the states;<sup>7</sup> and (c) permitted aircraft to use either the mobile transmit or base transmit side of the channel pair.<sup>8</sup>

3. Texas DPS seeks to license the air-ground channels under a new call sign. Therefore, Section 90.175 of the Commission's rules requires a showing of prior frequency coordination.<sup>9</sup> In support of its request to waive the frequency coordination rule, Texas DPS cites to Section 90.531(b)(7)(iv) of the Commission's rules, which provides that states are responsible for the administration of the air-ground channels.<sup>10</sup> Texas DPS also states that if its use of the 700 MHz narrowband air-ground channels causes interference, it will accept full responsibility and take immediate corrective action, including, if necessary, ceasing operation on the interfering frequency.<sup>11</sup>

### III DISCUSSION

4. To obtain a waiver of the Commission's rules, an applicant 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 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.<sup>12</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>13</sup>

5. Under Section 90.175 of the Commission's rules,<sup>14</sup> each application for a new frequency assignment must include a showing of prior frequency coordination unless specifically exempted pursuant to Section 90.175(j). Texas DPS's proposal to license the air-ground frequencies pursuant to a new call sign constitutes a request for a new frequency assignment.<sup>15</sup> We find that a conditional waiver of the prior coordination requirement is warranted in light of the particular facts surrounding the instant request.

6. Granting the Waiver Request would not undermine the purpose of the frequency coordination process, which was established to ensure the quality of frequency selections, expedite

---

<sup>7</sup> *Report and Order* 29 FCC Rcd at 13291 para. 19 and n.53. "Because the states are responsible for administration of the adjacent interoperability channels," the Commission stated, "they are in the best position to manage operations on the newly designated air-ground channels." *Id.* In 2016, the Commission clarified "that a state may either assume responsibility for the air-ground channels itself - by updating the submission it previously made to assume responsibility for administering the adjacent interoperability channels - or is permitted, in the first instance, to delegate responsibility for approval of air-ground applications to the cognizant [Regional Planning Committee (RPC)]." *See Proposed Amendments to the Service Rules Governing Public Safety Narrowband Operations in the 769-775/799-805 MHz Bands, et al.*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10063, 10072 para. 24 (2016). Similarly, the Commission noted, "a state may hold the air-ground licenses itself or approve other qualified licensees to do so." *Id.*

<sup>8</sup> *Report and Order* 29 FCC Rcd at 13291 para. 19.

<sup>9</sup> 47 CFR § 90.175(j).

<sup>10</sup> Waiver Request at 1.

<sup>11</sup> *See* Letter of Concurrence from Deputy Administrator, Acting Deputy Assistant Director, Texas Department of Public Safety (dated Mar. 30, 2017) attached to FCC File No. 0007866309. Texas DPS submits that its responsibility would include costs or actions necessary to remedy the interference including moving to a different frequency.

<sup>12</sup> 47 CFR § 1.925(b)(3).

<sup>13</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family 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).

<sup>14</sup> 47 CFR § 90.175.

<sup>15</sup> *Id.*

licensing, and improve spectrum efficiency to the benefit of private land mobile radio users.<sup>16</sup> In the case of the Texas DPS air-ground licenses, the usual coordination procedure used to avoid interference between fixed stations—maintaining specific distances between co-channel stations—is not applicable because, under Texas DPS’ proposal, air-ground stations are mobile, i.e. they may operate anywhere in the state. Also, because Texas DPS proposes to license all 16 air-ground frequencies, statewide, the coordination of frequencies within the state is a matter internal to Texas DPS. Texas DPS must, however, coordinate its use of the air-ground channels with its neighboring states; i.e., Arkansas, Louisiana, New Mexico, and Oklahoma.

7. When the Commission established the 700 MHz air-ground channels, it gave the states authority to manage operations on the air-ground channels and encouraged states to coordinate operations on these channels with Regional Planning Committees (RPCs).<sup>17</sup> We believe this interstate coordination will serve as a proxy for the frequency coordination process applicable to fixed stations. Therefore, we condition the Texas DPS air-ground license on Texas DPS coordinating use of the frequencies with adjoining states and, if applicable, the RPCs in those states.<sup>18</sup>

8. Section 90.533 of the Commission’s rules requires, in pertinent part, that public safety facilities must accept any interference from UHF television broadcast transmitters in Mexico.<sup>19</sup> We remind Texas DPS of that rule requirement and condition Texas DPS’ license on Texas DPS complying with existing<sup>20</sup> and any future agreements between the United States and Mexico regarding Mexico’s broadcast or non-broadcast use of these frequencies.<sup>21</sup>

9. We find that the Waiver Request is consistent with the public interest. The proposal would promote spectrum efficiency and expedite licensing on the air-ground channels by Texas DPS, and minimize the potential for interference to co-channel or adjacent channel operations by requiring coordination with adjoining states.

### III. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission’s rules, 47 CFR § 1.925, that the waiver request of Section 90.175 of the Commission’s rules, 47 CFR § 90.175, associated with File No. 0007866309, filed by the State of Texas, Department of Public Safety, on July 26, 2017, is GRANTED subject to the conditions.

11. IT IS FURTHER ORDERED that staff shall grant application, File No. 0007866309, and impose on the license a condition that the Texas Department of Public Safety shall coordinate use of the air-ground channels with adjoining states and, if applicable, the Regional Planning Committees that govern use of 700 MHz narrowband channels in Arkansas, Louisiana, New Mexico, and Oklahoma.

---

<sup>16</sup> See *Town of New Haven, Vermont*, Order, 24 FCC Rcd 2925 2927 para. 8 (PSHSB 2009) citing *Frequency Coordination in the Private Land Mobile Radio Services*, Report and Order, 103 FCC 2d 1093, 1098-99 para. 11 (1986).

<sup>17</sup> *Report and Order*, 29 FCC Rcd at para. 20 and n.53.

<sup>18</sup> To date, Arkansas; Louisiana; New Mexico and Oklahoma have not delegated administration of the air-ground channels to the relevant RPCs. We note that New Mexico has not established an RPC.

<sup>19</sup> 47 CFR § 90.533(b).

<sup>20</sup> Protocol Between the Department of State of the United States of America and the Secretariat of Communications and Transportation of the United Mexican States Concerning the Allotment and Use of the 698-806 MHz Band for Terrestrial Non-Broadcasting Radiocommunications Services Along the Common Border, Mex.-U.S., Nov. 8, 2006, T.I.A.S. 06-1108.2, as amended by exchange of letters on July 19 and 28, 2011, T.I.A.S. 11-728.

<sup>21</sup> *Cf.* 47 CFR § 90.533(c).

12. IT IS FURTHER ORDERED that staff shall impose on the Texas Department of Public Safety license for the air-ground channels, the condition that the Texas Department of Public Safety shall comply with existing and any future agreements between the United States and Mexico regarding Mexico's broadcast or non-broadcast use of the air-ground channels in Mexico.

13. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.19, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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