

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

In the Matter of
County of Los Angeles, California
Request for Waiver of Sections 90.305(a) and
90.307(d) of the Commission's Rules
File Nos. 0009466946 and 0009464743

ORDER

Adopted: May 11, 2023

Released: May 11, 2023

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

I. INTRODUCTION

1. On March 22 and 23, 2021, the County of Los Angeles, California (the County) filed the above-captioned applications to operate a station at Tejon Peak, California on frequencies in the 470-512 MHz band (T-Band), accompanied by two waiver requests. The County seeks waivers of sections 90.305(a) and 90.307(d) of the Commission's rules. For the reasons below, we grant the requested waivers.

II. BACKGROUND

2. The County operates the Los Angeles Regional Interoperable Communications System (LA-RICS) on T-Band spectrum. The County seeks to add a base station located at Tejon Peak, California to be the primary public safety radio site serving a growing community in the northwest part of Los Angeles County. The County seeks a waiver for a fixed station located 18.4 kilometers (11.1 miles) outside the 80-kilometer (50-mile) radius area around Los Angeles, California in which fixed stations are normally authorized under the rules. The County also seeks a waiver of section 90.307(d) to locate its station short-spaced to adjacent channel Class A television (TV) Stations KTLN-CD, TV Channel 15, Bakersfield, California and KSBB-CD, TV Channel 17, Santa Barbara, California. Section 90.307(d)

1 See File Nos. 0009464743 (filed Mar. 22, 2021, amended June 14, 2021) (requesting frequencies in the 482-488 MHz (TV Channel 16) band) and 0009466946 (filed Mar. 23, 2021, amended June 4, 2021) (requesting frequencies in the 470-476 MHz (TV Channel 14) band), attached Waiver Request (filed Mar. 22, 2021) (Siting Waiver Request); Waiver Request (filed June 4, 2021) (TV Spacing Waiver Request).

2 47 CFR §§ 90.305(a), 90.307(d) (respectively stating that the transmitter site(s) for base stations shall be located not more than 80 kilometers (50 miles) of the geographic centers of the urbanized areas listed in 47 CFR § 90.303; and the minimum distance between a land mobile base station which has associated mobile units and a protected adjacent channel television station is 145 kilometers (90 miles)).

3 Siting Waiver Request at 3-4.

4 Id. at 6-7.

5 Id. at 1. The site is located 98.4 kilometers (61.1 miles) from Los Angeles city center coordinates. See also 47 CFR §§ 90.305(a), 90.307(d).

6 TV Spacing Waiver Request at 2. The proposed station is located 70.8 kilometers from Station KTLN-CD and 92.7 kilometers from Station KSBB-CD.

requires a Private Land Mobile Radio Service (PLMRS) base station which has associated mobile units to be spaced at least 145 kilometers (90 miles) from a protected adjacent channel TV station.⁷

3. The County states that the Tejon Peak site “provides critical coverage in the northwest part of the County. The County’s receive-only site at this location provides ‘talk-in’ coverage, but growth in the County necessitates the ability to reach heretofore unreachable portions of this mountainous region. Some of that growth is a large project called the ‘Centennial at Tejon Peak’ which has been approved in the area. The project will have almost 20,000 new residential units and over 10.1 million square feet of commercial space. The construction of this project is estimated to create 25,000 jobs in the area. The project was approved in 2019, and the Tejon Peak site will be the primary public safety radio site serving this community.”⁸

4. The County states that “[w]hile the County has operated a receive-only site at Tejon Peak for many years, ... the new system is designed to improve coverage to this rapidly expanding part of the County.”⁹ The County notes that in 1986, the Commission granted a waivers of sections 90.305(a) and 90.307(d) to the County to operate Station WIK406 at the Bald Mountain site located more than 50 miles from Los Angeles on Channel 16 band frequencies.¹⁰

5. On December 15, 2022, the Public Safety and Homeland Security Bureau (Bureau) issued a public notice¹¹ seeking comment on the applications and waiver requests. The Enterprise Wireless Alliance filed comments in support of the County’s requests.¹²

III. DISCUSSION

6. To obtain a waiver, 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; 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.¹³ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁴

7. Regarding the Siting Waiver Request, we find that the County satisfies the first prong of the waiver standard, in that they have shown that the underlying purpose of section 90.305 would not be

⁷ 47 CFR § 90.307(d). Here, the proposed sites would be spaced 76.3 km from a protected adjacent channel TV station. See TV Spacing Waiver Request at 3.

⁸ Siting Waiver Request at 7.

⁹ *Id.* at 6.

¹⁰ *Id.* at 6-7 citing Private Land Mobile Radio Services (Channel 16 Public Safety Allocation), Report and Order, Gen. Docket No. 84-902, 59 R.R.2d 910 (1986) at footnote 3; and call sign WIK406, Special Conditions.

¹¹ See Public Safety And Homeland Security Bureau Seeks Comment on Requests For Waiver Filed by the County of Los Angeles, California to Operate a Base Station at Tejon Peak on Television Channels 14 and 16 Band Frequencies, *Public Notice*, DA 22-1329 (PSHSB rel. Dec. 15, 2022).

¹² File Nos. 0009464743 and 0009466946, Comments of the Enterprise Wireless Alliance (filed Jan. 17, 2023) (stating that waiver relief is appropriate because the County has demonstrated that the public interest requires public safety communications coverage outside the 50-mile boundary; no other interests are adversely affected; and the County does not overlap contours with TV Stations KTLN-CD and KSBB-CD). *Id.* at 2-3.

¹³ 47 CFR § 1.925(b)(3)(i-ii).

¹⁴ *WAIT Radio v. FCC*, 413 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).

frustrated by grant of a waiver in the present case, and that a grant is in the public interest. In 2001, the Commission stated that sections 90.305(a) and (b)¹⁵ “create[e] a circular area with a radius of 80 miles (80-mile area) within which PLMR stations may operate without interference from television stations.”¹⁶ The Commission stated that waiver requests that do not involve extension of the 80-mile limit are more likely to receive favorable treatment than requests involving extension of the limit, and that such operation would not adversely impact television stations because television stations are already required to protect land mobile stations operating within that area.¹⁷ Here, because the County’s proposed base station would operate 61.1 miles—within an 80-mile radius—from the center of the Los Angeles urbanized area and, therefore, would likely not interfere with TV stations entitled to protection, we find that the underlying purpose of section 90.305(a) would not be served by application of the rule in this instance. Moreover, we have waived section 90.305(a) previously under similar circumstances.¹⁸

8. The County has shown that a waiver is in the public interest by improving the County’s radio coverage for first responders in a growing part of Los Angeles County, allowing continued use of the LA-RICS radio system, and maintaining interoperability with other T-Band public safety agencies in the greater Los Angeles metropolitan area.¹⁹ Accordingly, we grant the County’s Siting Waiver Request.

9. Regarding the TV Spacing Waiver Request, we have independently reviewed the County’s engineering analysis²⁰ and agree with its conclusions. The generally accepted protection criterion for a contour analysis between a PLMR station and an adjacent channel TV station is zero dB at the TV station’s Grade B contour.²¹ Based on the non-overlap of the County’s 64 dBu interfering contour with Station KTLN-CD and KSBB-CD’s 64 dBu Grade B service contours, we agree that the County would provide the requisite zero dB protection to the TV station.²² Moreover, the County’s existing base stations have operated short-spaced from these Class A TV stations with no reported interference issues. We conditionally grant the TV-Spacing Waiver Request with a requirement that the County must accept any interference caused by full-power and other primary television stations, and must eliminate any interference caused by its facilities to Station KTLN-CD and KSBB-CD’s viewers.

IV. CONCLUSION

10. Based on the information before us, we conclude that the County has satisfied the criteria set forth under the waiver standard, and that grant of their requests for waiver of Commission rules to

¹⁵ 47 CFR § 90.305(b) (“Mobile units shall be operated within 48 km. (30 mi.) of their associated base station or stations.”).

¹⁶ See *Goosetown Enterprises, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 12792, 12795 para. 9 (2001) (*Goosetown MO&O*) citing 47 CFR §§ 90.305(a), 90.305(b).

¹⁷ *Goosetown MO&O* at 16 FCC Rcd 12797 para. 13; see also 47 CFR §§ 73.623(e) (requiring digital television stations to be located at least 250 kilometers (155 miles) from the geographic center of a co-channel land mobile allocation and 176 kilometers (110 miles) from the geographic center of an adjacent land mobile allocation), 74.709 (requiring low power television (LPTV) stations to protect co-channel or first adjacent channel land mobile operations located within a contour radiating 130 kilometers (80 miles) from the geographic center in question).

¹⁸ See, e.g., *County of Monmouth, New Jersey*, Order, 25 FCC Rcd 7176, 7182-83 para. 17 (PSHSB PD 2010) (granting a waiver of section 90.305(a) because all operations would be contained within 80 miles of Philadelphia, Pennsylvania, consistent with the *Goosetown MO&O*).

¹⁹ See Siting Waiver Request at 3-4.

²⁰ See File Nos. 0009464743 and 0009466946, attached letter from Adam Quintana, Systems Engineer, EZ-Spectrum, LLC, to Federal Communications Commission (dated May 26, 2021) (Engineering Analysis).

²¹ See Private Land Mobile Operations in the 470-512 MHz Band, *Public Notice* No. 20291 (rel. Oct. 22, 1991) at 1.

²² TV Spacing Waiver Request at 3-4. See also Engineering Analysis.

enable them to modify their shared public safety radio system as proposed is warranted. We therefore grant the requests for waiver, subject to the following condition:

The licensee must accept any interference caused by full-power and other primary television stations, and must eliminate any interference caused by its facilities to viewers located within Station KTLN-CD and KSBW-CD's noise-limited service contours (NLSC), 41 dBu F(50,90).

The licensee must accept any interference from Stations KHSC-LD, TV Channel 16, Fresno California; Station KJEO-LD, TV Channel 14, Fresno, California; and Station KXBF-LD, TV Channel 15, Bakersfield, California.

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1, 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 303(r), and section 1.925 of the Commission's rules, 47 CFR § 1.925, the March 22, 2021 Siting Waiver Request and the June 4, 2021 TV Spacing Waiver Request, filed by the County of Los Angeles, California, ARE GRANTED as conditioned herein.

12. **IT IS FURTHER ORDERED**, that the applications, File Nos. 0009464743 and 0009466946, SHALL BE PROCESSED in accordance with this Order and the Commission's rules.

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

FEDERAL COMMUNICATIONS COMMISSION

John A. Evanoff
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau