

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

In the Matter of)
Government of the Virgin Islands) File No. 0009948269

ORDER

Adopted: August 21, 2023

Released: August 21, 2023

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

I. INTRODUCTION

1. The Government of the Virgin Islands (GVI) seeks a waiver of certain technical limitations in the rules so that it can strengthen and expand its public safety communications system. Specifically, GVI seeks a waiver of limitations (13) and (45) under Section 90.20(d) of the Federal Communications Commission’s (Commission) rules. GVI seeks a waiver of these limitations to permit the use of frequency 157.4500 MHz as a mobile inbound to a Mobile Relay fixed station using an effective radiated power (ERP) of 50 watts.

II. BACKGROUND

2. In support of its waiver request, GVI submits that its contractor analyzed the available spectrum and determined that there is no other frequency immediately available that can satisfy the requested public safety use. GVI states that it requires spectrum in the 150-160 MHz band that is compatible with existing infrastructure and in order to remain interoperable between the various operations of the Virgin Islands Government. GVI states that frequencies in other bands would not satisfy the immediate public safety use and contends that the implementation of a fixed base frequency as “mobile only” is technically feasible without causing interference. Finally, GVI claims that its analysis has shown that there are no current license holders on this frequency within the Virgin Islands.

3. On May 11, 2023, the Public Safety and Homeland Security Bureau (Bureau) issued a

1 Government of Virgin Islands Application, File No. 0009948269 (dated Jul. 29, 2022) (Application). GVI originally filed the application on March 10, 2022 and attached a waiver request (Waiver Request) and a contour study (Contour Study). The Bureau returned it on July 8, 2022. See Return Letter, Reference Number 7053667 (dated Jul. 8, 2022) (Return Letter) (stating, among other issues, that the Application was returned for a statement from the frequency coordinator that there are no other VHF public safety channels available to be used for the proposed mobile operation and a list of other public safety channels considered by the frequency coordinator). GVI amended the application and resubmitted it on July 29, 2022 with a responsive attachment, “Response to Return.”

2 47 CFR § 90.20 (d)(13) (limiting the use of an affected frequency to one-way paging communications to mobile receivers and prohibiting transmissions on the frequency for the purpose of activating or controlling remote objects); 47 CFR § 90.20 (d)(45) (limiting the use of an affected frequency to 30 watts transmitter output power).

3 Waiver Request at 2-3 citing 47 CFR § 90.20 (d)(13) and (45).

4 Waiver Request at 4.

5 Id.

6 Id.

7 Id.

Public Notice seeking comment on GVI's waiver request.⁸ The Bureau specifically sought comment on the requested waiver, and in particular, from any party who would be affected by GVI's proposed use of paging frequency 157.4500 MHz.⁹ The Bureau did not receive any comments on the waiver request.

III. DISCUSSION

4. 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 requested waiver would be in the public interest;¹⁰ 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.¹¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹² As detailed below, we conclude GVI's request for waiver of Sections 90.20(d)(13) and (d)(45) may be granted under our waiver standard.¹³

5. The Commission allocated frequency 157.450 MHz for limited area, hospital one-way paging systems.¹⁴ The Commission made this frequency available exclusively for paging communications because paging transmissions were found to be disruptive to voice communications on regular two-way channels.¹⁵ The Commission envisioned medical paging operations in the Special Emergency Radio Service shifting to frequency 157.450 MHz if harmful interference occurred to voice operations on other VHF channels.¹⁶ To limit the possibility of interference to licensees operating on adjacent channels and to promote frequency reuse, the Commission limited paging operations on

⁸ See *Public Safety And Homeland Security Bureau Seeks Comment On Request Filed By The Government Of The Virgin Islands To Waive Technical Limitations In Section 90.20 Of The Commission's Rules*, Public Notice, DA 23-399, rel. May 11, 2023 (PSHSB).

⁹ *Id.*

¹⁰ 47 CFR § 1.925(b)(3)(i).

¹¹ 47 CFR § 1.925(b)(3)(ii).

¹² *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *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).

¹³ We note that the Bureau has granted similar relief in the past. See *County of St. Croix*, Order, 34 FCC Rcd 2471, 2743, para. 14 (PSHSB 2019) ("granting St. Croix a waiver of Sections 90.20(d)(13) and 90.20(d)(45) to be in the public interest so St. Croix can add additional capacity to its simulcast network in order to meet the communication needs of the "Fire, Emergency Medical Service (EMS), Rescue and Law Enforcement agencies" which rely on its network for their first responder communications."); *State of Maine - MSCOMMNET Project*, Order, 28 FCC Rcd 15754, 15757, para. 11 (PSHSB 2013) ("Furthermore, we find it in the public interest for Maine to fill in coverage in an otherwise unserved coastal area and, "thereby, to facilitate interoperability with federal, state and local public safety officials using predominantly VHF communications systems."").

¹⁴ *Amendment of Parts 2 and 89 to Allocate 157.450 MHz to the Special Emergency Medical Radio Service for Medical Paging Systems in Hospitals*, Docket No. 19643, RM-1884, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 38 FCC 2d 147, 149 para. 6 (1972); *Amendment of Subpart P, Part 89 of the Commission's Rules (Eligibility of Comprehensive Health Services)*; *Amendment of Parts 2 and 89 of the Commission's Rules to Allocate 157.450 MHz to the Special Emergency Radio Service for Medical Paging Systems in Hospitals*; *Amendment of Parts 2 and 89 of the Commission's Rules and Regulations Relating to Communications for Emergency Medical Services*, Docket 19576 RM-2017; Docket 19643; Docket 19880, Report and Order, 47 FCC 2d 676, 687 para. 36 (1974).

¹⁵ *Id.*

¹⁶ *Id.*

frequency 157.450 MHz to a maximum transmitter output power of 30 watts.¹⁷ The Commission believed this power level appropriate to accommodate the coverage needs of most hospital campuses.¹⁸

6. *Section 90.20(d)(13)*: In this instance, we find GVI has no reasonable alternative to deploying frequency 157.450 MHz for voice communications to strengthen and expand its public safety system. In reaching our conclusion, we find particularly persuasive the statement from GVI's contractor that there is no other frequency immediately available that can satisfy the requested public safety use, *i.e.*, spectrum in the 150-160 MHz band that is compatible with existing infrastructure and enables it to remain interoperable between the various operations of the Virgin Islands Government.¹⁹

7. Furthermore, staff performed a database search of licensees operating on frequency 157.450 MHz and found no other licensee operating on the channel within 180 kilometers of GVI's proposed locations.²⁰ As such, GVI's proposal to deploy frequency 157.450 MHz as a repeater output channel for voice communications will not impact any use of the frequency for paging operations. We also note that no party objected to GVI's applications or waiver request.

8. We find it unduly burdensome for GVI to either forego increasing the capacity of its network or for it to deploy a channel which is less than optimal from an interference or engineering perspective when Public Safety Pool frequency 157.450 MHz is available for use and capable of meeting its capacity needs. Therefore, we grant GVI's request for waiver of Section 90.20(d)(13) and allow it to use frequency 157.450 MHz for voice communications.

9. *Section 90.20(d)(45)*. With respect to its request to operate on 157.450 MHz with an output power greater than 30 watts, we find the underlying purpose of Section 90.20(d)(45) would not be served by its application to the present case. As noted above, the purpose of limiting licensees to 30 watts transmitter output power when operating on frequency 157.450 MHz is to reduce the possibility of paging operations causing interference to voice communications on adjacent channels and to promote reuse of the channel. We find the purpose of the restriction does not apply in this case.

10. First, GVI intends to use frequency 157.450 MHz for voice rather than paging communications. Therefore, we see little risk of interference to adjacent-channel users from GVI's proposal to operate at 100 watts transmitter output power on the channel for voice communications. Second, we believe GVI's operation at 100 watts output power will have little impact on the ability of other licensees to reuse frequency 157.450 MHz for paging operations since frequency 157.450 MHz continues to remain available for the majority of the Virgin Islands and Puerto Rico.

11. *Public Interest*. Finally, we find granting GVI a waiver of Sections 90.20(d)(13) and 90.20(d)(45) to be in the public interest so it can add a frequency which is compatible with GVI's existing infrastructure and will allow interoperability between the various operations of the Virgin Islands Government.²¹

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 1.925 and 90.20 of the Commission's rules, 47 CFR §§ 1.925, 90.20, that the request for waiver filed by the Government of

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Waiver Request at 4.

²⁰ Bureau staff performed a ULS search for licensees operating on frequency 157.450 MHz within 180 kilometers of the proposed location.

²¹ Waiver Request at 4.

the Virgin Islands filed July 29, 2002 in connection with application File No. 0009948269 IS GRANTED, and the application SHALL BE PROCESSED consistent with this Order and the Commission's rules.

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

FEDERAL COMMUNICATIONS COMMISSION

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