

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

In the Matter of
Waldo County, Maine
Request for Waiver of Sections 90.203(a),
90.242(a)(2)(iv), and 90.242(b)(4)(iii) of the
Commission's Rules
File No. 0010901948

ORDER

Adopted: April 10, 2024

Released: April 10, 2024

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

I. INTRODUCTION

1. We have before us a waiver request submitted by Waldo County, Maine (the County) to operate a Travelers' Information Station (TIS) using equipment not certified for part 90 use on frequency 530 kilohertz in the AM radio band under call sign WRBR686. On January 31, 2024, the County filed its applications to modify its authorization and request for waiver of section 90.203(a) of the Commission's rules to use a transmitter that is not certified for use under part 90 of the Commission's rules. The County also seeks waiver of sections 90.242(a)(2)(iv) and 90.242(b)(4)(iii). For the reasons set forth below, we deny the request.

II. BACKGROUND

2. The County seeks a waiver of section 90.203 because it "desires to instead operate a conventional AM broadcast transmitter - certified for use under FCC Rules Part 73 with a capacity of 500 watts - but operating at 10 watts. The proposed transmitter is not certified under Part 90.203," as "its specifications substantially exceed the required standards for a TIS transmitter." The County states that "[i]n this instance, the proposed transmitter's maximum power capability is 500 watts, though it will only be operated at 10 watts in accordance with the Travelers Information Station Rules cited above. The transmitter would only operate at a power level exceeding 10 watts if and only if permitted by a separate Special Temporary Authority (STA) were it granted by the Commission."

3. The County states that "The Armstrong Transmitter Corporation - Model X500B transmitter can function in every way as a TIS transmitter while operating at 10 watts, which is the power

1 File No. 0010901948 and accompanying Waiver Justification of Waldo County (filed January 31, 2024) (Waiver Justification). See 47 CFR § 90.203(a) (each transmitter utilized for operation under this part ... must be of a type which has been certified for use under this part.)

2 Waiver Justification at 1; 47 CFR § 90.242(a)(2)(iv) (Each application for a station or system shall be accompanied by: For each transmitter site, the transmitter's output power, the type of antenna utilized, its length (for a cable system), its height above ground, distance from transmitter to the antenna, and the elevation at the transmitting site); 47 CFR § 90.242(b)(4)(iii) (Transmitter RF output power shall not exceed 10 watts to enable the user to comply with the specified field strength limit).

3 Waiver Justification at 1.

4 Waiver Justification at 1. See also id., attached Armstrong Transmitter Corporation X-500B & X-1000B product sheet. See also 47 CFR § 90.242(b)(4)(iii).

level allowed for station WREW773.”⁵ The County states that “[a]t this time there is not a sufficient need or sales volume to encourage commercial transmitter manufacturers such as Armstrong Transmitter to obtain certifications for their transmitters for the TIS service. Therefore, this waiver of the Part 90 certification requirement for this licensee is respectfully submitted.”⁶

4. The County argues that “[t]he presence of the 500-watt transmitter would make a power increase for TIS station WRBR686 - which could be permitted if approved by FCC via a future Special Temporary Authority - quicker to implement during a major emergency, which is the purpose driving this request.”⁷ As stated earlier, in order to use this transmitter in a TIS environment, the County also seeks waiver of two “associated TIS power rules”: 90.242(a)(2)(iv) and 90.242(b)(4)(iii).⁸ The County states that the first rule “requires the TIS application to state the power capability of the transmitter[;]” and the second rule “states that the output power of the transmitter shall be limited to 10 watts.”⁹

III. DISCUSSION

5. Under section 1.925(b)(3) of the rules, “the Commission may grant a request for waiver if it is shown that: (i) 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 (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.”¹⁰ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹¹

6. We find that the County has failed to satisfy either prong of the waiver standard. Under the first prong, regarding the purpose of section 90.203, the Commission has stated that:

“The Act and the Commission’s rules set forth requirements for radio frequency devices to obtain equipment authorization and to be operated in a manner consistent with the authorization. Section 302(b) of the Act mandates that ‘[n]o person shall... use devices [] which fail to comply with regulations promulgated pursuant to this section.’ In the context of Private Land Mobile Radio services, section 90.203 of the Commission’s rules requires that ‘each transmitter utilized for operation under this part . . . must be of a type which has been certified for use under this part.’”¹²

The Commission established section 90.203 as part of its long-standing equipment certification requirements.¹³ We note that the Commission has developed technical standards and other requirements

⁵ Waiver Justification at 2.

⁶ *Id.*

⁷ *Id.*

⁸ *See supra* n. 2.

⁹ Waiver Justification at 1.

¹⁰ 47 CFR § 1.925(b)(3).

¹¹ *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).

¹² IOU Acquisitions, Inc., Forfeiture Order, 36 FCC Rcd 8880, 8881 para. 2 (2021) (*IOU Order*) *citing* 47 U.S.C. § 302a(b), 47 CFR § 90.203(a). “The Act” refers to the Communications Act of 1934, as amended (the Act).

¹³ In 1978, the Commission created section 90.203 by combining existing certification rules, former 47 CFR §§ 89.117, 91.109(a) and (b), and 93.109, when it consolidated former parts 89, 91, and 93 of the Commission’s rules into part 90. *See In the Matter of Amendment of the Commission's Rules governing the private land mobile radio*

(continued...)

for radio frequency [RF] equipment and parts or components thereof “to carry out its responsibilities under the Communications Act and the various treaties and international regulations,” and “to promote efficient use of the radio spectrum.”¹⁴ The Commission’s equipment certification program “ensures that RF devices used in the United States operate effectively without causing harmful interference and otherwise comply with the Commission’s rules.”¹⁵ Although the County asserts that the proposed equipment “has a power level function which can be programmed to exactly 10 watts,”¹⁶ that capability has not been verified for TIS operation using well-established FCC equipment certification procedures and calibrated measuring equipment. Grant of the waiver would create a long-term potential for non-compliance with the Commission’s TIS rules under a permanent regular authorization¹⁷ and thus would frustrate the purpose of the certification rule, that is, ensuring that RF devices used in the United States operate effectively without causing harmful interference and otherwise comply with the Commission’s rules.

7. Next, when the Commission adopted the TIS rules, it stated that TIS “is intended to serve a 3 km zone with generally repetitive information pertinent to travelers.”¹⁸ In limiting the TIS coverage zone, the Commission primarily was motivated to minimize the potential for TIS to cause interference to broadcast stations.¹⁹ Since the County did not include an engineering analysis in its instant request,²⁰ we cannot determine whether operation of the proposed transmitter at its maximum output power of 500 watts would interfere with incumbent AM broadcast stations. Therefore, the County has not shown how grant of the waiver would not frustrate the underlying purpose of the TIS power rules, that is, to maintain a limited TIS coverage zone and prevent interference to broadcast stations.

8. Under the second prong, the County states that it is “a coastal jurisdiction and is susceptible to severe summer and winter storms, in the form of blizzards, nor-easters, ice storms, tropical storms and hurricanes,” and that it “can experience out-of-control forest fires that can burn into

service to provide a new Part 90 that re-regulates and consolidates Parts 89, 91, and 93, Docket No. 21348, Report and Order, 69 F.C.C.2d 1612 (1978). See also 43 FR 54889, 93, 97 (showing § 90.203 in a cross reference table, which shows conversion of rules from parts 89, 91, and 93 to part 90).

¹⁴ 47 CFR § 2.901(a).

¹⁵ Federal Communications Commission, Equipment Authorization, <https://www.fcc.gov/engineering-technology/laboratory-division/general/equipment-authorization> (last visited Jan. 19, 2024)

¹⁶ Waiver Justification at 2.

¹⁷ Cf. *Municipality of San Juan, Request for Waiver of Section 90.203 of the Commission’s Rules*, Order, 16 FCC Rcd 17178 (WTB-PSPWD 2001) (*San Juan*) (granting a time-limited waiver of approximately eight months to allow San Juan, Puerto Rico to use transmitters that are not certified until it can acquire new type-certified equipment). Our decision today to deny a permanent waiver is consistent with *San Juan* in adhering to the purpose of the rules by not granting waiver authority to use transmitters that are certified *on a permanent basis*).

¹⁸ Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public, Docket No. 20509, *Report and Order*, 67 F.C.C.2d 917, 925 para. 27 (1977) (*TIS Report and Order*).

¹⁹ *Id.* at 924 para. 25.

²⁰ Prior to the instant requests, Waldo County requested Special Temporary Authority (STA) to test a Armstrong Transmitter Corporation Model X500B transmitter at 200 watts over a two-day period, which the Public Safety and Homeland Security Bureau, Policy and Licensing Division’s Licensing Branch (Branch) granted on August 10, 2021. The STA request included an engineering analysis that was based on the transmitter operating at 0.3 kW (300 watts). See File No. 0009635412, attached STA justification (filed July 26, 2021). Since the Waldo County STA engineering analysis does not predict transmitter operation at the full 500 watts, we do not incorporate it into our waiver analysis.

neighborhoods and cut off escape routes.”²¹ Though these circumstances may be factual, and though do not downplay the severity of such threats, we find that these do not constitute unique or unusual circumstances, as these circumstances could apply to other areas of the country. Further, the County have not demonstrated that they have no reasonable alternative. The County does not mention other siting alternatives or address why they would not be feasible. Similarly, we question whether the County have performed their due diligence regarding equipment options when it states, “there is not a sufficient need or sales volume to encourage commercial transmitter manufacturers such as Armstrong Transmitter to obtain certifications for their transmitters for the TIS service.”²² The County has not addressed the suitability of any part-90 certified TIS transmitters that have the capability to exceed 10 watts,²³ and whether they could provide improved signal coverage during emergencies.

9. Finally, we disagree with the County’s contention that grant of the waiver is warranted because it would “make a power increase ... quicker to implement during a major emergency.”²⁴ Not only has the County failed to quantify the time savings grant of the waiver might achieve, the County prematurely presumes how the Bureau would evaluate future STA requests. A waiver grant here might cause the Bureau to evaluate such a request in the County’s favor, potentially to the detriment of incumbent AM broadcast stations. Even the appearance of such prejudice is contrary to the public interest. Thus, a waiver grant would limit the Bureau’s flexibility to consider future requests for STA based on consideration of factual circumstances of each case. Notwithstanding that the County has previously received favorable waiver treatment,²⁵ a waiver grant here would frustrate the Bureau’s ability to evaluate waiver requests and STA requests on their own merits and without bias. Accordingly, we deny the waiver request and dismiss the application without prejudice.

IV. ORDERING CLAUSES

10. 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 section 1.925 of the Commission’s rules, 47 CFR § 1.925, that the Request for Waiver of Waldo County, Maine, filed on January 31, 2024, IS DENIED.

²¹ Waiver Justification at 3, Letter from Dale D. Rowley, Director, Waldo County Emergency Management Agency, to FCC (undated).

²² Waiver Justification at 2.

²³ See <https://apps.fcc.gov/oetcf/eas/reports/GenericSearch.cfm> (interested parties may search TIS equipment authorizations by Rule 90.242).

²⁴ Waiver Justification at 2.

²⁵ On January 31, 2024, the Bureau’s Licensing Branch granted a waiver of 47 CFR § 90.242(b)(4)(iv) to allow Waldo County’s 2.0 mV/m signal contour to fall at a maximum of 5.0 kilometers from the transmitting antenna, beyond the 1.5-kilometer rule limit. See call sign WRBR686, special condition.

11. IT IS FURTHER ORDERED, that application File No. 0010901948, filed by Waldo County, Maine, IS DISMISSED without prejudice consistent with this Order and the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

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