

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

In the Matter of )
County of St. Louis St. Louis County, Missouri, ) WT Docket 99-87
St. Charles County, Missouri, Jefferson County 9- )
1-1- Dispatch Board of Jefferson County, )
Missouri, the East-West Gateway Council of )
Governments )
Request for Waiver of Section 90.209(b) of the )
Commission's Rules )

ORDER

Adopted: February 21, 2012

Released: February 21, 2012

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. We have before us the requests of St. Louis County, Missouri (St. Louis County); St. Charles County, Missouri (St. Charles County); the Jefferson County 9-1-1 Dispatch Board of Jefferson County, Missouri (Jefferson County); and the East-West Gateway Council of Governments (collectively, Petitioners), for a waiver until December 31, 2013, of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline, which requires private land mobile radio licensees in the 150-174 MHz and 450-512 MHz bands to operate using channel bandwidth of no more than 12.5 kHz or equivalent efficiency by January 1, 2013. By this Order, we conditionally grant the Waiver Requests.

II. BACKGROUND

2. Petitioners operate multiple VHF and UHF facilities in their respective jurisdictions that are the subject of the Waiver Requests. Petitioners are also members of the St. Louis Urban Area, which

1 See Request for Waiver of Commission Rules, filed September 3, 2010, updated June 17, 2011, by the County of St. Charles, Missouri and the East-West Gateway Council of Governments (St. Charles Waiver Request); Request for Waiver of Commission Rules, filed September 3, 2010, updated June 17, 2011, by the County of St. Louis, Missouri and the East-West Gateway Council of Governments (St. Louis Waiver Request); and Request for Waiver of Commission Rules, filed September 3, 2010, updated June 17, 2011, by Jefferson County 911 Dispatch of St. Jefferson County, Missouri and the East-West Gateway Council of Governments (Jefferson Waiver Request). The East-West Gateway Council of Governments (East-West Gateway Council), which has no FCC authorizations, is an umbrella agency responsible for implementing the Land Mobile Communications Plan of the St. Louis Urban Area. The East-West Gateway Council filed a status update on the Petitioners' progress on June 17, 2011. See also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004).

2 47 C.F.R. § 90.209(b)

3 St. Louis County seeks waivers for 222 frequencies held by 73 licensees. St. Louis Waiver Request at 7, Appendix B. St. Charles County seeks waivers for 215 frequencies held by 15 licensees. St. Charles Waiver Request at 7,

is in the process of constructing a multi-county interoperable 800 MHz radio system.<sup>4</sup> Petitioners note that they have passed sales tax initiatives to secure funding for the new system,<sup>5</sup> which has a Commission-approved extended implementation construction schedule until December 31, 2013.<sup>6</sup> Petitioners state that upon completion of the 800 MHz system, they intend to transition their VHF/UHF operations that are the subject of the Waiver Requests onto the new system and will vacate their associated VHF and UHF authorizations.<sup>7</sup> However, because the new system will not be operational by the January 1, 2013 narrowbanding deadline, Petitioners seek a waiver of the deadline until December 31, 2013 to avoid having to divert financial, technical, and administrative resources to narrowbanding their existing VHF/UHF facilities pending the transition.<sup>8</sup>

3. On November 12, 2011, the Public Safety and Homeland Security Bureau (Bureau) issued a Public Notice seeking comment on the Waiver Request.<sup>9</sup> We received comments from the Region 24 800 MHz Regional Planning Committee (Region 24)<sup>10</sup> and joint comments from the International Municipal Signal Association (IMSA) and International Association of Fire Chiefs (IAFC).<sup>11</sup> Region 24 supports the Waiver Requests but expresses two concerns. First, Region 24 states that it has requested but has yet to receive a list of VHF/UHF frequencies and licenses that each Petitioner will relinquish when construction of the 800 MHz system is completed.<sup>12</sup> Second, Region 24 notes that many of the VHF/UHF licenses in the Petitioners' counties are held by agencies other than the Petitioners and that Petitioners have proposed no mechanism to ensure that these agencies will relinquish VHF/UHF spectrum.<sup>13</sup> IMSA and IAFC also support the Waiver Requests but question whether it is necessary for the Bureau to issue a narrative public notice seeking comment each time a licensee files a request for waiver of the narrowbanding deadline.<sup>14</sup>

### III. DISCUSSION

4. Petitioners seek relief pursuant to Section 1.925 of the Commission's rules, which provides that to obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i)

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Appendix B. Jefferson County seeks waivers for 274 frequencies held by 27 licensees. Jefferson Waiver Request at 7, Appendix B.

<sup>4</sup> The St. Louis Urban Area consists of the Missouri counties of Franklin, Jefferson, St. Charles, St. Louis, the independent City of St. Louis, and the Illinois counties of Madison, Monroe, and St. Clair. See Jefferson Waiver Request at 2-3, fn. 2.

<sup>5</sup> St. Louis Waiver Request at 5; Jefferson Waiver Request at 5; St. Charles Waiver Request at 5.

<sup>6</sup> St. Louis Waiver Request at 5, 8; St. Charles Waiver Request at 5, 8; Jefferson Waiver Request at 5, 8.

<sup>7</sup> St. Charles Waiver Request at 8; St. Louis Waiver Request at 8; Jefferson Waiver Request at 8.

<sup>8</sup> St. Charles Waiver Request at 7; St. Louis Waiver Request at 7; Jefferson Waiver Request at 7.

<sup>9</sup> See Public Safety and Homeland Security Bureau Seeks Comment on Requests for Waiver Of The January 1, 2013 VHF-UHF Narrowbanding Deadline Filed By St. Louis County, Missouri, St. Charles County, Missouri, Jefferson County 9-1-1 Dispatch Board and The East-West Gateway Council Of Governments, *Public Notice*, DA 11-1784 (rel. Oct. 26, 2011).

<sup>10</sup> Region 24 is the State of Missouri, which includes the Petitioners' jurisdictions.

<sup>11</sup> Comments of the Region 24 800 MHz Regional Planning Committee, filed Nov. 9, 2011 (Region 24 Comments); Comments of the International Municipal Signal Association and the International Association of Fire Chiefs, filed Nov. 10, 2011 (IMSA/IAFC Joint Comments).

<sup>12</sup> Region 24 Comments at 2.

<sup>13</sup> *Id.* at 2-3.

<sup>14</sup> IMSA/IAFC Joint Comments at 6-9.

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;<sup>15</sup> 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>16</sup> Applying this standard to narrowbanding, we have stated in the *Narrowbanding Waiver Guidance Notice*, jointly issued by the Wireless Telecommunications Bureau, the Public Safety and Homeland Security Bureau, and the Office of Engineering and Technology, that narrowbanding waiver requests “will be subject to a high level of scrutiny” under the waiver standard.<sup>17</sup> We have also provided recommended guidance on the factors that licensees should address in their requests and have recommended that in addressing these factors, licensees should seek to demonstrate that “(i) they have worked diligently and in good faith to narrowband their systems expeditiously; (ii) their specific circumstances warrant a temporary extension of the deadline; and (iii) the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process.”<sup>18</sup>

5. Based on the record before us, we conclude that Petitioners have presented sufficient facts to meet the high standard for grant of the requested waiver, subject to several conditions discussed below. The record shows that Petitioners have been planning since 2007 to migrate their VHF/UHF public safety communications operations to the 800 MHz band.<sup>19</sup> Migrating to the new multi-county 800 MHz system will increase the reliability of public safety communications and will significantly improve interoperability among the multiple jurisdictions operating in the St. Louis Urban Area. Ideally, Petitioners would be able to complete construction of the 800 MHz system in time to migrate their VHF/UHF operations before the narrowbanding deadline. However, Petitioners indicate that it will take until December 31, 2013, a year after the narrowbanding deadline, to complete the new system due to its size and complexity.<sup>20</sup>

6. If we were to strictly apply the narrowbanding rules, Petitioners would be required to expend significant financial and administrative resources to narrowband their existing VHF/UHF wideband facilities by January 1, 2013, even though they plan to decommission these facilities and vacate their VHF/UHF frequencies no more than twelve months later when they migrate to the new 800 MHz system. We conclude that strict enforcement of the narrowbanding deadline under these circumstances would not serve the underlying purpose of the rule and that a waiver would be in the public interest. In reaching this conclusion, we place significant weight on the showing that Petitioners have made with respect to the factors identified in our *Narrowbanding Waiver Guidance Notice*.

7. First, Petitioners have shown diligence in planning for and implementing their transition to the 800 MHz band, which will enable them to decommission their existing wideband facilities and vacate their VHF/UHF frequencies.<sup>21</sup> Planning for the transition began five years ago, and Petitioners have provided for funding of the new system through local sales taxes. Based on the size and complexity

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<sup>15</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>16</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>17</sup> Wireless Telecommunications Bureau, Public Safety And Homeland Security Bureau, And Office Of Engineering And Technology Provide Reminder Of January 1, 2013 Deadline For Transition To Narrowband Operations In The 150-174 MHz And 421-512 MHz Bands And Guidance For Submission Of Requests For Waiver And Other Matters, *Public Notice*, 26 FCC Rcd 9647 (2011) (*Narrowbanding Waiver Guidance Notice*).

<sup>18</sup> *Id.* at 9649.

<sup>19</sup> St. Louis Waiver Request at 5; St. Charles Waiver Request at 5; Jefferson Waiver Request at 5.

<sup>20</sup> St. Louis Waiver Request at 6; St. Charles Waiver Request at 6; Jefferson Waiver Request at 6.

<sup>21</sup> *Narrowbanding Waiver Guidance Notice*, 26 FCC Rcd 9647, 9649.

of the new system, Petitioners have submitted and received Commission approval for an extended implementation schedule until December 31, 2013.<sup>22</sup> Under these circumstances, we conclude that the one-year waiver period requested by Petitioners is no more than is reasonably necessary to vacate their existing VHF/UHF facilities.<sup>23</sup>

8. Second, the record indicates that grant of the waiver will not harm neighboring systems or impair interoperability during the one-year waiver period.<sup>24</sup> Because the waiver will cover most VHF/UHF operations in the St. Louis Urban Area, we find no indication that it will have any negative impact on co-channel or adjacent channel VHF/UHF operations.

9. Third, Petitioners plan to relinquish substantial VHF/UHF spectrum once Petitioners and other licensees migrate to the new 800 MHz system.<sup>25</sup> Grant of the waiver will avoid the diversion of Petitioners' financial, technical, and administrative resources to narrowbanding their existing VHF/UHF facilities pending the transition to the 800 MHz band and will allow Petitioners to devote their resources to decommissioning their existing wideband facilities and vacating their VHF/UHF frequencies. This will facilitate efficient use of scarce VHF/UHF spectrum and free up capacity for potential new spectrum users, which are key goals of the narrowbanding program.<sup>26</sup> Petitioners have shown that these circumstances support a temporary extension of the deadline.

10. However, while the Petitioners represent the interests of multiple licensees, we agree with Region 24 that they lack the authority to legally bind all of the licensees whose authorizations are the subject of this waiver request.<sup>27</sup> Thus, as a condition of the waiver, we require that each individual licensee in the St. Louis Urban Area that seeks the benefit of the waiver relief granted by this Order must submit to the Commission, within 90 days of the release date of this Order, a letter confirming that, as represented in Petitioners' waiver requests, it consents to the terms of this Order and will transition its operations to the new 800 MHz system and, upon doing so, relinquish any VHF/UHF spectrum for which it has obtained relief under this Order. Licensees should attach these letters to their licenses via the Commission's Universal Licensing System (ULS). Any licensee that does not file such a letter in ULS will not be afforded the waiver relief granted by this Order and therefore must comply with the January 1, 2013 narrowbanding deadline.

11. Further, Petitioners have not yet identified the exact scope of the existing VHF/UHF frequencies and licenses that each county will relinquish by December 31, 2013, or of the VHF/UHF frequencies and licenses that each county intends to retain and narrowband by the January 1, 2013

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<sup>22</sup> See St. Louis Waiver Request, Appendix E, St. Charles Waiver Request, Appendix C; Jefferson Waiver Request, Appendix C. The Bureau's approval of extended implementation is attached to each authorization in ULS.

<sup>23</sup> See *Narrowbanding Waiver Guidance Notice*, 26 FCC Rcd at 9649 (waiver applicant should show that "the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process").

<sup>24</sup> See *id.* (waiver applicant should show "[p]lans to minimize the negative impact of extended wideband operations on co-channel and adjacent channel operations").

<sup>25</sup> See *id.* (waiver applicant migrating to a non-VHF/UHF band (*e.g.*, 700 MHz or 800 MHz) should indicate "whether it will relinquish VHF/UHF spectrum once it has migrated and the amount of spectrum to be relinquished"). Petitioners seek a waiver for more than 700 frequencies, see note 3, *supra*, which they plan to vacate and relinquish once the licensees transition to their new 800 MHz system.

<sup>26</sup> See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 10 FCC Rcd 10076, 10077 ¶2 (1995).

<sup>27</sup> Region 24 Comments at 3.

deadline.<sup>28</sup> Because our public interest determination in this case rests on the premise that Petitioners (and the other licensees covered by this Order) will transition to an 800 MHz system and relinquish a substantial amount of spectrum when they do so, we condition grant of this waiver upon Petitioners identifying these frequencies and licenses in a list provided to the Commission no later than six months after the release of this Order.<sup>29</sup> This will allow us to ensure, based on the information submitted, that our expectations in granting this waiver remain justified. A six-month deadline will allow ample time for licensees other than Petitioners to finalize their lists of frequencies to be relinquished or narrowbanded. We retain the authority to rescind or modify the waiver if we determine, based on the information submitted, that it is no longer in the public interest.

12. We expect that as a general matter in other cases, licensees seeking narrowbanding waivers will ensure that their submissions include, or are amended to include, a definitive list of the frequencies for which they are seeking a waiver, a list of frequencies that will be relinquished (if applicable), and representations from all licensees covered by the waiver request that they have committed to take any actions that form the basis for the waiver justification. Concurrently with the release of this Order, we are releasing a Public Notice advising licensees of the need to provide such information.

13. Finally, as noted above, IMSA and IAFC question whether the Bureau should place future narrowbanding waiver requests on individual public notice.<sup>30</sup> Because this issue relates to the Bureau's future processes rather than the merits of Petitioners' waiver requests, we do not consider it here.

#### IV. CONCLUSION

14. Based on the foregoing, we conclude that grant of the requested waiver is in the public interest subject to the conditions discussed herein. Accordingly, we grant Petitioners a waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline until December 31, 2013, subject to the following conditions: (1) within ninety days of the release of this Order, any licensee in the St. Louis Urban Area seeking to have the waiver apply to its facilities must file a letter in ULS confirming that it consents to the terms of this Order and agrees to be bound by them; and (2) within six months of the release of this Order, Petitioners must file with the Commission a list of VHF/UHF frequencies and/or licenses that will be relinquished.

#### V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3) of the Commission's rules, 47 C.F.R. § 1.925(b)(3), that the Request for Waiver, filed by St. Louis County, Missouri (St. Louis County); St. Charles County, Missouri (St. Charles County); Jefferson County 9-1-1 Dispatch Board of Jefferson County, Missouri (Jefferson County); and the East-West Gateway Council of Governments IS GRANTED subject to the conditions stated herein.

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<sup>28</sup> *Id.* at 2. Region 24 states that Petitioners agreed to provide this information in consideration for its assigning 800 MHz frequencies to Petitioners for their new multi-county system. *Id.*

<sup>29</sup> This list will be made publicly available on the Commission's Electronic Comment Filing System. As a result, it is unnecessary to require Petitioners to provide this information directly to Region 24 as Region 24 requested in its comments.

<sup>30</sup> IMSA/IAFC Joint Comments at 6-9.

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, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

James A. Barnett, Jr., Rear Admiral (Ret.)  
Chief, Public Safety and Homeland Security Bureau