

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

In the Matter of
ARIZONA WATER COMPANY
Request for Waiver of Section 90.209(b) of the
Commission's Rules
WT Docket No. 99-87

ORDER

Adopted: July 19, 2012

Released: July 20, 2012

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. We have before us the request of Arizona Water Company (the Company), for a temporary waiver until January 1, 2014, of the Commission's VHF/UHF narrowbanding deadline, which requires private land mobile radio (PLMR) licensees in the 150-174 MHz and 421-512 MHz bands to operate using channel bandwidth of no more than 12.5 kHz or equivalent efficiency by January 1, 2013. The Company seeks the extension for forty-one PLMR stations. For the reasons set forth below, we grant the request.

2. Background. Arizona Water Company provides water service to over 84,000 customers in 22 water systems throughout Arizona. Its water systems are located in mostly rural areas with diverse geographic and topographic settings. The Company's voice and telemetry radio systems consist of approximately 148 mobile or handheld voice radios, 13 voice radio base stations, and 70 telemetry radios.

1 See Request for Waiver of Narrowbanding Deadline (filed Apr. 25, 2012) (Request). On June 5, 2012, comment was sought on the narrowbanding waiver request. See Wireless Telecommunications Bureau Seeks Comment on Arizona Water Company Request for Waiver of the January 1, 2013 VHF-UHF Narrowbanding Deadline, Public Notice, WT Docket No. 99-87, 27 FCC Rcd 6048 (WTB MD 2012). No comments were filed.

2 47 C.F.R. § 90.209(b); 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). On April 26, 2012, the Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology waived the January 1, 2013 narrowbanding deadline for 470-512 MHz band frequencies. See 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, Order, WT Docket No. 99-87, RM-9332, 27 FCC Rcd 4213 (WTB/PSHSB/OET 2012).

3 Stations KD6286, KDJ835, KDJ837, KMG566, KNDE487, KNDE488, KOK861, KOK863, KOK864, KOK865, KOK868, KOK869, KRW595, WNMA388, WNMA390, WNNN622, WNNN623, WNNN624, WNNN625, WNNQ257, WNNQ258, WNNQ259, WNUP702, WNUP703, WNVF591, WNVT801, WNYZ296, WNYZ297, WNZC481, WPPU979, WPXD917, WPXE223, WQKL785, WQKN639, WQNH231, WQNJ291, and WQNJ292. The Company also requested an extension for Stations KOK867, WNVT800, WNWL749, and WPTJ527, but we note that those license have expired or been canceled.

4 See Request at 1.

5 Almost none of the communities served by the Company has a population in excess of 10,000 people.

Most of its radio equipment is not narrowband-capable, and therefore must be replaced to bring the Company into compliance with the Commission's narrowbanding mandate.⁶

3. The Company states that the number of technicians in these rural areas who are qualified to install or modify the specialized radio equipment deployed in its water production, water storage, water treatment and booster pump facilities is quite limited, which prevents it from completing all of the work necessary to complete the narrowbanding transition by January 1, 2013.⁷ It expects to finish reprogramming or replacing voice base stations by April 2013, telemetry radios by September 2013, and mobile and handheld voice radios by the end of 2013.⁸ It therefore requests a 12-month extension, until January 1, 2014, to replace and reprogram radio base stations and related site equipment throughout its system.

4. *Discussion.* 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 waiver would be in the public interest;⁹ 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 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.¹¹ 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."¹² We conclude, under the circumstances presented, that strict enforcement of the deadline would be inequitable, unduly burdensome, and contrary to the public interest. In reaching this conclusion, we place significant weight on the showing that the Company has made with respect to the factors identified in the *Narrowbanding Waiver Guidance Notice*.

5. Based on the record before us, we conclude that Arizona Water Company has presented sufficient facts to meet the high standard for grant of the requested waiver. First, the record shows that the Company has been diligently preparing for the transition to narrowbanding by inspecting every piece of its radio equipment, securing contractors to perform reprogramming of designated equipment, and preparing a detailed schedule for the transition. The Company has already committed most of the necessary funds for the narrowbanding implementation, with the remaining funds to be allocated in

⁶ *Id.* at 1, 2.

⁷ *Id.* at 1, 3.

⁸ *Id.* at Attachment A.

⁹ 47 C.F.R. § 1.925(b)(3)(i).

¹⁰ 47 C.F.R. § 1.925(b)(3)(ii).

¹¹ 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 (WTB/PSHSB/OET 2011) (*Narrowbanding Waiver Guidance Notice*).

¹² *Id.* at 9649.

2013.¹³ Because most of the Company's voice and telemetry radios are not narrowband-capable, the replacement of entire control system installations is necessary throughout Arizona.¹⁴ The reprogramming or replacement of the equipment will require securing qualified technicians, who are of limited availability in the Company's service areas.¹⁵ Strict application of the narrowbanding rules could result in interruption of the Company's communications, which could put the public health and safety at risk. Based on the size and complexity of the new system, and the necessity to maintain public utility water service to rural communities, we conclude that the twelve-month waiver period requested by the Company is no more than is reasonably necessary to complete narrowbanding.¹⁶

6. In addition, it does not appear that grant of the waiver will significantly harm neighboring systems. The Company operates in rural areas, and does not indicate that it has any interoperability or interdependence with other radio systems. We expect the Company to work with any impacted licensee to minimize interference.

7. *Conclusion and Ordering Clauses.* Based on the foregoing, we conclude that grant of the requested waiver is warranted. Accordingly, we grant Arizona Water Company a waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline until January 1, 2014 for Stations KD6286, KDJ835, KDJ837, KMG566, KNDE487, KNDE488, KOK861, KOK863, KOK864, KOK865, KOK868, KOK869, KRW595, WNMA388, WNMA390, WNNN622, WNNN623, WNNN624, WNNN625, WNNQ257, WNNQ258, WNNQ259, WNUP702, WNUP703, WNVF591, WNVF801, WNYZ296, WNYZ297, WNZC481, WPPU979, WPXD917, WPXE223, WQKL785, WQKN639, WQNH231, WQNJ291, and WQNJ292.

8. 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 of Narrowbanding Deadline filed by Arizona Water Company on April 25, 2012 IS GRANTED to the extent indicated above.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹³ Request at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ 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").