

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

In the Matter of
Monterey County, California
Request for Waiver of Section 90.209(b) of the
Commission's Rules
WT Docket 99-87

ORDER

Adopted: August 10, 2012

Released: August 10, 2012

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

I. INTRODUCTION

1. We have before us the request of Monterey County, California (the County), for a waiver until July 1, 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. The County seeks a waiver for itself and on behalf of all local agencies participating in the Next Generation (NGEN) radio system. By this Order, we grant the Waiver Request.

II. BACKGROUND

2. The County and other members of the NGEN radio systems currently operate a number of separate conventional radio channels. In 2006, the County Board of Supervisors approved a plan recommending regionalization of all public radio systems. On May 22, 2007, the Board of Supervisors approved a Request For Proposal (RFP) to develop a regional system. Developing the system requirements, including getting a commitment from the member agencies to fund the system took over two years and on June 1, 2009 the County released an RFP soliciting turnkey proposals for the design and

1 See Request for FCC Narrowband Deadline Waiver, filed December 20, 2011 (Waiver Request). 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 Members of the NGEN radio system include the County of Monterey, Cities of Carmel-by-the-Sea, Del Rey Oaks, Gonzales, Greenfield, King City, Marina, Monterey, Pacific Grove, Salinas, Seaside, Sand City and Soledad, Monterey Regional Fire Protection District, North County Fire Protection Districts, Spreckels Volunteer Fire Company and Big Sur Volunteer Fire Brigade. Governance of the NGEN radio system is facilitated through the Emergency Communications User Advisory Council (ECUAC). Waiver Request at 1.

4 See Table 1, Waiver Request at 4-9.

5 Waiver Request at 1.

6 Waiver Request at 1-2.

implementation of the NGEN radio system.⁷ The County awarded the contract to Harris Corporation in 2010.⁸ The NGEN system, as currently designed, will have a P25 VHF trunked subsystem, a P25 700 MHz trunked subsystem and analog VHF conventional paging and overlay subsystem. The NGEN system is funded directly by member agencies with support from federal grants included the U.S. Department of Justice Community Oriented Policing (COPS) Technology Grant Program and the Assistance for Firefighters Grant (AFG) Program.⁹

3. The original plan was to complete and cutover to the NGEN system prior to January 1, 2013; but two of the essential radio sites are experiencing an extended regulatory review process including compliance with the California Environmental Quality Act (CEQA) and National Historic Preservation Act (NHPA).¹⁰ The current schedule has system cutover beginning in late May 2013 and a final acceptance date of August 5, 2013.¹¹ The County recognizes that it may need to seek an additional extension, *i.e.*, beyond August 5, 2013, of the waiver for some call signs.¹²

4. On January 27, 2012, the Public Safety and Homeland Security Bureau (Bureau) issued a Public Notice seeking comment on the Waiver Request.¹³ No party filed comments specifically in support of or in opposition to the County's request.

III. DISCUSSION

5. The County seeks 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) 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;¹⁴ 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.¹⁵ 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.¹⁶ 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

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Email, dated April 24, 2012 from Zack Sterngold, project manager NEGN to Roberto Mussenden, Federal Communications Commission.

¹² *Id.*

¹³ See Public Safety and Homeland Security Bureau Seeks Comment on Requests for Waiver Of The January 1, 2013 VHF-UHF Narrowbanding Deadline, *Public Notice*, DA 12-90 (rel. Jan. 27, 2012).

¹⁴ 47 C.F.R. § 1.925(b)(3)(i).

¹⁵ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁶ 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*).

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.”¹⁷

6. Based on the record before us, we conclude that the County has presented sufficient facts to meet the high standard for grant of the requested waiver. The record shows that the County has planned since 2009 to upgrade its VHF system.¹⁸ Given the level of interference NGEN entities currently experience due to spectral congestion,¹⁹ the 2011 decision to migrate to the NGEN system will increase the reliability of public safety communications in the region²⁰

7. We recognize that narrowbanding a public safety radio system is not an insignificant endeavor since it requires not only retuning or replacing all of a systems radios but also scheduling this work to ensure that the system remains operational during the transition. Given the number of discrete agencies, call signs, and frequencies that are the subject of this waiver,²¹ we recognize that strict application of the narrowband deadline would require the County and the NGEN agencies to expend significant financial and administrative resources to narrowband their existing VHF/UHF wideband facilities by January 1, 2013, even though they plan migrate to the NGEN system no more than seven months later. 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 the County has made with respect to the factors identified in our *Narrowbanding Waiver Guidance Notice*.²²

8. The County and the NGEN agencies have shown diligence in planning for and implementing their transition to the 700 MHz band, which will enable them to decommission their existing wideband facilities and vacate their VHF/UHF frequencies.²³ Further, the system is fully funded.²⁴ Under these circumstances, we conclude that the eight-month waiver period requested by the County is no more than is reasonably necessary.²⁵

9. Moreover, the record does not indicate that grant of the waiver will harm neighboring systems or impair interoperability during the waiver period.²⁶ No party opined that grant of the waiver will have any negative impact on co-channel or adjacent channel VHF/UHF operations.

¹⁷ *Id.* at 9649.

¹⁸ Waiver Request at 1.

¹⁹ Waiver Request at 2.

²⁰ *Id.* at 1, 3.

²¹ See Table 1, Waiver Request at 4-9.

²² Waiver Request at 1-3.

²³ See Waiver Request at 1. See also *Narrowbanding Waiver Guidance Notice*, 26 FCC Rcd 9647, 9649.

²⁴ Waiver Request at 2.

²⁵ 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”).

²⁶ See *id.* (waiver applicant should show “[p]lans to minimize the negative impact of extended wideband operations on co-channel and adjacent channel operations”). The County contends that grant will have no impact on neighboring jurisdictions. Waiver Request at 4.

IV. CONCLUSION

10. Based on the foregoing, we conclude that grant of the waiver is in the public interest. Accordingly, we grant Monterey County a waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline until July 31, 2013. We list the entities and call signs that are subject to this waiver in a table attached to this order.

V. ORDERING CLAUSES

11. 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 Monterey County, California IS GRANTED.

12. 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

Thomas J. Beers
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

Table 1: Licenses Subject to Waiver

Licensee	FRN	Call Sign	Frequency (MHz)
Monterey, County of	0004120390	KA5117	154.725
			154.785
			154.815
			155.190
			155.490
			155.535
			155.595
			155.730
			155.910
			155.970
			156.015
			158.805
			158.850
			158.910
159.090			
159.180			
159.210			
Monterey, County of	0004120390	KAQ361	155.730 159.090
		KDK98	
		KHQ52	
		KJN825	
		KKO50	
		KMA600	
		KMH974	
		KNIS913	
		WAG42	
		WHL62	
		WNUA302	
		WQNJ481	
		WQNJ482	
		WQNJ484	
WQNL864			
WQNL866			
Monterey, County of	0004120390	KMA393	155.730
			159.090
			453.5875
			458.5875
Monterey, County of	0004120390	KMA809	155.595
			155.670
			155.730
			158.850
			159.090
Monterey, County of	0004120390	KNIS912	155.730
Monterey, County of	0004120390	WBF95	155.595
			155.730
			158.910
			159.090

Licensee	FRN	Call Sign	Frequency (MHz)
Monterey, County of	0004120390	WNKV646	154.725
			154.785
			154.815
			155.595
			155.730
			158.910
King, City of	0004514824	WBM79	159.090
			154.755
			155.730
			156.015
			158.805
Monterey, County of	0004120390	WNCH891	159.090
			452.225
Monterey, County of	0004120390	KIJ495 WCM521 WGP788	457.225
			155.595
Monterey, County of	0004120390	WGC325	158.910
			154.725
			154.785
			154.815
Monterey, County of	0004120390	KIB393	155.595
			155.190
			155.970
Monterey, County of	0004120390	WQBB989	159.210
			153.965
Monterey, County of	0004120390	WNMC399	155.085
Monterey, County of - DRO	0004513792	WNMC399	153.965
Monterey, County of	0004120390	WPGT646	453.750
			458.750
Monterey, County of	0004120390	KVP571	155.535
Monterey, County of	0004120390	KVP572 KVR941	155.490
			155.535
Monterey, City of	0001541234	WSZ35 WSZ29 WSZ31	154.785
			154.815
			154.860
Monterey, City of	0001541234	WPBS270	154.860
Monterey, City of	0001541234	WPJZ458	155.160
			155.235
			155.280
Monterey, City of	0001541234	WPWY867	453.2750
			453.4500
			453.4750
			458.2750
			458.4500
			458.4750
Monterey, County of	0004120390	WAH323	154.725
			154.785
			154.815

Licensee	FRN	Call Sign	Frequency (MHz)
Monterey, County of	0004513735	WSZ34	154.785 154.815
Monterey, County of - DRO	0004513792	WSZ32	154.785 154.815
Pacific Grove, City of	0004514766	WSZ33	154.785 154.815
Monterey, County of	0004120390	WRA487	155.490
Monterey, County of	0004513735	KEC559	155.685
Monterey, County of	0004120390	WQND440	154.025 155.775
Marina, City of	0004518023	WPWX347	155.775 158.835
Marina, City of	0004518023	WZT829	153.785
Monterey, County of	0004120390	KN2803	156.015
Monterey, County of	0004120390	KRJ837	154.755 156.015 158.805 453.6375 458.6375
Monterey, County of	0004120390	WPYH272	154.755 156.015 158.805
Soledad, City of	0004514576	WQG805	154.755 155.805 156.015
King, City of	0004514824	KDZ478	155.100 156.015 158.805
Gonzales, City of	0004514865	WBM78	154.755 156.015 158.805
Monterey, County of	0004120390	WNPO492	153.920 155.805
Monterey, County of	0004120390	KNJE473	460.1750
Monterey, County of	0004120390	WPIH733	460.1750 460.3000 460.3500 460.3750 460.5000 465.1750
Monterey, County of	0004120390	KCT69 KF2934	155.835
Monterey, County of	0004120390	KBJ220	153.815
City of Carmel-by-the-Sea Police Department	0001541945	KMA766	154.710 155.430
City of Carmel-by-the-Sea Police Department	0001541945	KJN869	154.025
Monterey, County of	0004120390	WCT336	453.6750 458.6750

Licensee	FRN	Call Sign	Frequency (MHz)
Monterey, County of	0004120390	KCI996 KNEY537 WNHG584	154.175 154.370
Monterey, County of	0004120390	KQR351	154.175 154.370 156.105
Monterey, County of	0004120390	WQGS653 WQNK516 WQNK517 WQNL863 WQNL867	154.370 156.105
Monterey, County of	0004120390	KDZ443	154.175 154.205 154.370 156.105
Monterey, County of	0004120390	KE3779	153.890 154.175 154.205 154.235 154.370 154.430 154.995 156.105 156.240
Monterey, County of	0004120390	KML267 WNLC257 WQJZ626	154.370
Carmel Valley Fire Protection District	0004513818	KMJ275	154.175 154.370 156.195
Monterey Regional Fire	0004514212	KJD923	154.370 156.105
Salinas Rural Fire Protection District	0004514212	KNGE591 KNIK410	154.370 156.105
Soledad, City of	0004514576	KWV456	154.370 156.105
Gonzales, City of	0004514865	KWE532	154.370 156.105
Monterey, County of	0004513735	KMA696	154.175 154.235 154.370
Monterey, County of	0004514683	KL3141	154.175 154.205 154.370
Monterey, County of	0004514683	KLG552 KNBR747	154.205 154.370 154.995

Licensee	FRN	Call Sign	Frequency (MHz)
Monterey, County of	0004514683	WRE365	154.175
			154.205
			154.370
			154.995
Pacific Grove, City of	0004514766	KMM520	154.175
			154.370
Pacific Grove, City of	0004514766	KET302	155.100
King, City of	0004514824	KNBF423	154.370
Marina, City of	0004518023	KCT203	154.175
			154.370
Spreckels Volunteer Fire Company	0004537288	KNEC873	154.370
Monterey, County of	0004120390	WPRJ595	153.890
			154.205
			155.205
			155.325
			155.895
			158.895
Monterey, County of	0004120390	KNIK580	153.890
Monterey, County of	0004120390	KEC844	154.175
Monterey, County of	0004120390	KNIK576	154.175
Monterey, County of	0004120390	WPAU487	154.175
			156.240
Monterey, County of	0004120390	WPMK447	153.785
			155.580
			156.000
			158.775
Monterey, County of	0004120390	WPRH533	156.160
			154.100
			155.955
			156.000
Monterey, County of	0004120390	KJ3939	153.860
			155.865
			158.745
Monterey, County of	0004120390	KLU418	155.205
			155.325
Monterey, County of	0004120390	KQU301	155.325
Monterey, County of	0004120390	KFX278	155.865
		KJZ979	
		KTO75	
		WAG41	
		WCG530	
WNHI627	158.745		
Monterey, County of	0004120390	KLU411	151.160
			151.340
			154.085
			155.955
Monterey, County of	0004120390	KGR280	151.160
		KGR281	
		KGR283	

Licensee	FRN	Call Sign	Frequency (MHz)
Monterey, County of	0004120390	KJ7114	151.160 151.340
Monterey, County of	0004120390	KNDJ454	151.160 453.000 458.000
Monterey, County of	0004120390	KD9322	150.995 156.060 156.195
Monterey, County of	0004120390	KEQ78 KMZ69 KND41 KNHW909 KXZ61 WAU778 WNFD393 WNFD394 WSY83	156.060
Monterey, County of	0004120390	KMK328 KMK329 KMK330	150.995
Monterey, County of	0004514683	KCI552 KLG554 KNBU647 WRE532	154.040
Monterey, County of	0004514683	WNUS414	156.165
Monterey, County of	0004120390	KMK354	158.880
Monterey, City of	0001541234	WPPB873	158.880
Monterey, County of	0004513735	KCP542	158.940
Greenfield, City of	0010985125	WRE271	155.895