

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of
CITY OF PHILADELPHIA
Request for Waiver of Section 90.209(b) of the
Commission's Rules
WT Docket 99-87

ORDER

Adopted: December 26, 2012

Released: December 26, 2012

By the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau
Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On September 21, 2012, the City of Philadelphia's Office of Innovation and Technology (Philadelphia) submitted a request for waiver of the Federal Communications Commission's (the Commission) VHF/UHF narrowbanding deadline, which requires private land mobile radio licenses 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. Philadelphia seeks an eighteen month extension of the Commission's narrowbanding deadline until and including July 1, 2014. By this Order, we grant the request for an extension up to, and including February 1, 2014.

II. BACKGROUND

2. Philadelphia is the fifth largest city in the United States, with 1.5 million inhabitants. The Philadelphia metropolitan area extends approximately 143 square miles, and includes both urban and suburban areas. Its communications system supports activities for law enforcement, fire and rescue, federal law enforcement, homeland security, highway, rail, subway, two airports, a school district, and multiple harbors. Additionally, Philadelphia is also a participant in the Southeast Pennsylvania Urban

1 See Request for Waiver of Commission Rules Regarding the Spectral Efficiency of Private Land Mobile Radio Services in the 150-174 and 450-470 MHz bands, Requiring 12.5 kHz Channel Bandwidth or Equivalent Technology By January 1, 2013 (filed September 21, 2012) (Waiver Request).

2 47 C.F.R. § 90.209(b)(5). A suspension on applications in the T-Band (450-512 MHz) has been in effect since April 26, 2012. See Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum, Public Notice, 27 FCC Rcd 4218 (WTB/PSHSB 2012).

3 Waiver Request at 3.

4 Id.

5 Id.

6 Id.

Areas Security Initiative Region, which promotes and coordinates emergency response across multiple jurisdictions.⁷

3. Philadelphia contends it has made extensive planning efforts to comply with the Commission's narrowbanding deadline. Philadelphia plans to upgrade to a more efficient P25 based trunking system and has secured adequate funding for the project.⁸ This transition includes new infrastructure, rebanded channels, new subscriber units, and reconfigured subscriber units.⁹ Philadelphia argues that it lacks the personnel resources to meet the narrowbanding deadline. Philadelphia contends that various interdependencies with its 800 MHz NPSPAC (National Public Safety Planning Advisory Committee) rebanding and upgrade effort, along with assuring uninterrupted public safety communications, have made full compliance impossible.¹⁰

4. Philadelphia claims that, while simultaneously rebanding, narrowbanding, and maintaining its current systems at their highest performance levels, it has experienced a shortage of manpower.¹¹ Philadelphia also argues that, because agencies currently using VHF/UHF must continue to do so until the 800 MHz Trunked system is rebanded and subscriber units become available, it will be unable to meet the narrowbanding deadline.¹² Philadelphia claims that operations of a local nature will require continued operation on frequencies in the 150 – 470 MHz range until rebanding is complete.¹³ Philadelphia also claims that operations that require wide area coverage have to be transitioned to the 800 MHz NPSPAC Trunked radio system, and this is impossible until rebanding is complete.¹⁴

5. Philadelphia expects to complete its rebanding process by March 29, 2013, at which time it will test and certify this rebanded system until June 30, 2013.¹⁵ From July 1, 2013 to December 31, 2013, the City will initiate bidding and purchase order issues to fund the transition of lower frequency operations and/or the cost associated with modifying lower band operations to narrowband.¹⁶ Between January 1, 2014 and July 1, 2014, the City will complete its narrowbanding transition.¹⁷

6. Philadelphia anticipates no negative impact to any existing licensees as a result of granting this Waiver Request.¹⁸ Philadelphia admits that there will be an "undetermined impact" on the ability of new licensees to license channels at 12.5 kHz, but that it knows of no licensees waiting to obtain licenses within this coverage area which would be impacted by granting this Waiver Request.¹⁹

⁷ *Id.*

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 3, 9.

¹² *Id.* at 3-4.

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ *Id.* at 7, Appendix C.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 7.

¹⁹ *Id.*

7. Philadelphia claims that it has been working diligently and in good faith towards meeting the Commission's narrowbanding deadline by securing funding, developing a Narrowbanding Time Schedule, and developing a comprehensive plan for rebanding and narrowbanding its communications systems.²⁰ However, Philadelphia argues that, because of interdependencies with its 800 MHz NPSPAC rebanding and upgrade effort and a lack of personnel resources, it is unable to complete narrowbanding by the January 1, 2013 deadline. Therefore, given its considerable efforts towards narrowbanding to date, Philadelphia contends that it is entitled to a waiver and extension of the deadline.²¹

8. On December 10, 2012, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau issued a *Public Notice* seeking comment on the Waiver Request.²² We received two comments in response to the *Public Notice*²³ and on December 17, Philadelphia submitted comments concerning its own Waiver Request.²⁴

III. DISCUSSION

9. Philadelphia 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;²⁵ 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.²⁶

10. Applying this standard to narrowbanding, we 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.²⁷ 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

²⁰ See Waiver Request.

²¹ *Id.* at 3.

²² See Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on the City of Philadelphia's Office of Innovation and Technology's Request for Waiver of the January 1, 2013 VHF-UHF Narrowbanding Deadline, *Public Notice*, DA 12-1982 (rel. Dec. 10, 2012)(WTB & PSHSB).

²³ See Comments of John Delaney, filed December 13, 2012 (Delaney Comments) and Comments of the American Association of State Highway and Transportation Officials, filed December 13, 2012(AASHTO Comments).

²⁴ See Comments of the City of Philadelphia, filed December 17, 2012 (Philadelphia Comments).

²⁵ 47 C.F.R. § 1.925(b)(3)(i).

²⁶ 47 C.F.R. § 1.925(b)(3)(ii).

²⁷ 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*).

waiver is requested is no more than is reasonably necessary to complete the narrowbanding process.”²⁸

11. In light of the record, we find that Philadelphia warrants some waiver relief because it has demonstrated that in view of its unique or unusual factual circumstances of the instant case, strict application of the narrowbanding would be contrary to the public interest.²⁹ We recognize that Philadelphia has two separate public safety systems (UHF/VHF and NPSPAC) and is in the midst of making significant changes to its NPSPAC system. We find the City’s decision to only modify one system at a time reasonable. Furthermore, we find that grant of a waiver request is consistent with the public interest. Given that denial of the waiver would force the City to modify both its public safety systems simultaneously, which could place public safety personnel and the City’s citizens at risk, we believe it is in the public interest to allow Philadelphia additional time to narrowband its UHF/VHF operations.

12. While we do not concur with Mr. Delaney’s contention that the City’s proposed timeline shows total disdain toward the Commission,³⁰ we do share AASHTO’s concern that the City’s proposed narrowbanding schedule will significantly delay the ability of licensees within a very congested area from acquiring interstitial channels because of Philadelphia’s continued wideband operations.³¹ Further, as discussed below, we do not believe the City fully heeded the admonition to request only as much time as was necessary to complete the narrowband process.

13. The City’s proposed schedule contemplates initiating the funding process for narrowbanding its UHF/VHF systems in July 2013, at the conclusion of the testing of the reconfigured 800 MHz system. It anticipates that this process will take seven months and that the actual narrowbanding of its systems will take an additional six months.³² However, the City does not explain why initiating the funding process is dependent on the status of the 800 MHz rebanding effort. Given the pent-up demand for UHF/VHF frequencies in the Philadelphia area, grant of a waiver that accommodates Philadelphia’s proposed timeline would frustrate the underlying purpose of narrowbanding: facilitating efficient use of scarce VHF/UHF spectrum and freeing up capacity for potential new spectrum users.³³

14. To that end, we believe that the City can immediately begin undertaking those narrowbanding steps that will not affect the operational status of its UHF/VHF operations. Under Philadelphia’s proposed schedule, this process will take seven months, which takes Philadelphia past its proposed June 2013 date for testing and acceptance of its 800 MHz system. This will satisfy the City’s need to only modify one communications system at a time. We then anticipate Philadelphia taking an additional six months to perform the actual narrowbanding of those systems that will not transition to the new 800 MHz system, and thus completing their narrowbanding efforts by February 1, 2014. Therefore we grant the City a waiver of the Commission’s narrowbanding deadline until that date.

²⁸ *Id.* at 9649.

²⁹ *See* 47 C.F.R. § 1.925(b)(3)(ii).

³⁰ *See* Delaney Comments.

³¹ *See* AASHTO Comments.

³² Waiver Request at Appendix C.

³³ *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).

IV. CONCLUSION

15. Based on the foregoing, we conclude that granting the instant waiver request is in the public interest. Accordingly, we grant the City of Philadelphia a waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline, until and including February 1, 2014, for the call signs set forth in the Appendix below.

V. ORDERING CLAUSES

16. 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)(ii) of the Commission's rules, 47 C.F.R. § 1.925(b)(3)(ii), that the Request for Waiver of the Commission rules filed by the City of Philadelphia Office of Emergency Management Communications, IS GRANTED TO THE EXTENT DESCRIBED HEREIN.

17. We take this action under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Zenji Nakazawa
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

Appendix : List of Affected Call Signs

KAV718	PW	453.4500, 453.8500
KGC742	IG	451.2500
KGF587	PW	453.0500, 453.1500, 453.2000, 453.2500, 453.3000, 453.3500, 453.4000, 453.5000, 453.5500, 453.6000, 453.6500, 453.7500, 453.8000, 453.9500, 460.1500, 460.2500, 460.3500
KGF991	PW	453.7250, 453.7750, 453.9250
KLM719	PW	158.9400
KLS497	PW	158.7750
KNCY656	PW	158.9400
KNCY657	PW	158.9400
KNDN543	PW	453.4500, 453.8500, 458.4500, 458.8500
KNIZ528	PW	465.1500
KWM747	PW	460.1500
KWM748	PW	460.2500
WCT263	IG	456.2500
WDB361	PW	153.8900, 154.0100, 154.4150, 166.2500
WDE789	PW	458.2500, 458.4000, 458.5500, 458.7500
WDE791	PW	458.2500, 458.4000, 458.5500, 458.7500
WNRD678	PW	159.2100
WNXJ773	PW	153.9350, 154.9650
WPPB590	PW	460.0250, 460.0500, 460.1000, 460.1750, 460.2250, 460.3000, 460.5000, 465.0250, 465.0500, 465.1000, 465.1750, 465.2250, 465.3000, 465.5000
WPTE421	PW	153.8750, 158.7750
WQAB667	PW	154.2800, 155.3400
WQCF247	PW	453.3500, 458.3500
WQCG318	PW	453.2500, 453.4000, 458.2500, 458.4000, 460.1500, 465.1500
WQH265	PW	155.0400
WSL643	PW	158.7750
KA2660	PW	153.8150
KD4811	IG	456.2500
KD6365	PW	458.0500, 458.1500, 458.2000, 458.2500, 458.3000,

		458.3500, 458.4000, 458.5000, 458.5500, 458.6000, 458.6500, 458.7500, 458.8000, 458.9500, 465.1500, 465.2500, 465.3500
KF9481	PW	153.8300, 153.8900, 153.9500, 154.0100, 154.1450, 154.4150, 166.2500
KF9482	PW	458.7250, 458.7750, 458.9250
KG7858	PW	158.9400
KJ2176	PW	153.9350
KL7263	PW	158.7750
KNGQ614	PW	158.7750
KVN533	PW	158.7750
WDB363	PW	458.7250, 458.7750, 458.9250
WNUM344	PW	453.1000, 458.1000
WQCP395	PW	153.8750, 158.7750