

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

In the Matter of )
COUNTY OF JUNEAU ) File No. 0005935408
Request for Waiver and Application for VHF )
Industrial/Business Pool Channels for a Public )
Safety Radio Communications System )

ORDER

Adopted: March 12, 2014

Released: March 12, 2014

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

I. INTRODUCTION

1. The County of Juneau, Wisconsin (Juneau) filed an application and associated Waiver Request, to use, for public safety communications, Industrial/Business (I/B) Pool frequency 150.890 MHz. Specifically, Juneau seeks a waiver of Section 90.35(a) of the Commission's rules. For the reasons stated below, we grant Juneau's request.

II. BACKGROUND

2. In its Waiver Request, Juneau states that it:

plans to implement a new state-of-the-art trunked radio system to serve all county agencies, and other neighboring and statewide agencies participating in the Wisconsin Interoperable System for Communications. The new system will comply with Commission regulations requiring the use of narrowband Project 25 digital technology. The system will provide improved interoperability statewide by allowing federal, state, local, and tribal agencies with comparable radio spectrum operation and equipment to intercommunicate and react to public safety related matters such as terrorist threats and natural disasters in a seamless manner.

Juneau further states that:

An extensive analysis of VHF High Band channels has been conducted to develop a proposed channel plan for the trunked system. Unfortunately, in the vicinity of the proposed transmitter sites, there [are] not enough Public Safety Pool channels available to meet the needs of the radio system. However, we have identified Industrial/Business Pool channels that are not assigned in

1 See File No. 0005935408, Waiver (dated Aug. 12, 2013) (Waiver Request).

2 See File No. 0005935408.

3 47 C.F.R. § 90.35(a).

4 Waiver Request at 1.

this area, and which could be used by [Juneau] without causing interference to existing Industrial/Business Pool licensees.<sup>5</sup>

Finally, Juneau asserts, *inter alia*, that “operation of this system is critical to mitigate the loss of life and property and furnish critical service for the welfare of the public[.]” that “[i]nter-category sharing of frequencies between entities which are eligible in one of the pools” results in a “greater and more uniform use of the radio frequency spectrum[.]” and that “grant of this waiver is in the public interest because of the importance of the services to be furnished by the system to the citizens of Wisconsin served by the users of the radio system.”<sup>6</sup>

### III. DISCUSSION

3. Section 1.925 of the Commission’s rules provides that to obtain a waiver of the Commission’s rules, a petitioner must demonstrate either that: “(i) [t]he 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 waiver would be in the public interest; or (ii) [i]n 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>7</sup> Applicants seeking a waiver face a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>8</sup> We find that Juneau’s request satisfies the first prong of the waiver criteria.

4. *Section 90.35*. We find that granting the Waiver Request for the specified frequencies will not frustrate the underlying purpose of Section 90.35(a). The Commission consolidated the private land mobile radio services below 800 MHz into the I/B Pool and Public Safety Pools in 1997 in order to increase spectrum efficiency, increase licensee flexibility to manage the spectrum more efficiently, and reduce administrative burdens on users as well as the Commission.<sup>9</sup> The Commission maintained a separate Public Safety Pool (as opposed to a single pool covering all users) to maintain the integrity of the critical functions of the users included within this pool.<sup>10</sup> Petitions to use I/B spectrum for public safety purposes should be accompanied by a showing that no compatible frequencies are available in its own allotment within the Public Safety Pool.<sup>11</sup>

5. In this case, staff has confirmed that no public safety frequencies are available to Juneau. Moreover, Juneau has identified an I/B Pool frequency available for licensing,<sup>12</sup> and staff has found that there are only 19 I/B Pool licensees in the entire VHF band in Juneau County. Accordingly, we find that allowing Juneau to use an I/B pool frequency will not create an inadequate supply of I/B channels for use in conventional or trunked systems in the relevant geographic areas for future I/B Pool eligible applicants.

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<sup>5</sup> Waiver Request at 1-2. For documentation supporting these assertions, see File No. 0005935408.

<sup>6</sup> Waiver Request at 2.

<sup>7</sup> 47 C.F.R. § 1.925(b)(3).

<sup>8</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *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.*, File No. BP-19860725AB, *Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

<sup>9</sup> Replacement of Part 90 By Part 88 To Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, PR Docket No. 92-235, *Second Report and Order*, 12 FCC Rcd 14307, 14315 ¶ 15 (1997).

<sup>10</sup> *Id.* at 14316 ¶ 16.

<sup>11</sup> County of Boone, Iowa, File No. 0003255243, *Order on Reconsideration*, 27 FCC Rcd. 2359, 2362 ¶ 8 (2012).

<sup>12</sup> Waiver Request at 1.

Based upon the frequency coordination report Juneau submitted,<sup>13</sup> we also conclude that authorizing Juneau's use of the I/B Pool frequency it requested would not otherwise result in spectrum inefficiencies. Further, no objection has been made by any other I/B Pool frequency coordinator against Juneau's proposed use of this frequency.<sup>14</sup> In addition, because Juneau will be subject to the same technical requirements that apply to all other users of these I/B Pool frequencies, a grant of the Waiver Request should not result in any increased potential for interference to other users of these frequencies.<sup>15</sup>

6. *Public Interest.* We also find that granting the requested relief serves the public interest. Juneau states that the requested frequency will be part of a new state-of-the-art trunked radio system to serve all county agencies, and other neighboring and statewide agencies participating in the Wisconsin Interoperable System for Communications.<sup>16</sup> Juneau also states that the frequency will improve interoperability statewide by allowing federal, state, local, and tribal agencies with comparable radio spectrum operation and equipment to intercommunicate and react to public safety related matters such as terrorist threats and natural disasters in a seamless manner.<sup>17</sup> We also find that use of the requested I/B Pool channel by Juneau will promote interagency communication and enhance the ability of public safety agencies in the county to save lives and protect property. We therefore find that Juneau's use of I/B Pool frequency 150.890 MHz would serve the public interest. Accordingly, we find that Juneau satisfies the first prong of the waiver standard set forth in Section 1.925.

7. We therefore conclude that waiver relief in this instance is warranted. In reaching this decision we note that Juneau's operations on I/B Pool frequency 150.890 MHz will be subject to all technical requirements that otherwise apply to operations on these frequencies, including any limitations that may apply under Section 90.35(c).

#### IV. ORDERING CLAUSES

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 of the Commission's rules, 47 C.F.R. § 1.925, that the Request for Waiver, as amended, associated with File No. 0005935408, filed by Juneau County, Wisconsin, IS GRANTED.

9. IT IS FURTHER ORDERED that File No. 0005935408, SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

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<sup>13</sup> See File No. 0005935408, attached approval from AAA (the American Automobile Association), an FCC-certified frequency coordinator for the Industrial/Business Pool. See [http://wireless.fcc.gov/services/index.htm?job=licensing\\_3&id=industrial\\_business](http://wireless.fcc.gov/services/index.htm?job=licensing_3&id=industrial_business) (last visited Feb. 3, 2014).

<sup>14</sup> Under 47 C.F.R. § 90.176, coordination of these frequencies requires that all I/B Pool frequency coordinators be placed on notice of any proposed use of these frequencies.

<sup>15</sup> See, e.g., West Virginia Department of Health and Human Resources/Bureau of Public Health/State Office of Emergency Medical Services, File Nos. 0005456978, 0005456980, 0005457241, 0005457243, 0005457246, 0005457248, 0005457249, 0005457253, 0005457255, 0005457257, 0005457742, 0005457745, 0005462607, 0005526075, 0005559553, *Order*, 28 FCC Red 7089 (PSHSB 2013) (finding under similar circumstances that the underlying purpose of Section 90.35 would not be served or would be frustrated by application to the instant case).

<sup>16</sup> Waiver Request at 1.

<sup>17</sup> *Id.*

10. 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

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