



Federal Communications Commission
Washington, D.C. 20554

June 16, 2014

DA 14-820

Mr. Joey Bolyard
Belington Emergency Squad
PO Box 922
Belington, West Virginia 26250

Re: Petition for Reconsideration

Dear Mr. Bolyard:

Under consideration is the July 22, 2013 Petition for Reconsideration (Petition) filed by Business Radio Licensing (BRL) on behalf of the Belington Emergency Squad, West Virginia (Belington).¹ Belington seeks reconsideration of the dismissal of its modification application seeking to “narrowband” public safety station KNJB861. For the reasons set forth below, and on our own motion, we waive the narrowbanding requirement for six months in order to enable Belington to obtain “Quiet Zone” approval. Accordingly, we dismiss Belington’s Petition as moot.

The Commission’s VHF/UHF narrowbanding deadline requires private land mobile radio (PLMR) licensees in the 150-174 MHz and 450-512 MHz bands to operate using channel bandwidth of no more than 12.5 kilohertz or equivalent efficiency by January 1, 2013.² On January 23, 2013, Belington filed a modification application to “narrowband” the channels licensed under Station Call Sign KNJB861 from 25 kHz to 12.5 kHz.³ On April 13, 2013, the Public Safety and Homeland Security Bureau’s (Bureau) licensing staff dismissed the application because it lacked Quiet Zone approval.⁴

The Quiet Zone, which encompasses an area of approximately 13,000 square miles, was created to minimize possible harmful interference to the National Radio Astronomy Observatory (NRAO), located at Green Bank, West Virginia, and the Naval Radio Research Observatory (NRRO), located at Sugar Grove, West Virginia. Section 1.924(a) of the Commission's rules requires that the NRAO be notified of any proposed construction and operation of a new or modified station at a permanent fixed location within the Quiet Zone.⁵ If the NRAO objects to the proposed facility, on behalf of itself or the

¹ See Letter from Jerry Walker, Business Radio Licensing, on behalf of Belington Emergency Squad, to FCC (Jul. 22, 2013).

² 47 C.F.R. § § 90.203(j), 90.209(b)(5); 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 FCC File No. 0005616807 (Jan. 22, 2013).

⁴ See Notice of Return, Reference No. 5530050 (Jan. 24, 2013); Notice of Dismissal, Reference No. 5576025 (Apr. 16, 2013).

⁵ 47 C.F.R. § 1.924.

NRAO, the Commission, pursuant to section 1.924(a)(3) of its rules “will, after consideration of the record, take whatever action is deemed appropriate.”⁶

On April 22, 2013, Belington filed a second application seeking to comply with the narrowbanding mandate.⁷ On April 23, 2013, the Bureau’s licensing staff returned Belington’s application for additional information.⁸ Specifically, the staff directed Belington to demonstrate (1) a current Quiet Zone notification date and (2) whether prior Quiet Zone written consent had been obtained.⁹ Belington did not provide the requested documentation, and on July 13, 2013, the licensing staff dismissed Belington’s application without prejudice.¹⁰

On July 22, 2013, BRL, on behalf of Belington, filed the instant Petition. BRL represents that both application dismissals are “due to the non-action of the Quiet Zone administrator [...]”¹¹ Belington included an email exchange between the Quiet Zone administrator and BRL in which the Quiet Zone administrator requested that Belington reduce its Effective Radiated Power (ERP) to 17 watts, thus resulting in a significant reduction in area of operation relative to Belington’s currently authorized wideband operations.¹² BRL submits that Belington is trying to comply with the narrowbanding mandate but is unable to do so because of factors apparently outside its control.¹³

Given the email referenced above, we cannot agree that the Quiet Zone administrator has engaged in “non-action.” The response of the administrator, however, does not explain why the proposed Belington operation in a 12.5 kHz bandwidth poses a greater potential for interference than the current operation at 25 kHz bandwidth, much less the basis of the administrator’s conclusion that the ERP of the Belington facility should be reduced to 17 watts. In light of the record and the unique restrictions that apply to license modifications in the Quiet Zone, we grant Belington a limited waiver of the narrowbanding mandate so that it may pursue the matter further with the Quiet Zone administrator.

Section 1.925 of the Commission’s rules provides that a waiver may be granted if it is shown that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁴

Belington warrants waiver relief under the second prong of the waiver standard. First, Quiet Zone approval is a matter largely beyond Belington’s control. The email exchange between the Quiet Zone administrator and BRL indicates that Belington has acted in good faith to resolve some of the issues noted by the Bureau’s staff and to comply with the Commission’s narrowbanding mandate. Additionally,

⁶ 47 C.F.R. § 1.924(a)(3).

⁷ FCC File No. 0005749532 (Apr. 22, 2013).

⁸ See Notice of Return, FCC Reference No. 5579761 (Apr. 23, 2013).

⁹ *Id.*

¹⁰ See Notice of Dismissal, FCC Reference No. 5624472 (Jul. 16, 2013).

¹¹ Petition at 1.

¹² *Id.* at 1-3.

¹³ *Id.* at 3.

¹⁴ See 47 C.F.R. § 1.925(b)(3)(i)-(ii).

the reduction in power proposed by the Quiet Zone administrator, as BRL notes, would result in a significant reduction in Belington's already approved area of operation. Finally, a waiver will allow Belington additional time to negotiate with the Quiet Zone administrator the technical parameters of its modified public safety communications system and is, therefore, in the public interest. Therefore, on our own motion, we grant Belington a six-month, waiver of the narrowband mandate (*i.e.* until December 17, 2014). In that connection, we require Belington to contact the Quiet Zone administrator within 15 days from the date of this letter (*i.e.* July 1, 2014). The Quiet Zone administrator's response, and any reply submitted by Belington will be taken into account by the Commission, which "after consideration of the record, [will] take whatever action is deemed appropriate."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)(ii) of the Commission's rules, 47 C.F.R. § 1.925(b)(3)(ii), and on our own motion, that Belington Emergency Squad IS GRANTED a limited waiver to the extent described herein.

IT IS FURTHER ORDERED, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed July 22, 2013 by the Belington Emergency Squad is DISMISSED as moot.

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

Michael J. Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

¹⁵ 47 C.F.R. § 1.924(a)(3).