

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

In the Matter of)
)
KAISER FOUNDATION HOSPITALS)
and KAISER FOUNDATION)
HEALTH PLAN, INC.)
)
Petition for Permanent Waiver to)
Grandfather Special Emergency Radio)
Service Paging Facilities on 453.025 MHz)
in the Southern California Metropolitan Area)

ORDER

Adopted: March 19, 1998

Released: March 19, 1998

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. We have before us a Petition for Permanent Waiver ("Waiver Petition") filed jointly by the Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc. ("Kaiser"). Kaiser requests that the Commission grandfather its existing Special Emergency Radio Service ("SERS")¹ paging system operating on 453.025 MHz in the Southern California metropolitan area.² Kaiser contends that it meets the Commission's criteria for permanent waiver of such systems. Based on the record in this proceeding, we conclude that Kaiser's Waiver Petition should be granted.

II. BACKGROUND

2. *Emergency Medical Radio Service Report and Order.* On January 14, 1993, the Commission established the Emergency Medical Radio Service ("EMRS") as a new Public Safety Radio Service

¹ Twenty private land mobile radio services recently were consolidated into two pools -- one for Public Safety (including SERS) and one for Industrial/Business. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, *Second Report and Order*, 12 FCC Rcd 14307 (1997). Prior to consolidation, SERS was not a Public Safety service. Rather, SERS covered such categories as medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, and school buses, and it comprised Subpart C of Part 90 of the Commission's Rules, 47 C.F.R. Part 90, Subpart C.

² Waiver Petition, filed March 13, 1997. Kaiser's authorized base stations for 453.025 MHz are: WNIS884 (Fontana), KTA961 (Harbor City), WNIT590 (Anaheim), KTG654 (Panorama City), WNQA825 (Riverside), KNIN887 and WPDY495 (San Diego), and WNDD332 (Woodland Hills). *Id.* at 2.

("PSRS").³ The EMRS was created as a discrete radio service to enhance the reliability of emergency medical radio communications by dedicating specific frequencies solely to life support-related transmissions.⁴ The Commission reallocated 39 VHF and UHF frequencies for EMRS use,⁵ and limited eligibility to persons or entities who provide basic or advanced life support services on an ongoing basis.⁶ Four of these frequencies were in the 453 MHz band and were previously assigned for one-way paging operations under SERS.⁷ The International Municipal Signal Association and the International Association of Fire Chiefs, Inc. ("IMSA/IAFC") were designated as the certified frequency coordinator for the EMRS because of their previous experience coordinating emergency medical communications.⁸

3. In reassigning the four 453 MHz frequencies to the EMRS, the Commission recognized the concerns of existing SERS licensees on these channels and acknowledged that in certain situations an accommodation may be warranted to allow current licensees to continue operating.⁹ Accordingly, it provided a process by which one-way medical paging systems operating on the subject frequencies may permanently remain on their existing frequencies through waiver of the Commission's Rules.¹⁰ Under this process, a paging system may be grandfathered if a licensee currently operating on a one-way paging channel demonstrates that: (1) adequate spectrum exists for emergency medical transmissions in its area of operation; (2) relocation of its medical paging system would not serve the public interest;¹¹ or (3) relocation would significantly disrupt public safety communications.¹² Licensees were provided a five-year period -- from January 14, 1993, through January 14, 1998, -- within which to request that their systems be grandfathered. Otherwise, licensees operating on these 453 MHz frequencies are required to cease operations after January 14, 1998.¹³

³ In the Matter of Amendment of Part 90 of the Commission's Rules to Create the Emergency Medical Radio Service, PR Docket No. 91-72, *Report and Order*, 8 FCC Rcd 1454, 1455 (1993) ("*EMRS Report and Order*").

⁴ *Id.*

⁵ *Id.* at 1458-60.

⁶ *Id.* at 1456.

⁷ *Id.* at 1457. The four frequencies are 453.025/.075/.125/.175 MHz. These frequencies previously were shared with the Local Government Service in the PSRS for highway call box operation. Highway call box operations existing on the adoption date of the *EMRS Report and Order* were indefinitely grandfathered. *Id.* at 1457, n.38.

⁸ *Id.* at 1460.

⁹ *Id.* at 1459.

¹⁰ *Id.*

¹¹ *Id.* One method of meeting this criterion would be to demonstrate that there is no reasonable alternative channel for the subject paging system.

¹² *Id.*

¹³ *Id.*

4. *Memorandum Opinion and Order*. On February 8, 1996, the Commission released a *Memorandum Opinion and Order* reaffirming its decision to establish the EMRS and reallocate 39 SERS frequencies for emergency medical communications.¹⁴ The Commission stated that the record supported the need for additional spectrum for emergency medical use because the substantial increase in the demand for emergency medical service frequencies nationwide significantly overburdened existing frequencies. In carefully balancing the competing interests of various parties, the Commission concluded that the needs of emergency medical service providers warranted priority.¹⁵ Further, the Commission granted a request by ProNet, Inc. ("ProNet") to permanently waive mandatory reassignment of 453.125 MHz in the greater Chicago metropolitan area to the EMRS.¹⁶ The Commission concluded that although ProNet was only required to meet one criterion, it met all the established criteria.¹⁷ ProNet demonstrated, with findings from a study of spectrum usage ("Trott Study I"), that existing emergency medical service channels in the Chicago area displayed virtually no congestion,¹⁸ and that its SERS system was intensely utilized.¹⁹ For instance, Trott Study I indicated that ProNet used 453.125 MHz to transmit paging messages 95 percent of the available time from 7:00 a.m. to 9:00 p.m. on a daily basis.²⁰ The Commission noted that ProNet's migration to another channel other than ProNet's would involve significant cost, and, because of ProNet's intense use of 453.125 MHz by, such migration would likely cause disruption to public safety communications, *i.e.*, medical alert operations.²¹ Thus, the Commission concluded that relocation of ProNet's system would not serve the public interest.

5. *Waiver Petition*. On March 13, 1997, Kaiser filed its Waiver Petition. On July 11, 1997, the public was invited to comment on this request.²² No comments were received in response to the *Public Notice*. Kaiser currently operates eight SERS paging stations on 453.025 MHz that serve over 5,300 medical and support personnel in that area.²³

¹⁴ In the Matter of Amendment of Part 90 of the Commission's Rules to Create the Emergency Medical Radio Service, PR Docket No. 91-72, *Memorandum Opinion and Order*, 11 FCC Rcd 1708, 1709 (1996) ("*EMRS MO&O*").

¹⁵ *Id.*

¹⁶ *Id.* at 1711.

¹⁷ *Id.*

¹⁸ *Id.* at 1710.

¹⁹ *Id.* at 1711.

²⁰ *Id.*

²¹ *Id.*

²² *Public Notice*, 12 FCC Rcd 9774 (1997). Comments and replies were due August 8, 1997, and August 25, 1997, respectively.

²³ Waiver Petition at 5.

III. DISCUSSION

6. To obtain a waiver of the frequency reassignment implemented by the *EMRS Report and Order*, a petitioner is required to meet any one of three established criteria.²⁴ As discussed below, Kaiser has met the requisite showing as to whether its request should be granted.²⁵

7. *Relocation would significantly disrupt public safety communications.* We conclude that Kaiser has demonstrated that relocation of its system would significantly disrupt public safety communications. Kaiser argues that its system provides 24-hour medical emergency communications to hospitals, clinics and other health care facilities, including Kaiser's own medical facilities in Bellflower, Fontana, Harbor City, Orange County, Panorama City, Riverside, San Diego and Woodland Hills, California.²⁶ Further, Kaiser contends that its paging system facilitates communications between code teams, trauma teams and other medical personnel when serious emergencies occur within hospital premises, or when ambulances arrive.²⁷ Also, in emergency situations, pagers summon attending physicians and on-call staff to acute and critical patients.²⁸ According to Kaiser, its system also uses "code" pagers, which facilitate response to life-threatening situations through hands-free voice paging.²⁹ Kaiser maintains that a significant percentage of its traffic on 453.025 MHz involves emergencies.³⁰ Kaiser also contends that relocation to another channel would make many routine medical matters become emergency situations, because the process of changing the frequency of the base station and multiple pagers could render the system partially inoperable during the transition period.³¹ Kaiser also asserts that in the event it relocates its system, the users may fail to obtain new equipment, which would further endanger public safety.³² These same problems (e.g., obtaining new equipment and process for switching to new frequency) would be experienced by the hospitals, clinics, health maintenance organizations (HMOs), and other institutions that participate in Kaiser's SERS paging system.³³ Kaiser argues that, in a time of escalating health costs and uncertainty as to the future of medical insurance, forcing these health care organizations to purchase new pagers would be unduly burdensome.³⁴ Therefore, to preserve high-quality SERS paging service to the Southern

²⁴ See para. 3 *supra*. In addition, the Commission has an obligation to seek out the public interest in particular matters and individualized situations. See *WAIT Radio v. FCC*, 418 F. 2d 1153, 1157 (D.C. Cir. 1969).

²⁵ For a discussion of the merits of ProNet's request for waiver, see *EMRS MO&O*, 11 FCC Rcd at 1711.

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 6.

³⁰ Waiver Petition at 10.

³¹ *Id.*

³² *Id.* at 10-11.

³³ *Id.* at 11.

³⁴ *Id.*

California metropolitan area, Kaiser requests permanent grandfathering of its system.³⁵ Permanently grandfathering Kaiser's paging system on 453.025 MHz would avoid not only a considerable expenditure of resources,³⁶ but would prevent interruption of these important communications. We, therefore, conclude that Kaiser has demonstrated that relocation of its paging system to a new frequency would significantly disrupt public safety communications.

8. *Adequate spectrum exists for emergency medical transmissions.* Based on the record before us, we also conclude that there is adequate spectrum for emergency medical transmissions in the Southern California metropolitan area. In support of its Waiver Petition, Kaiser offers the results of a study by Trott Communications Group, Inc. ("Trott Study II"), which provides an independent examination of frequency utilization on Kaiser's medical paging channel, as well as on other EMRS and SERS channels.³⁷ Trott Study II, conducted September 2 through October 4, 1996, indicates that without the availability of 453.025 MHz there is sufficient EMRS spectrum in the Southern California metropolitan area to meet existing needs.³⁸ For example, usage on the ten channel pairs in the 460 MHz range ("MED Channels"), which are now reassigned to EMRS, were monitored from four different locations.³⁹ Also, from those same four locations, and at the same time of day, Trott Study II monitored Kaiser's usage of 453.025 MHz. According to Trott Study II, the 453.025 MHz frequency on which Kaiser operates had greater congestion than other emergency medical channels. For example, the 453.025 MHz frequency had 73 percent of its channel capacity unused on average, and only about 30 percent of its channel capacity unused during peak hours,⁴⁰ whereas the 462-463 MHz MED Channels (emergency medical frequencies) had 97 to 99 percent of their channel capacity unused on average, and about 78 percent of their channel capacity unused during peak hours.⁴¹ As a result, it appears that adequate spectrum remains to meet the communications needs of EMRS entities even with Kaiser's continued use of 453.025 MHz.

9. *Relocation would disserve the public interest because of a lack of reasonable alternatives.* We further conclude that relocation of Kaiser's system would disserve the public interest because there are no reasonable alternatives available to Kaiser. In this connection, Kaiser contends that, of seven alternative SERS frequencies, five are unsuitable for its paging operations.⁴² Four of these five frequencies, 35.64, 35.68, 43.64 and 43.68 MHz, are low-band frequencies which do not penetrate

³⁵ *Id.*

³⁶ See Seminole County, Fla., DA 96-494, *Order*, 11 FCC Rcd 4105, 4106 (1996) ("Seminole") (waiver granted noting that it would save financial resources and avoid necessity of purchasing equipment).

³⁷ Trott Study II was commissioned by Kaiser and appears as Attachment 1 of the Waiver Petition. Waiver Petition at 3-4. Attachment 1 at 1.

³⁸ Waiver Petition at 8-9; Trott Study II at 3.

³⁹ Specifically, the locations were San Diego, Fontana, Panorama City and Anaheim. Trott Study II at 3.

⁴⁰ *Id.* Peak usage was 71.55 percent, and average usage was 27.07 percent at 453.025 MHz. *Id.*

⁴¹ Waiver Petition at 8. Peak usage was 22.10 percent, and average usage was 2.87 percent at the 462-463 MHz MED Channels. Also, peak usage was 32.20 percent, and average usage was 0.56 percent at the 467-468 MHz MED Channels. Trott Study II at 3.

⁴² *Id.* at 9.

buildings well, thus making them practically useless for a wide-area system located in an urbanized area.⁴³ The fifth frequency, 157.450 MHz, is limited to 30-watt transmitter output, which falls far short of Kaiser's current 250-watt output on 453.025 MHz. As a result, Kaiser argues, the only two "real" possibilities for alternative SERS frequencies are 152.0075 MHz and 163.250 MHz.⁴⁴ Kaiser further argues that since its equipment works exclusively in the 453 MHz band, modification of its system equipment to either of the two non-453 MHz alternative frequencies would be financially burdensome.⁴⁵ Specifically, Kaiser contends that modifying or replacing its 5,300 pagers to the non-453 MHz band alternative frequencies would be disruptive and inefficient, costing, at a minimum, nearly \$800,000.⁴⁶

10. We note that the Commission established the EMRS waiver criteria, in part, to accommodate SERS operations that would otherwise sustain significant conversion costs.⁴⁷ Given Kaiser's stated associated costs and the resulting deflection of financial resources away from enhancement of current medical paging operations, coupled with the lack of any significant benefit resulting from migration to another channel, we conclude that there are no reasonable alternatives to permitting Kaiser to continue to operate on 453.025 MHz, and that the public interest, therefore, would not be served by requiring its relocation.

IV. CONCLUSION

11. In sum, we conclude that Kaiser has met the requirements established in the *EMRS Report and Order* for the permanent grandfathering of its SERS system.⁴⁸ Therefore, we grant its unopposed request for permanent waiver and permit it to continue operating its medical paging system on 453.025 MHz in the Southern California metropolitan area. This action serves the public interest because Kaiser's migration to another paging frequency would pose unnecessary risks to essential medical paging communications, and because adequate alternative spectrum for EMRS communications exists in the metropolitan area where Kaiser is operating its system.

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to the authority of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 90.27(c)(19), 90.53(b)(26), 90.55 and 90.151 of the Commission's Rules, 47 C.F.R. §§ 90.27(c)(19), 90.53(b)(26), 90.55, 90.151, that the Petition for Permanent Waiver filed by Kaiser Foundation Hospitals and Kaiser

⁴³ *Id.*

⁴⁴ While we note that Kaiser did not provide a utilization analysis for these alternatives, we nonetheless conclude that its waiver showing was sufficient with respect to this issue. Waiver Petition at 10.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.* at 5.

⁴⁷ *EMRS MO&O* at 1711.

⁴⁸ Grant of Kaiser's Waiver Petition incorporates its specific request for waiver of 47 C.F.R. §§ 90.27(c)(19), 90.53(b)(26) and 90.55. The first two rules provide the date on which SERS paging operations on the subject 453/458 MHz frequencies must cease, and the last rule designates which frequencies may be used for SERS paging operations.

Foundation Health Plan, Inc., to continue operating its paging system (WNIS884 , KTA961, WNIT590,KTG654, WNQA825, KNIN887, WPDY495, and WNDD332) on 453.025 MHz in the Southern California metropolitan area, IS GRANTED.

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

14. For further information concerning this *Order*, contact Freda Lippert Thyden, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-0627.

FEDERAL COMMUNICATIONS COMMISSION

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