

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

In the Matter of
City of South Lake Tahoe
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 the City of South Lake Tahoe (Lake Tahoe) for a two-year waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline. This deadline 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. By this Order, we deny the waiver request without prejudice.

II. BACKGROUND

2. Lake Tahoe operates ninety handheld units and fifty mobile units under four authorizations (WCP351, WNJP885, KJD298 and WPRG476). Lake Tahoe states that for the past five years it has been replacing its legacy wideband (25 kHz bandwidth) handheld and vehicle radios with radios capable of operating in narrowband (12.5 kHz bandwidth) mode. Lake Tahoe further states that in 2010 its vendor informed it that narrowbanding its infrastructure would cost \$800,000 and upgrading the infrastructure from analog to digital compensate for coverage loss could increase the cost to \$1.5 million.

3. Lake Tahoe states that due to the economic downturn it is currently operating with an annual budget deficit of \$4.7 million that precludes it from funding the narrowband transition. Lake Tahoe indicates that after consulting neighboring jurisdictions it has determined that it can remain wideband without affecting neighboring systems or impacting interoperability. Lake Tahoe states that it plans to comply with the narrowbanding mandate and to that end will conduct a budgetary analysis in July 2014 to determine whether sufficient funding exists to include narrowbanding in the capital

1 Letter, dated December 14, 2011 from Martin D. Hewlett, Police Captain (Waiver Request).

2 47 C.F.R. § 90.209(b).

3 Waiver Request.

4 Id. at 2.

5 Id.

6 Id.

7 Id.

improvements for the 2014-15 fiscal year.⁸ Should the fiscal climate remain as it is today, the City will determine whether a lease or loan is an option to obtain the necessary upgrades.⁹ Once funding is secured, Lake Tahoe anticipates that it should achieve narrowband compliance by the end of 2014.¹⁰

4. On January 27, 2012, the Public Safety and Homeland Security Bureau (Bureau) issued a Public Notice seeking comment on the Waiver Request.¹¹ No party filed comments specifically in support of or in opposition to Lake Tahoe's request.

III. DISCUSSION

5. Lake Tahoe 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;¹² 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.¹³ 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.¹⁴ 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 waiver is requested is no more than is reasonably necessary to complete the narrowbanding process."¹⁵

6. Based on the record before us, we conclude that Lake Tahoe has not presented sufficient facts to meet the high standard for grant of the requested waiver. While we are sympathetic to Lake Tahoe's fiscal situation, it has failed to show that its circumstances are sufficiently unique or unusual to meet the waiver standard. Indeed, despite the economic downturn, our licensing database indicates that numerous other public safety licensees have converted over 30,000 separate authorizations to narrowband operation since July 2010. These licensees have commenced narrowbanding planning well ahead of the deadline and have obtained the necessary funding in time to complete the process. Some have financed their conversions through means ranging from the collection of a dedicated sales tax¹⁶ to the use of federal

⁸ *Id.* at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ 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).

¹² 47 C.F.R. § 1.925(b)(3)(i).

¹³ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁴ 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*).

¹⁵ *Id.* at 9649.

¹⁶ St. Louis County Missouri, St. Charles County, Missouri, Jefferson County 9-1-1 Dispatch Board of Jefferson County Missouri and the East- West Gateway Council of Governments, *Order*, DA 12-245, (rel. Feb. 21, 2012) ¶ 7.

grants.¹⁷ By comparison, it appears that after evaluating its system in 2010 and determining that it would cost \$800,000 to narrowband the system and \$1.5 million to upgrade it Lake Tahoe confined its narrowbanding efforts to upgrading its mobile and portables. Lake Tahoe provides no description of its prior efforts (if any) to obtain the necessary funding, or the results of such efforts. Finally, Lake Tahoe also provides no explanation for the proposed delay until July 2014—a year and a half after the narrowbanding deadline—before it plans to undertake a budgetary analysis to determine its funding needs. While we recognize that Lake Tahoe may face significant challenges, we cannot countenance such a prolonged delay in planning for narrowbanding, much less completing the process. Therefore, we must deny the waiver request. However, we do so without prejudice in order to give Lake Tahoe the opportunity to make a more substantial showing in a subsequent request.

IV. ORDERING CLAUSES

7. 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 the City of South Lake Tahoe IS DENIED without prejudice.

8. 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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¹⁷http://www.chestertontribune.com/PorterCounty/commissioners_okay_buying_radio.htm