

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

In the Matter of
State of Montana
Request for Waiver of Section 90.20(d)(41)
of the Commission's Rules

ORDER

Adopted: December 10, 2012

Released: December 10, 2012

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

I. INTRODUCTION

1. On September 24, 2012, the State of Montana (Montana) submitted a request for waiver to use frequency 155.4750 MHz (Blue Channel) for interagency coordination of all public safety responders within 16 kilometers (km) of the U.S.-Canada border. Specifically, Montana requests a waiver of Section 90.20(d)(41) of the Commission's rules to use the Blue Channel licensed under call sign WNQN689 for multi-discipline (e.g., law enforcement, fire and emergency medical services, mutual aid) communication within 16 km of the border. By this Order, we grant the requested waiver subject to conditions.

II. BACKGROUND

2. On June 1, 2011, the Northern Tier Interoperability Consortium (NTIC), represented by the Interoperability Montana Project (IMP), was awarded a grant under the Border Interoperability Demonstration Project (BIDP). In its grant application, Montana proposed to use the Blue Channel for general interagency border communications during an emergency. Specifically, Montana would allow state, local, tribal and Canadian first responders to communicate on the Blue Channel for mutual U.S./Canadian operations at or within 16 km of the border. Montana submits that this plan would achieve the following objectives:

- a) Improve day-to-day interoperable emergency communications among local, state, tribal, and federal entities as well as international partners along and across international borders;

1 Montana codes its public safety channel by color, hence the designation "Blue Channel."

2 See State of Montana Frequency Waiver Request, Request to Utilize Frequency 155.4750 MHz (Call Sign WNQN689) for Multi-Discipline Mutual Aid Communication Operations Within 16km of the U.S./Canadian Border attached to License WNQN689 on Sept. 24, 2012 (Montana Waiver Request). Montana defines the border as the 49th Parallel. Id. at 5.

3 Id. at 2. Pursuant to Congressional directive, the Department of Homeland Security established the BIDP - "a competitive grant program that will provide funding to U.S. communities located on the international borders of Canada or Mexico to develop innovative solutions for improving interoperable emergency communications along and across the border." http://www.dhs.gov/border-interoperability-demonstration-project.

4 Montana Waiver Request at 2.

5 Id.

- b) Improve interoperable communications among emergency response providers responding to threats and natural disasters on the border; and
- c) Facilitate interoperable communications among emergency response providers in border communities of varying population densities.<sup>6</sup>

3. Under Section 90.20(d)(41) of the Commission rules, the Blue Channel is “available nationwide for use in police emergency communications networks operated under statewide law enforcement emergency communications plans.”<sup>7</sup> Consequently, Montana requires a waiver to expand the permissible use of the Blue Channel to include multi-discipline mutual aid communication within 16 km of the U.S./Canadian border.

4. In support of its waiver request, Montana notes that communities along the border are sparsely populated with limited resources so it is common for law enforcement personnel to perform other functions, e.g. to provide Emergency Medical Services.<sup>8</sup> Montana further explains that it is already licensed to operate on the Blue Channel, and has 20 base station licenses with coverage in or near the area of concern.<sup>9</sup> Finally, Montana argues that most patrol and emergency situations at or near the border will involve law enforcement personnel interacting with other law enforcement or emergency services; and that the waiver, if granted, will assist Canadian first responders operating on the U.S. side of the border to communicate with their U.S. counterparts.<sup>10</sup>

5. Montana also argues that expanded use of the Blue Channel serves the best interest of the public as well as law enforcement and other response organizations (including Canadian responders on the U.S. side of the border) by providing a “centralized resource” over which all units may communicate.<sup>11</sup> Montana believes it would be unduly burdensome to restrict communications on the Blue Channel to law enforcement given the extreme and rural nature of the topography and population along the border, and the mutual reliance of multi-discipline local, tribal, state, Federal, and international response groups in times of emergency.<sup>12</sup>

6. On September 27, 2012, the Public Safety and Homeland Security Bureau issued a *Public Notice* seeking comment on Montana’s Waiver Request.<sup>13</sup> No party submitted comments.

### III. DISCUSSION

7. The Commission will grant a waiver request if the waiver proponent shows that: “(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant

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<sup>6</sup> *Id.* at 3 (quoting Northern Tier Border Interoperability Demonstration Project (BIDP) Grant Application, Interoperability Montana at 3.).

<sup>7</sup> 47 C.F.R. § 90.20(c)(3)(d)(41). Amendment of Part 89 of the Commission’s Rules and Regulations to Designate the Frequency 155.475 MHz as a Common, Nationwide Police Emergency Communications Channel, Docket No. 20560, RM–2522, *Report and Order*, 57 FCC 2d 673 (1976) .

<sup>8</sup> Montana Waiver Request at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.*

<sup>13</sup> See Public Safety and Homeland Security Bureau Seeks Comment on Request by State of Montana to Use Frequency 155.4750 MHz for Multi-Discipline Mutual Aid Communication Within 16 km of the U.S.-Canada Border, *Public Notice*, 27 FCC Rcd 11344 (PSHSB 2012).

case, and that a grant of the requested waiver would be in the public interest; 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.”<sup>14</sup> Here, we analyze Montana’s waiver request with reference to the second prong of the waiver standard, *i.e.*, we examine whether there are unique or unusual factual circumstances that would make strict application of Section 90.20(d)(41) inequitable, unduly burdensome or contrary to the public interest.

8. Given that Montana borders Canada, we find that Montana is unusually situated for engaging in interoperable communications to coordinate cross-border incidents. We believe expanding interoperability (1) in Montana among state, local and tribal emergency responders in rural parts of the state and (2) across the border with Canadian emergency responders, serves the public interest. Specifically, grant of this waiver would advance important homeland security goals reflected in the BIDP legislation.<sup>15</sup> For example, Congress directed that the Department of Homeland Security shall “foster local, tribal, State, and Federal interoperable emergency communications, as well as interoperable emergency communications with appropriate Canadian and Mexican authorities in the communities selected for the demonstration project.”<sup>16</sup> Additionally, grant of this waiver is consistent with our precedent promoting cross-border communications.<sup>17</sup> Based on the record before us, we find that permitting multi-discipline, mutual aid communications on the Blue Channel will improve interoperable communications among all first responders responding to threats and natural disasters along the border and will assist any Canadian first responder who needs to communicate in the unlikely event that he or she is operating on the U.S. side of the border.

9. In granting the Waiver Request, we must ensure that our decision does not impede existing or future state police communications plans in Montana and adjacent states. Accordingly, we grant the Waiver Request, subject to the condition that Montana shall restrict the use of the Blue Channel for multi-discipline, mutual aid communications among public safety personnel operating within 16 km (10 miles) of the border with Canada. Additionally, within 30 days of the release of this *Order*, we require Montana to notify the State Police in Idaho, North and South Dakota and Wyoming of its multi-discipline, mutual aid plans in order to ensure that frequency 155.4750 MHz remains available nationwide for use in police emergency communications networks operated under statewide law enforcement emergency communications plans.

#### IV. CONCLUSION

10. Based on the foregoing, we conclude that granting the instant waiver request is in the public interest. Accordingly, we grant the State of Montana a waiver of Section 90.20(d)(41) of the Commission’s rules and allow it to use frequency 155.4750 MHz (Blue Channel) for multi-discipline, mutual aid communications within 16 km of the U.S.-Canada border.

#### V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED pursuant to Section 154(i) of the Communications Act of

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<sup>14</sup> 47 C.F.R. § 1.925(b)(3)(i)-(ii). On waiver standards generally, *see Northeast Cellular Telephone Co. v. FCC.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”) *citing WAIT Radio v. FCC.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969).

<sup>15</sup> Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. No. 110-53), 121 Stat. 300.

<sup>16</sup> *Id.* § 1810(c).

<sup>17</sup> *See State of Washington, Order*, 22 FCC Rcd 10121 (PSHSB 2007) (granting the State of Washington a waiver to use a frequency designated for paging operations to be used to coordinate cross-border incidents with Canada).

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 Waiver Request filed by the State of Montana on September 24, 2012, IS GRANTED to the extent, and subject to the conditions, discussed herein.

12. 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 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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