

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

In the Matter of Applications of )
KERN COUNTY, CALIFORNIA ) FCC File No. 0001297806
Requests for Waiver To Allow The Use Of ) FCC File No. 0001311298
20 kHz Bandwidth Adjacent to Public Safety ) FCC File No. 0001311456
Interoperability Channels )

ORDER

Adopted: December 18, 2003

Released: December 24, 2003

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us three applications filed by Kern County, California ("KCC"). We are addressing the three separately filed applications in this instant order because they raise common questions of fact and law. All three applications request a waiver of Section 90.20(d)(81) of the Commission's Rules to allow operation with a 20 kHz authorized bandwidth on channels adjacent to channels designated for public safety interoperability communications. For the reasons discussed herein, we grant KCC's waiver requests.

II. BACKGROUND

2. Ranked by area, Kern County is the third largest county in California, larger than Massachusetts, New Jersey or Hawaii; and larger than Delaware, Rhode Island and Connecticut combined. KCC operates one hundred base stations and one thousand mobile units on numerous Public Safety pool frequencies. KCC currently operates with a 20 kHz authorized bandwidth on all channels, but intends to convert its entire system to narrowband 11.25 kHz authorized bandwidth operations by January 1, 2007. Before transitioning to narrowband operations, KCC states that it intends to improve coverage within the county by implementing additional sites. KCC states that once additional sites are added, it will replace all existing equipment with narrowband equipment.

3. As part of its effort to improve coverage within the county, KCC has filed two applications proposing to add new frequencies to existing sites, and one application proposing to add three new sites

1 See attachments to FCC File Nos. 0001297806, 0001311298, 0001311456 (Waiver Requests).

2 Id.

3 Id.

4 Id.

5 FCC File Nos. 0001297806 and 0001311456.

within the county.<sup>6</sup> KCC requests a waiver of Section 90.20(d)(81) of the Commission's Rules in connection with each of these applications in order to operate with a 20 kHz authorized bandwidth on the frequencies 453.225, 453.450 and 453.700 MHz.<sup>7</sup> KCC asserts that it has been using these three frequencies at other locations within its county-wide simulcast system for sixteen to twenty-eight years.<sup>8</sup>

4. Section 90.20(d)(81) limits the bandwidth on frequencies 453.225, 453.450 and 453.700 MHz to a maximum of 11.25 kHz because these channels are immediately adjacent to channels designated for public safety interoperability communications.<sup>9</sup> The adjacent channels became available primarily for public safety interoperability communications on December 7, 2000.<sup>10</sup>

### III. DISCUSSION

5. The Commission will grant a waiver of its rules if it is shown that (i) the 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 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>11</sup> Based on the record before us, we believe that KCC has made the requisite showing for grant of a waiver.

6. We conclude that the underlying purpose of Section 90.20(d)(81) of the Commission's Rules would not be frustrated and would be served if this rule would be waived under the circumstances presented. The purpose of Section 90.20(d)(81) is to limit the bandwidth of new stations on channels adjacent to the public safety interoperability channels to 11.25 kHz while permitting existing licensees to operate with a wider bandwidth on a co-primary basis until January 1, 2005. After that date, all stations, whether new or existing, operating on channels adjacent to the interoperability channels have a choice to either: (a) operate with an 11.25 kHz authorized bandwidth in order to retain co-primary status, or (b) operate with bandwidths wider than 11.25 kHz and become secondary to adjacent channel interoperability operations.<sup>12</sup>

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<sup>6</sup> FCC File No. 0001311298.

<sup>7</sup> On application FCC File No. 0001311456, KCC requires a waiver of Section 90.20(d)(81) in order to operate with 20 kHz bandwidth on frequency 453.225 MHz. In KCC's attached waiver request, it also requests a waiver of Section 90.20(d)(81) for frequencies 453.450, 458.450, 453.700, 458.700 and 458.225 MHz although these frequencies do not appear on the application. See attachment to FCC File No. 0001311456. On application FCC File No. 0001311298, KCC requires a waiver of Section 90.20(d)(81) in order to operate with a 20 kHz bandwidth on frequencies 453.450, 453.700 and 453.225 MHz. In KCC's attached waiver request, it requests a waiver of Section 90.20(d)(81) only for frequency 453.225 MHz. We will extend their waiver request to frequencies 453.450 and 453.700 MHz as well. In addition, KCC requests a waiver of Section 90.20(d)(81) for frequency 460.125 MHz which does not appear on the application. See attachment to FCC File No. 0001311298. On application FCC File No. 0001297806, KCC requires a waiver of Section 90.20(d)(81) in order to operate with a 20 kHz bandwidth on frequencies 453.225, 453.450, and 453.700 MHz. In KCC's attached waiver request, it requests a general waiver of Section 90.20(d)(81) without listing specific frequencies. See attachment to FCC File No. 0001297806.

<sup>8</sup> See Waiver Requests.

<sup>9</sup> 47 C.F.R. § 90.20(d)(81). Section 90.20(d)(81) provides that: "After December 7, 2000, new stations will only be licensed with an authorized bandwidth not to exceed 11.25 kHz. Licensees authorized prior to December 7, 2000 may continue to use bandwidths wider than 11.25 kHz on a co-primary basis until January 1, 2005."

<sup>10</sup> See 47 C.F.R. § 90.20(d)(80). The four UHF interoperability channel pairs are: 453/458.2125 MHz, 453/458.4625 MHz, 453/458.7125 MHz, and 453/458.8625 MHz.

<sup>11</sup> See 47 C.F.R. § 1.925(b)(3)

<sup>12</sup> Secondary operations may not cause interference to primary interoperability use. 47 C.F.R. § 90.7.

7. KCC is currently authorized for one or more of the three frequencies at issue (453.225, 453.450 and 453.700 MHz) on a number of licenses, including Stations KCI548, KNHS820, K VX907, WPYR251, WNXR341, KWE370 and WPIH737. The continued renewal of these licenses would allow KCC to operate existing equipment with 20 kHz authorized bandwidth until January 1, 2018.<sup>13</sup> Under the existing licenses, KCC can operate at 20 kHz authorized bandwidth on a co-primary basis to operations on the interoperability channels until January 1, 2005. After January 1, 2005, KCC can either retain primary status by transitioning to an 11.25 kHz authorized bandwidth or accept secondary status to adjacent channel interoperability operations. In its waiver request, KCC states it will accept secondary status to all narrowband operations until it converts to narrowband in 2007.<sup>14</sup> KCC also states that if its operations create interference on interoperability channels KCC will take whatever action is necessary to reduce the interference and will cease operations on frequencies causing interference if the interference cannot be reduced to acceptable levels.<sup>15</sup> The American Association of State Highway and Transportation Officials (AASHTO) notes that there are virtually no users in California currently using the interoperability channels for the purpose of public safety interoperability.<sup>16</sup>

8. Granting the waiver request will allow KCC to expand coverage on the same channels and with the same bandwidth that it currently operates. We believe that, under the circumstances presented, granting the waiver request would neither impede the Commission's interoperability goals nor would it undermine the purpose of the rule or frustrate application of the rule to KCC. The daily operation of KCC affects the health, safety and welfare of 676,000 county residents. Accordingly, we conclude that granting the waiver request associated with the captioned applications is in the public interest. We therefore grant KCC's request for a waiver of Section 90.20(d)(81) of the Rules to the extent that its operations do not cause interference to any adjacent channel interoperability communications after January 1, 2005. Consequently, we reserve the discretion to revisit the continuation of such authority should we receive complaints from other public safety licensees in the future.

#### IV. ORDERING CLAUSES

9. Accordingly, 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 waiver request filed by the Kern County, California with respect to FCC File Numbers 0001297806, 0001311298 and 0001311456 IS GRANTED on the CONDITION that KCC's operations on the locations and frequencies added by the subject modifications will be authorized on a secondary, non-interference basis to adjacent-channel public safety interoperability communications.

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<sup>13</sup> 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, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, 18 FCC Rcd 3034, 3042 ¶ 19 (2003), *recon. pending*. Specifically, the FCC amends its rules to impose a deadline for migration to 12.5 kHz technology for non-public safety PLMRS systems operating on those bands, beginning January 1, 2013 and for public safety systems operating on those bands, beginning January 1, 2018. *Id.*

<sup>14</sup> See attachment, FCC File No. 0001297806

<sup>15</sup> See attachment, FCC File No. 0001311298 and 0001311456.

<sup>16</sup> See attachment, FCC File No. 0001311298 and 0001311456. AASHTO is an FCC-certified Public Safety Frequency Coordinator and served as the frequency coordinator on the three applications subject to this *Order*.

10. IT IS FURTHER ORDERED, pursuant and Section 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(a), that application FCC File No. 0001297806, FCC File No. 0001311298, and FCC File No. 0001311456 SHALL BE PROCESSED in accordance with this *Order*.

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

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau