

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

In the Matter of)
STATE OF WASHINGTON) File No. 0002479866
Request for Waiver of Sections 90.20 and 22.561)
of the Commission's Rules)

ORDER

Adopted: May 31, 2007

Released: May 31, 2007

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

I. INTRODUCTION

1. We have before us an application and a request for waiver filed by the State of Washington (Washington).1 Washington requests a waiver of Sections 90.20(c) and 22.561 of the Commission's rules2 to permit the Washington State Patrol (WSP)3 to operate a public safety station in Whatcom County, Washington, on a frequency designated for paging operations.4 For the reasons discussed herein, we grant the Waiver Request, subject to conditions specified herein.

II. BACKGROUND

2. According to Washington, the Royal Canadian Mounted Police (RCMP) operate a mutual aid public safety repeater system designed to provide interoperability among VHF, UHF, and 800 MHz systems in the Vancouver, British Columbia area, adjacent to Washington State.5 RCMP has asked the WSP to participate in the use of this system for purposes of coordinating cross-border incidents.6 Washington states that the proposed participation by WSP in the RCMP system would involve public safety mobile units and control stations transmitting on frequency 158.490 MHz.7

1 See File No. 0002479866 and associated Request for Waiver (filed Feb. 10, 2006; amended Feb. 27, 2006, June 1, 2006 and Oct. 11, 2006) (Waiver Request).

2 47 C.F.R. §§ 90.20(c), 22.561.

3 The Washington State Patrol provides traffic safety, ferry terminal security, commercial vehicle and law enforcement services in the State of Washington.

4 See Waiver Request at 1.

5 Id.

6 Id.

7 See Letter from Clark W. Palmer, Electronic Services Division, Washington State Patrol, to S/Sgt Peter Vanderploeg, Informatics NCO, Lower Mainland District, E Division (dated Feb. 2, 2006) (filed Feb. 10, 2006). Frequency 158.490 MHz is the mobile frequency of the paging two-way frequency pair 152.03/158.490 MHz.

3. Washington is a public safety entity eligible to hold authorizations in the Public Safety Pool.⁸ Section 90.20(c) lists the frequencies available for assignment to public safety stations.⁹ Because the desired frequency at 158.490 MHz is not a frequency specified in the public safety frequency table, Washington requires a waiver of Section 90.20(c) and Section 22.561.¹⁰

4. On September 14, 2006, we returned the application because Washington did not consider whether its proposed facilities would cause interference to the following existing paging licensees: Stations KNKB425 (Spokane, WA), KNKB576 (Spokane, WA), KOA793 (Wenatchee, WA), and WQZ588 (Neilton, WA).¹¹ On October, 11, 2006, Washington amended its application¹² and, in support of the Waiver Request, provides a contour overlap study purporting to demonstrate that its proposed operations would not cause interference to any existing paging licensee.¹³ Washington notes that frequency 158.490 MHz would be used only in mutual aid situations involving Canadian public safety operations.¹⁴

III. DISCUSSION

5. 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;¹⁵ 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.¹⁶ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁷ We conclude that Washington has shown that its request should be granted under the second prong of the waiver standard.

6. Given that Whatcom County, Washington borders British Columbia, Canada, we find that Washington is uniquely situated in being able to engage in interoperable communications between WSP and RCMP for coordination of cross-border incidents. We believe that permitting Washington to operate on frequency 158.490 MHz, and thus share a mutual aid channel with RCMP, would serve the public interest.¹⁸ We also find persuasive to our decision the results of Washington's interference

⁸ See 47 C.F.R. § 90.20(a)(1). This rule states, in part, “[a]ny territory, possession, state... is eligible to hold authorizations in the Public Safety Pool...” *Id.*

⁹ 47 C.F.R. § 90.20(c).

¹⁰ See 47 C.F.R. §§ 90.20(c) and 22.561.

¹¹ See Notice of Return Letter (Sept. 14, 2006) (Notice of Return Letter).

¹² See File No. 0002479866 (filed Oct. 11, 2006).

¹³ See Contour Overlap Study, filed Oct. 11, 2006.

¹⁴ Waiver Request at 1.

¹⁵ 47 C.F.R. § 1.925(b)(3)(i).

¹⁶ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁷ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

¹⁸ Waiver Request at 1.

contour analysis, which indicates that operation of the proposed station by WSP on frequency 158.490 MHz in Whatcom County would not cause harmful interference to existing primary paging licensees. We concur with Washington's analysis that the proposed mobile and control station operations in Whatcom County would be outside all of the protected interference contours of Stations KNKB425 (Spokane, WA), KNKB576 (Spokane, WA), KOA793 (Wenatchee, WA), and WQZ588 (Neilton, WA).

7. In granting the Waiver Request, we also must ensure that our decision does not impact existing or future paging licensees. Accordingly, we grant the Waiver Request, subject to the conditions that Washington (i) operates on frequency 158.490 MHz on a secondary basis¹⁹ to existing primary paging licensees, Stations KNKB425 (Spokane, WA), KNKB576 (Spokane, WA), KOA793 (Wenatchee, WA), and WQZ588 (Neilton, WA), as well as to future primary paging licensees, (ii) restricts the use of frequency 158.490 MHz only in mutual aid situations involving Canadian public safety operations, and (iii) limits the area of operation of its control station and mobile units to within fifteen miles (twenty-four kilometers) of the northern border of Whatcom County, Washington.²⁰

IV. CONCLUSION

8. Based on the information before us, we find that Washington has satisfied the Commission's waiver criteria in support of its request for a waiver of Sections 90.20(c) and 22.561 to operate on frequency 158.490 MHz in Whatcom County, Washington. We therefore grant Washington's waiver request, subject to the conditions stated herein.

V. ORDERING CLAUSES

9. 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 of the Commission's rules, 47 C.F.R. § 1.925, that the Waiver Request filed by the State of Washington with respect to application File No. 0002479866 IS GRANTED, subject to the conditions that the State of Washington (i) operates on frequency 158.490 MHz on a secondary basis to existing primary paging licensees, Stations KNKB425 (Spokane, WA), KNKB576 (Spokane, WA), KOA793 (Wenatchee, WA), and WQZ588 (Neilton, WA), as well as to future primary paging licensees, (ii) restricts the use of frequency 158.490 MHz only in mutual aid situations involving Canadian public safety operations, and (iii) limits the area of operation of its control station and mobile units to within fifteen miles (twenty-four kilometers) of the northern border of Whatcom County, Washington.

10. IT IS FURTHER ORDERED that the Policy Division of the Public Safety and Homeland Security Bureau SHALL PROCESS application File No. 0002479866 in accordance with this *Order* and the Commission's rules.

¹⁹ Secondary operation means that Washington's operations on frequency 158.490 MHz "may not cause interference to operations authorized on a primary basis and...are not protected from interference from those primary operations." 47 C.F.R. § 90.7.

²⁰ Staff confirmed by telephone with John Woodcock of the Washington State Patrol Electronic Services Division, that Washington could limit its proposed operations to within fifteen miles of the border with Canada.

11. 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

Dana Shaffer
Chief, Policy Division
Public Safety and Homeland Security Bureau