

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

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| In the Matter of Applications of |) | |
| |) | |
| GASTON COUNTY, NORTH CAROLINA |) | FCC File No. 0001251063 |
| |) | FCC File No. 0001254313 |
| Requests for Waiver To Allow The Use Of |) | |
| 20 kHz Bandwidth Adjacent to Public Safety |) | |
| Interoperability Channels |) | |

ORDER

Adopted: January 14, 2004

Released: January 15, 2004

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

I. INTRODUCTION

1. We have before us two applications filed by Gaston County, North Carolina (“Gaston County”).¹ We are addressing the two separately filed applications in this instant order because they raise common questions of fact and law. Both 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.² For the reasons discussed herein, we grant Gaston County’s waiver requests.

II. BACKGROUND

2. Gaston County covers 365 square miles and ranked by population is the seventh largest county in North Carolina. Gaston County operates a large system of base and mobile stations and holds over forty licenses in the Public Safety Pool. Gaston County states that it is midway through a six-year project to upgrade its VHF and UHF communication systems.³ As part of its effort to improve coverage within the county, Gaston County has filed two applications proposing to add new sites and frequencies to its current authorizations for Stations KWJ337, Gastonia, North Carolina, and WNMJ237, Bessemer City, North Carolina.⁴

3. Gaston County requests a waiver of Section 90.20(d)(81) of the Commission’s Rules in connection with these applications in order to operate with a 20 kHz authorized bandwidth on the frequencies 158.745 MHz and 453.725 MHz.⁵ Gaston County maintains that the waiver is needed to

¹ FCC File Nos. 0001251063, 0001254313.

² See attachments to FCC File Nos. 0001251063, 0001254313 (Waiver Request).

³ *Id.*

⁴ See note 1, *supra*.

⁵ On application FCC File No. 0001251063, Gaston County requests a waiver of Section 90.20(d)(81) in order to operate with 20 kHz bandwidth on frequency 158.745 MHz. See FCC File No. 0001251063. On application FCC

provide backward compatibility with existing equipment that is incapable of 11.25 kHz authorized bandwidth operation.⁶ Gaston County is requesting a waiver until June 30, 2005, when it intends to complete its conversion to narrowband equipment.⁷

4. Section 90.20(d)(81) limits the bandwidth on frequencies 158.745 MHz and 453.725 MHz to a maximum authorized bandwidth of 11.25 kHz because these channels are immediately adjacent to channels designated for public safety interoperability communications.⁸ The adjacent channels became available primarily for public safety interoperability communications on December 7, 2000.⁹

III. DISCUSSION

5. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case and that grant of the waiver would be in the public interest;¹⁰ or that, 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.¹¹ We believe that Gaston County has demonstrated that grant of a waiver is warranted under the circumstances presented.

6. We conclude that the underlying purpose of Section 90.20(d)(81) would not be frustrated and would be served if this rule were waived under the circumstances presented. The purpose of Section 90.20(d)(81) is to limit the authorized 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 11.25 kHz authorized bandwidth in order to retain co-primary status, or (b) operate with authorized bandwidths wider than 11.25 kHz and become secondary to adjacent channel interoperability operations.¹²

7. Gaston County is currently authorized to operate on the frequencies at issue (158.745 MHz and 453.725 MHz) on Stations KA72936, Gaston County, North Carolina (453.725 MHz), KDA687, Gastonia, North Carolina (453.725 MHz), KWJ337, Gastonia, North Carolina (453.725 MHz) and WNMJ237, Bessemer City, North Carolina (158.745 MHz). The continued renewal of these licenses would allow Gaston County to operate existing equipment with 20 kHz authorized bandwidth until

File No. 0001254313, Gaston County requests a waiver of Section 90.20(d)(81) in order to operate with a 20 kHz bandwidth on frequency 453.725 MHz. *See* FCC File No. 0001254313.

⁶ *See* Waiver Request.

⁷ *Id.*

⁸ 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."

⁹ *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.

¹⁰ 47 C.F.R. § 1.925(b)(3)(i).

¹¹ 47 C.F.R. § 1.925(b)(3)(ii).

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

January 1, 2018.¹³ Under the existing licenses, Gaston County 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, Gaston County 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, Gaston County states it will be transitioning its entire system to 11.25 kHz authorized bandwidth by June 30, 2005.¹⁴

8. Granting the waiver request will allow Gaston County 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 Gaston County. The daily operation of Gaston County's communications system affects the health, safety and welfare of county residents. Accordingly, we conclude that granting the waiver request associated with the captioned applications is in the public interest.¹⁵ We therefore grant Gaston County's request for a waiver of Section 90.20(d)(81) of the Rules to the extent that its operations cause no 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 Gaston County, North Carolina, on July 1, 2003, with respect to FCC File Numbers 0001251063 and 0001254313 IS GRANTED on the CONDITION that Gaston County'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.

¹³ 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.*

¹⁴ See Waiver Request.

¹⁵ See Kern County, California, *Order*, DA 03-4078, ¶ 8 (WTB PSCID rel. Dec. 24, 2003).

10. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(a), that applications FCC File Nos. 0001251063 and FCC File No. 0001254313 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