



Federal Communications Commission
Washington, D.C. 20554

DA 15-781

July 2, 2015

Elizabeth Sachs
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
McLean, VA 22102

Re: Call Sign KNNT443

Dear Ms. Sachs:

This letter addresses the request for waiver of Section 90.617(c) of the Commission's rules¹ that you filed on March 20, 2015, on behalf of Oakland County, Michigan (the County) in conjunction with an application to assign the authorization for Call Sign KNNT443 from the Suburban Mobility Authority for Regional Transportation (SMART) to the County.² For the reasons set forth below, we grant the waiver request and will process the assignment application accordingly.

Background. SMART, the regional public transportation agency for Wayne, Macomb, and Oakland Counties (including the City of Detroit) was initially licensed for thirteen 900 MHz Business/Industrial Land Transportation (B/ILT) frequency pairs under Call Sign KNNT443 in 1996.³ Section 90.421(c) of the Commission's rules allows Industrial/Business Pool licensees to authorize other Part 90 eligibles that assist the licensee in emergencies and with whom the licensee must communicate in situations involving safety of life or property to operate on the licensee's frequencies.⁴ Pursuant to this provision, SMART arranged for the Road Commission for Oakland County (RCOC), which maintains roads and traffic signals in Oakland County, to install several hundred 900 MHz mobile data units in RCOC's vehicles.⁵ The data radios enabled SMART to operate its buses safely by communicating with RCOC regarding RCOC vehicles' position and speed, and road conditions.⁶

SMART now plans to migrate from its 900 MHz system to a commercial mobile data service, but RCOC still needs to use its installed 900 MHz data radios.⁷ In March 2015, SMART filed an application

¹ 47 C.F.R. § 90.617(c).

² See Request for Waiver of FCC Rule Section 90.617(c) (filed Mar. 20, 2015) ("Waiver Request").

³ Though a government entity, SMART also was eligible for B/ILT frequencies because it provides transportation services to the public for a fee. See Amendment of Part 90 of the Commission's Rules, *Second Report and Order and Second Further Notice of Proposed Rule Making*, WP Docket No. 07-100, 25 FCC Rcd 2479, 2485 ¶ 17 (2010).

⁴ See 47 C.F.R. § 90.421(c). In addition, Section 90.179(h) of the Commission's rules authorizes Industrial/Business Pool licensees to share their frequencies with Public Safety Pool entities. See 47 C.F.R. § 90.179(h).

⁵ Waiver Request at 1.

⁶ See *id.*

⁷ See *id.* at 1-2.

to delete eight of the thirteen frequency pairs and two of the three fixed locations from its license for Call Sign KNNT443,⁸ and to assign the remainder of the license to the County for use in support of road maintenance.⁹ Because the County is not eligible for B/ILT channels, it requests a waiver of Section 90.617(c).

Discussion. Under Section 1.925 of the Commission's rules, waiver is appropriate where (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and 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.¹⁰ In your request, you argue that the County satisfies the second prong of the waiver test, because denial would require the purchase of an entirely new radio system in another band, cause a delay in critical communications capability, and impose a financial burden on a Michigan governmental entity during difficult economic conditions.¹¹ You add that this circumstance is unusual, unlikely to be repeated, and leaves the County with no reasonable alternative.¹²

We note that both the original grant to SMART and RCOC's long-time use of these frequencies was consistent with the rules governing the 900 MHz band. Thus, the proposed assignment application is distinguishable from a request for waiver to acquire new spectrum. Moreover, SMART's proposed course of action to perpetuate RCOC's use of the frequencies – deleting most of the frequencies and locations and assigning only what RCOC currently is using – increases the spectrum available for assignment to other B/ILT eligibles, which would not be the case if SMART had proposed to assign the entire license to another B/ILT eligible that would share the spectrum with RCOC. In addition, we note that RCOC's use of the spectrum furthers the public interest by enhancing road safety. Finally, we agree that for RCOC to replace its radios currently would be unduly burdensome, especially where there is no available alternative of 900 MHz public safety channels. After considering the foregoing, we find that waiver is of Section 90.617(c) is warranted, and we will process ULS File No. 0006718893 in accordance with this decision.

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 303(r), 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 County of Oakland on March 20, 2015 IS GRANTED, and application FCC File No. 0006718893 SHALL BE PROCESSED in accordance with this action and the Commission's rules.

⁸ FCC File No. 0006701475.

⁹ FCC File No. 0006718893.

¹⁰ See 47 C.F.R. § 1.925(b)(3).

¹¹ See Waiver Request at 2.

¹² *Id.*

Oakland County, Michigan

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 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau