

In the Matter of)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems)	CC Docket No. 94-102
Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones)	WT Docket No. 01-309
Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services)	WT Docket No. 03-264
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules)	WT Docket No. 06-169
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86
Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule)	WT Docket No. 07-166

**EMERGENCY MOTION FOR CLARIFICATION,
OR IN THE ALTERNATIVE, WAIVER OF COMMISSION RULES**

THE STATE OF LOUISIANA

[Rex McDonald]

I. INTRODUCTION

The state of Louisiana hereby submits this motion for clarification of the apparent prohibition on “authorization . . . of any new narrowband operations in Channels 63 and 68, or in the upper 1 megahertz of channels 64 and 69,” after August 30, 2007.¹

Louisiana interprets the Order to prohibit new licenses on these channels after August 30, 2007, but to allow equipment to be deployed on these channels if a public safety entity has obtained an authorization, or license, before August 30, 2007. A recent public notice, however, potentially confuses this interpretation by stating that the new rule prohibits new narrowband operations on these channels as of August 30, 2007 and that narrowband equipment may be placed into operation after August 30, 2007, but only in the new consolidated narrowband block.²

Louisiana seeks clarification that it may continue to deploy new equipment in the old narrowband channels to operate on a system licensed before August 30, 2007.³ In the event that the Commission disagrees with this interpretation of its Second Report and Order and prohibits such equipment from being deployed on the old narrowband channels after August 30, 2007, Louisiana respectfully requests that the Commission grant a waiver of the prohibition to permit deployment of new handsets and base stations after August 30, 2007 to operate in conjunction with Louisiana’s already-licensed 700 MHz

¹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Second Report and Order, FCC 07-132 (rel. Aug. 10, 2007) (“Order” or “Second Report and Order”).*

² *New Public Safety Narrowband Operations Outside of the 700 MHz Consolidated Block Prohibited as of August 30, 2007, Public Notice, PS Docket No. 06-229, WT Docket No. 96-86, DA 07-3644 (August 16, 2007).*

³ Louisiana recognizes that, pursuant to the Order, this new equipment will not be eligible for relocation funding.

system. Without such a waiver, the Commission's policy poses a significant threat to Louisiana's plans to complete implementation of a needed new life-saving communication system in its jurisdiction.

II. BACKGROUND

Louisiana's first responders operate a statewide network that serves the entire state of Louisiana. Currently, Louisiana is in the process of implementing a vital communication system on the current 700 MHz narrowband spectrum under call sign [WPTZ793]. Under this call sign, Louisiana is authorized frequencies [764-776 MHz]. Louisiana began implementing this system on August 29, 2005, in the aftermath of Hurricane Katrina, in order to provide a statewide interoperable voice, data, and imagery system. Louisiana sought budget approvals since Hurricane Katrina in [Aug, 2005] and has been working with vendors to place orders for equipment as dictated by funding. Today, Louisiana has 46 transmitter sites in operation in the 700 MHz channels. Louisiana has plans to add 30 more sites between now and the first quarter of 2008 and place an additional 7,000 public safety subscribers on this system by deploying new handset equipment. If Louisiana cannot add subscribers on channels already in operation and complete build-out of the base station network, the existing system is virtually useless. Given the critical need for interoperable communications in Louisiana, the inability to fully utilize the planned system threatens the safety and lives of Louisiana's first responders and the health and property of the public they serve.

III. THE COMMISSION SHOULD CLARIFY THAT NEW EQUIPMENT MAY BE DEPLOYED ON ALREADY-AUTHORIZED SYSTEMS AFTER AUGUST 30, 2007.

The Commission's Order is ostensibly clear that equipment may be deployed in Channels 63 and 68, and in the upper 1 megahertz of Channels 64 and 69 after August

30, 2007, but that such equipment will not be entitled to relocation funding. Specifically, the Order states:

we prohibit authorization, whether pursuant to individual license or State License, of any new narrowband operations in channels 63 and 68, or in the upper 1 megahertz of channels 64 and 69, as of 30 days following the adoption date of this Second Report and Order. We caution that any equipment deployed in these frequencies subsequent to 30 days following the date of adoption of this Second Report and Order will be ineligible for relocation funding.⁴

The second sentence contemplates that transmitting equipment can be deployed to operate on the old channels after August 30, 2007 but would not be eligible for relocation funding. A logical interpretation, therefore, is that the first sentence only prohibits the issuance of new authorizations (licenses) to operate on the old narrowband channels.

The Public Safety and Homeland Security Bureau, however, recently issued a public notice to “remind the public safety community that no new narrowband operations will be permitted as of August 30, 2007” on the old channels. The Bureau also stated that “narrowband equipment may be placed into operation on or after August 30, 2007, but only in the consolidated narrowband blocks.” This statement is inconsistent with the Order’s statement that indicates narrowband equipment can be placed into operation in the old blocks after August 30, 2007, but such equipment will not receive relocation funding. The statement in the public notice removes all flexibility for public safety entities, like Louisiana, that have existing 700 MHz infrastructure and need to complete deployment or expand the operation of those systems.

Louisiana requests that the Commission clarify this conflict and instruct that Louisiana can deploy new equipment, *e.g.* radios and additional base transmitters, after August 30, 2007 because it already has authorizations and operations in the old channels.

⁴ Second Report and Order at ¶ 339.

This interpretation is more consistent with policy's stated purpose to define and clarify costs. A contrary interpretation would also be inconsistent with the public interest because it would delay deployment of additional base stations and the user terminals necessary to for the system to be functional as an effective means of providing critically needed communications. Freezing deployment of Louisiana's system at this stage would waste precious time, money and resources that Louisiana has spent building and deploying the state's 700 MHz system under valid Commission rules. Moreover, it would prevent Louisiana from deploying an interoperable statewide radio system that every agency could use, whether federal, state, local, or military – a system which Louisiana's first response community clearly needs.

IV. IN THE ALTERNATIVE, LOUISIANA SEEKS A WAIVER OF THE COMMISSION'S RULE PROHIBITING DEPLOYMENT OF NEW EQUIPMENT AFTER AUGUST 30, 2007.

If the Commission rejects Louisiana's interpretation and decides to prohibit any new equipment, including base transmitters and mobile and portable radios, from being deployed in the old channels after August 30, 2007, Louisiana requests a waiver of that policy. Under Section 1.3 of the Commission's rules,⁵ the Commission may exercise its discretion to waive a rule for "good cause shown."⁶ A waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will help serve the public interest.⁷

⁵ 47 C.F.R. § 1.3.

⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief*, Order, 14 FCC Rcd 6806, ¶ 11 (1999).

⁷ *Id.* (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

The waiver process allows the Commission to “maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility.”⁸ In deciding whether or not to grant specific waiver requests, the Commission has indicated it must “take into account considerations of hardship, equity, or more effective implementation of overall policy” in its broader quest for regulation in the “public interest.”⁹ As explained below, grant of Louisiana’s request would serve policy objectives of the Commission, particularly the deployment of spectrum to meet public safety needs.

Louisiana will undergo significant hardship if the FCC does not waive the new rule to permit Louisiana to deploy its new equipment as planned. As noted above, Louisiana has invested significant time and money in planning a new public safety communications system in 700 MHz spectrum formerly allocated for public safety narrowband communications. Specifically, Louisiana has invested **60 million** and almost 2 years planning and implementing its new system. This new system is designed for statewide interoperable communications critically needed by area first responders. With hurricane survival a top priority for the radio system, it also has the ability to re-route traffic should towers be lost and allow affected dispatch centers to relocate elsewhere in the state without disruption the system. The system also employs multiple layers of natural gas and diesel-fueled generators to ensure reliability in the event of natural or other disasters.

⁸ *WAIT Radio*, 418 F.2d at 1159.

⁹ *Id.*

It is impossible for Louisiana to fully deploy this system by the August 30, 2007 deadline. By the time the public notice was issued, Louisiana was left with two weeks to deploy 30 transmitter additional sites and 7,000 handsets. The FCC's new rule thus renders Louisiana's 700 MHz network virtually useless without deployment of end users radios. Louisiana's efforts to deploy a state of the art, interoperable communications network would be severely disrupted and delayed. This would not only deplete precious funding, but also significantly diminish Louisiana's ability to adequately meet its immediate needs for vital mission-critical voice communications.

Second, equity weighs in favor of granting Louisiana a waiver of the new prohibition on deploying new equipment in eight of the twelve megahertz that is currently allocated for public safety narrowband use. Louisiana has planned and designed its system based on a review of Commission rules and an expectation that such rules would remain unchanged without *significant* notice and a reasonable period of transition to public safety entities such as Louisiana. The Commission has instead given Louisiana less than two weeks to either finish deploying an extensive, complicated system ahead of schedule or forfeit months, and even years of time, money and resources spent deploying this system. A freeze on equipment was not found anywhere in the proposed rules or arguably the Order and first clearly appeared in the public notice reminding public safety about the new rules. Louisiana did not anticipate such a harsh result. Given Louisiana's reasonable reliance on the Commission's previous plan and associated rules and the fact that Louisiana could not have fairly anticipated this new requirement, both equity and responsible public policy dictate that the Commission grant

Louisiana a waiver of the new policy to permit deployment of new equipment under Louisiana's existing 700 MHz authorization.

Lastly, a waiver of the rules for Louisiana would be more effective in implementing the Commission's goal of improving public safety resources. As noted above, Louisiana has spent significant resources developing this system, which is partially complete. Louisiana anticipates an immediate need for the system and rendering it useless would be directly contrary to any goal of improving public safety resources. Further, the Commission created the general prohibition on new equipment in order to help define and contain costs of relocation. Granting Louisiana's waiver request, however, will not go against this goal; under the rules adopted in the Order Louisiana's request does not effect the cost of relocation because the equipment deployed after August 30, 2007 would not be eligible for relocation funding. Even so, because Louisiana can fairly estimate which equipment will be deployed and will need to be relocated, certainty and clarity of costs would not be impacted.

Moreover, although these goals of defining and containing costs are important, they do not outweigh Louisiana's immediate need to access to viable, usable spectrum in the next few years, the public's ultimate interest in the protections afforded by such access, or the costs associated with making a partially completed system utterly useless. Louisiana's system will fill an immediate need to help save lives and property in the short term. Allowing Louisiana to deploy equipment as planned will further the Commission's goal of helping public safety provide the most effective and efficient communications for the American public.

V. CONCLUSION

Louisiana seeks clarification that, after August 30, 2007, it can still deploy new equipment for existing operations outside of the consolidated narrowband blocks. If, however, the Commission does not agree with this interpretation, Louisiana, in the alternative, seeks a waiver of the prohibition because Louisiana's circumstances warrant a deviation from this rule and such deviation will help serve the public interest.

Respectfully Submitted,

By: _____

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