

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
STATE OF NEW YORK)
)
Request for Waiver of 700 MHz)
Narrowband Public Safety Channel)
Allotments in Canadian Border Region)
)
Call Sign: WPTZ 779)

To: Public Safety & Homeland Security Bureau

REQUEST FOR WAIVER

The State of New York (“the State”), pursuant to Section 1.925 of the Commission’s rules, hereby requests a waiver of the Commission’s order that, as of August 30, 2007, all new 700 MHz narrowband public safety operations are to be deployed at 769-775/799-805 MHz (hereinafter “new NB channels” or “consolidated narrowband channels”), instead of the pre-existing narrowband channel allotments of 764-767/794-797 MHz and 773-776/803-806 MHz (hereinafter “old NB channels”).¹ The waiver is necessary as narrowband operations on the new NB channels in the Canadian border regions of New York would violate the terms of an existing Letter of Understanding (“LOU”) between the United States and Canada.² Grant of the requested waiver will serve the public interest as it will allow for the continued deployment of a

¹ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Deployment of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007)(hereinafter “*Second R&O*”); “Public Safety Narrowband Operations Outside of the 700 MHz Consolidated Narrowband Blocks Prohibited as of August 30, 2007, PS Docket No. 06-229, WT Docket No. 96-86, *Public Notice*, DA 07-3644 (released August 16, 2007).

² *Sharing Arrangement Between the Department of Industry Canada and the Federal Communications Commission of the United States of America Concerning the use of the Frequency Bands 764 to 776 MHz and 794 to 806 MHz by the Land Mobile Service along the Canada-United States Border* (June 2005).

critical new public safety radio system that will greatly enhance interoperability and communications capability for first responders in the State of New York.

The State is in the process of deploying a Statewide Wireless Network (“SWN”) that will provide interoperable communications for public safety agencies throughout New York. The SWN will operate on a combination of 700 MHz statewide narrowband channels³ and 800 MHz channels, as neither band standing alone has sufficient spectrum throughout the State to accommodate SWN’s requirements. Spectrum shortages are especially severe in the densely populated “Downstate” New York City area,⁴ and in the Canadian border regions of the State. Spectrum is scarce in border areas as only portions of the 700 MHz public safety frequency band are available there due to treaty restrictions and because of Canadian television broadcast operations that will continue on channels 64 and 69 after the end of the DTV transition in the United States. The State has begun to deploy SWN in several areas near the Canadian border, with substantial deployment planned for later this year and into 2008.

The Commission’s band plan adopted in the *Second R&O* accommodates, to some degree, the state’s frequency requirements by shifting the public safety allocation down 1 MHz, allowing for some narrowband channels to remain in the upper portions of channels 63 and 68.⁵ This addresses the co-channel Canadian television operations on channels 64 and 69. However, treaty limitations on use of channels 63 and 68 also severely limit the amount of spectrum available for use in the border regions.

³ See 47 C.F.R. §90.531(b)(5). The call-sign of New York’s statewide license is WPTZ 779.

⁴ The State has a pending request for waiver to operate on 700 MHz channels in the “Downstate” area prior to the end of the DTV transition.

⁵ *Second R&O* at ¶¶ 323, 351.

In particular, the new consolidated narrowband channels fall within spectrum that is designated for “wideband” use by the LOU. Much of New York falls within Sharing Zone 1, Sector 2, as defined in Section 5.2 of the LOU, and its frequency use is thus governed by the channel assignments in Table 6a (U.S. Primary Narrowband Channels in Sector 2) and Table 6b (U.S. Primary Wideband Channels in Sector 2). The new consolidated narrowband channels, as designated in the *Second R&O*, are in the same spectrum identified in Table 6b for “Wideband Channels.”

Therefore, the State requests that it be allowed to continue deployment of narrowband operations on the old NB channels, notwithstanding that those channels are now allotted for public safety broadband operation. The State notes that the same LOU provisions that prevent its narrowband operation on the consolidated NB channels would also prevent “broadband” operations on the same spectrum. This waiver is requested until such time as the United States and Canada reach an appropriate bilateral agreement that would allow narrowband deployment in the border areas consistent with the *Second R&O*. The waiver would only apply within the Canadian border regions.

The *Second R&O* provides that the D Block licensee will be responsible for the costs of reprogramming 700 MHz narrowband radios deployed prior to August 30, 2007, and potentially those radios deployed thereafter pursuant to Commission waivers. Grant of this waiver will not add any costs to the D Block licensee’s obligations. The State’s 700/800 MHz system operates with M/A-COM radio equipment that provides for over-the-air reprogramming of subscriber units, so future frequency shifts to conform to the new band plan will not require any significant expenditures.⁶

⁶ While modification to certain elements of some base stations may be required, the State does not intend to seek reimbursement for those costs.

Section 1.925(b)(3) of the Commission's rules allows it to grant a waiver if it is shown that *either* "(i) the underlying purpose of the rules(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 rules(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has not reasonable alternative."⁷ The State believes that it has satisfied both of these alternative criteria.

The relevant purpose of the Commission *Second R&O* is to implement a new band plan and require new public safety narrowband operations to be deployed on the newly allotted channels after August 30, 2007. However, the treaty provisions of the LOU discussed above do not allow for implementation of the band plan in the Canadian border regions of New York, frustrating the purpose of the rule. The same LOU would also prevent "broadband" deployments in the United States consistent with the new band plan. Strict conformance with the narrowband allotments adopted in the *Second R&O* would not be in the public interest, as it would prevent deployment of a new interoperable public safety radio system without any countervailing public benefit.

⁷ 47 C.F.R. §1.925(b)(3).

CONCLUSION

For the reasons set forth above, the State of New York hereby requests a waiver of Commission rules and orders necessary for its continued deployment of a new 700 MHz narrowband public safety radio system in the Canadian border region.

Respectfully submitted

STATE OF NEW YORK

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