

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
KING COUNTY, WA DEPARTMENT)	PS Docket 06-229
OF TRANSPORTATION)	
)	
Request for Waiver of 700 MHz Band)	WT Docket 86-96
Plan in Canadian Border Region Sector 5)	
)	
Call Signs: WQHJ934, WQHJ935)	

TO: Public Safety and Homeland Security Bureau
File Nos. 0003519499, 0003519497

REQUEST FOR WAIVER

The Department of Transportation of King County, Washington, through its King County Metro (“KCM”), holds licenses to operate on 700 MHz narrowband channels under the captioned call signs. On October 16, 2008, the Public Safety and Homeland Security Bureau returned KCM’s modification applications (File Nos. 0003519499 and 0003519497) to construct on channels within the range of 767-773 and 797-803, the so-called “new” narrowband frequencies assigned as a consequence of the FCC’s decision to create a national public safety broadband communications network.¹

The Bureau’s Notice of Return explained that present treaty arrangements between the U.S. and Canada (“Arrangement G”) have not yet taken account of the new narrowband assignments. The Notice suggested, however, that KCM might seek waiver to operate on the old narrowband channels pending negotiation of a bilateral agreement to succeed Arrangement G. More recently, KCM has been encouraged, with the Bureau’s

¹ Notice of Return, Reference No. 4791626. The broadband network order is FCC 07-132, released August 10, 2007.

cooperation, to seek waiver of Section 90.533 of the Rules, embodying current treaty arrangements between the U.S. and Canadian governments, which would permit KCM to operate on the new narrowband channels in its pending modification applications.²

KCM is in much the same position as the State of New York, which was granted a waiver to operate on old narrowband frequencies pending revised arrangements between the U.S. and Canada.³ However, operation on the old channels also requires another dispensation. In the broadband order of 2007, the Commission asked 700 MHz licensees to report on their existing deployments on the old narrowband channels, and determined that construction on these channels should cease as of August 30, 2007. FCC 07-132, at ¶39. Only those duly reported deployments would qualify to have their eventual relocation to new narrowband channels compensated. Meanwhile, licensees wishing to deploy after August 30, 2007 would be required to use the new channels.⁴

Like the State of New York (note 3, *supra*), KCM operates near the Canadian order and must abide by the current Arrangement G. Thus, without waiver it cannot operate at this time on the new 700 MHz channels for which it has been approved regionally. Moreover, the use of the old channels would post-date the August 30th cut-off discussed above.

By seeking instead a waiver of Arrangement G, KCM would avoid both of these problems associated with use of the old narrowband channels. First, it would meet the Commission's intent that new narrowband construction not encroach on the future broadband D Block that would be part of a shared commercial/public safety national network. Second, KCM would not need to relocate – as will be the case for the State of

² To that end, the applications previously subject to the Notice of Return have been reinstated.

³ Order, DA 08-1463, June 20, 2008.

⁴ Public Notice, DA 07-3644, August 16, 2007.

New York and other waiver grantees⁵ – if and when the D Block comes into exclusive broadband shared network use.

KCM's construction and operation on new narrowband channels would serve the public interest because it would meet an urgent public transit need. KCM now operates in the region of 450 MHz, which has been re-channelized to narrower bandwidths no longer suitable for the transit system.⁶ While the ultimate deadline for changing over to the lesser bandwidths is still four years away, it has become impossible for KCM to secure replacement or new equipment to meet its ongoing needs, and additional spectrum at 450 MHz is not available.

Thus, KCM decided in 2003 to build the new radio system at 700 MHz. Funding was approved in 2005, and KCM signed a contract with Motorola for the radio system in March, 2006. All the radio site leases went into effect September 1, 2007. The microwave backbone system was purchased as part of the Motorola contract and the installation was completed in September 2008. Land mobile field installation is scheduled for 2009. To date, the County has spent some \$5 million in preparation for this spectrum shift.

KCM should not be forced to delay meeting its radio needs by the accident of its location on the Canadian border. That contingency of location also serves, however, to limit this kind of waiver to a relatively small geographic area. Moreover, TV channels 63, 64, 68 and 69 – whose 700 MHz spectrum is scheduled to be reassigned this year – are not in use in the Seattle area or the cross-border adjoining areas of Vancouver and Victoria, British Columbia. Thus, TV operations would not experience interference. In

⁵ See, e.g., *Pierce Transit*, 23 FCC Rcd 433 (2008); *Virginia State Police*, DA 07-195, released November 14, 2007; *Harris County, Texas*, DA 08-2518, released November 14, 2008.

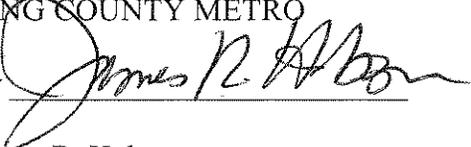
⁶ Third Memorandum Opinion and Order, FCC 04-292, released December 23, 2004.

fact, KCM is not aware of any circumstances under which its operation on the new narrowband channels would be likely to interfere with Canadian licensed uses.⁷ In addition, 700 MHz frequencies approved by Region 43 for KCM use are U.S. primaries and thus will not affect Canadian users in this band.

The foregoing meets the test of Section 1.925(a)(3)(ii) because “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.” Accordingly, KCM asks for waiver of Section 90.533 of the Rules to permit it to deploy its radio system on the new narrowband channels in its modification applications now pending.

Respectfully submitted,

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ITS ATTORNEY

⁷ We understand that the Bureau is seeking to confirm with Canadian sources this unlikelihood of harmful interference.