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

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MAR 15 2011

FCC Mail Room

In the Matter of)	
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PACIFIC GAS & ELECTRIC COMPANY)	WT Docket No. 10-217
)	
Requests for Waivers to Permit Implementation of)	File Nos. 0004269966, 0004269967,
Wide-Area Land Mobile Radio System Using Part)	0004269968, 0004316492, 0004316546,
22 and 90 Spectrum)	0004338881, 0004340739, 0004411788

ORDER

Adopted: March 4, 2011

Released: March 7, 2011

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order*, we address requests filed by Pacific Gas & Electric Company ("PG&E") to permit implementation of a wide-area private land mobile radio ("PLMR") system in California using Part 22 and Part 90 spectrum.¹ Specifically, PG&E seeks an extended construction period, until June 30, 2013, for proposed new Part 90 trunked Industrial/Business Pool ("I/B Pool") stations.² In addition, PG&E requests waivers of the permanent discontinuance rules to permit PG&E to discontinue operation until June 30, 2013 of existing Part 90 I/B Pool stations³ and a Part 22 VHF/UHF Paging ("Part 22 Paging") station,⁴ the licenses for which PG&E acquired by assignment.⁵ If the instant requests are granted, PG&E intends to file identical requests with respect to other new and existing stations.⁶ For the reasons stated below, we grant the requests.⁷

2. *Background.* PG&E serves approximately 5.1 million electricity customers and 4.2 million natural gas customers (representing approximately 15 million people) throughout more than 74,000 square miles across northern and central California.⁸ PG&E's various lines of business (*i.e.*, Gas & Electric Distribution, Gas & Electric Transmission, Hydro Generation, Customer Care and General

¹ Comment was sought on the requests. *See* Wireless Telecommunications Bureau Seeks Comment on Request by Pacific Gas & Electric Company for Waivers to Permit Implementation of Wide-Area Land Mobile Radio System Using Part 22 and 90 Spectrum, *Public Notice*, WT Docket No. 10-217, 25 FCC Rcd 14606 (WTB MD 2010). Enterprise Wireless Alliance filed supporting comments, and PG&E filed reply comments.

² Request for Waiver for Slow Growth Authority ("Slow Growth Waiver Request"); *see* File Nos. 0004269966, 0004269967, 0004269968, 0004340739.

³ *See* File Nos. 0004316492 (Station WPPB889), 0004338881 (Station WPUA857), 0004411788 (Station WNGE426).

⁴ *See* File No. 0004316546 (Station WPVE245).

⁵ Request for Waiver of Discontinuance Rules ("Discontinuance Waiver Request").

⁶ Slow Growth Waiver Request at 1 n.1; Discontinuance Waiver Request at 4 n.2; *see also id.* at 12-15 (listing the existing PG&E call signs at issue).

⁷ PG&E also seeks to modify the license for I/B Pool Station WNGE426 to change the regulatory classification from commercial to private, *see* Explanation of Application (attached to File No. 0004411788), and seeks a waiver of the common carrier requirement, 47 C.F.R. § 20.9(a)(6), with respect to Part 22 Paging Station WPVE245, *see* Request for Waiver of Common Carrier Requirement (attached to File No. 0004316546). The purpose of these requests is to permit the stations to be used for PLMR operations. These requests will be handled as part of processing of these applications, and we will not address these requests in this *Order*.

⁸ *See, e.g.*, Slow Growth Waiver Request at 1.

Services) currently use separate radio systems in different frequency bands.⁹ PG&E states that the systems are in need of replacement, and that the current fragmentation inhibits interoperability among the business lines and the introduction of advanced service features needed by PG&E's service personnel.¹⁰

3. PG&E plans to replace its existing conventional voice mobile radio systems with a single, integrated system that maximizes efficiency through trunking and frequency re-use, and that will improve quality and reliability of services, enhance security, simplify network management and operations, and lower overall operational costs by eliminating parallel systems.¹¹ The new network will operate on a single frequency band (450 MHz), and will provide common "push to talk" voice services to all of PG&E's business lines.¹² The new network will consist of over one hundred repeater sites, and thousands of mobile and portable units.¹³ PG&E plans to implement the system over a three-to-four year period, at a projected cost of approximately thirty million dollars.¹⁴ Although the proposed implementation plan contemplates completion of the project by the end of 2012, PG&E requests construction deadlines and authority to discontinue operations until June 30, 2013, to provide additional time in case of any unforeseen delay.¹⁵

4. In support of its request for an extended construction period June 30, 2013,¹⁶ PG&E states that it has mitigated its financial risk by structuring the project into five phases to lower the financial burden at any given time, and by working with the various lines of business to implement the network according to their operational needs and ability to contribute capital towards its completion.¹⁷ PG&E also points out that, because it is developing a trunked UHF network, the system must be licensed on exclusive frequency assignments,¹⁸ so requiring it to reapply for Part 90 frequencies that are not put into operation within the ordinary one-year construction period would put PG&E at risk of not being able to re-coordinate the assignments, which would hinder its ability to construct the wide-area system.¹⁹

5. Similarly, PG&E contends that a waiver of the discontinuance rules to permit PG&E to discontinue operation of the existing stations until June 30, 2013²⁰ is required to avoid incurring

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 2. For example, PG&E states that continued use of the disparate systems makes coordinating work crews during major storm events increasingly difficult.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 6.

¹⁴ *Id.* at 3, 6.

¹⁵ *See id.* at 6; Discontinuance Waiver Request at 16.

¹⁶ Section 90.155(a) of the Commission's Rules provides that Part 90 stations generally must be placed in operation within twelve months from the date of grant or the authorization cancels automatically. 47 C.F.R. § 90.155(a).

¹⁷ *See* Slow Growth Waiver Request at 3.

¹⁸ *See* 47 C.F.R. § 90.187.

¹⁹ *See* Slow Growth Waiver Request at 5.

²⁰ Section 1.955(a)(3) of the Commission's Rules provides generally that if a station is permanently discontinued, the license will terminate automatically. 47 C.F.R. § 1.955(a)(3). Section 22.317 of the Commission's Rules provides that any station licensed under Part 22 that has not provided service to subscribers for ninety continuous days is considered to have been permanently discontinued. 47 C.F.R. § 22.317. Under Section 90.157(a) of the Commission's Rules, a Part 90 station that has not been operated for one year or more is considered to have been permanently discontinued. 47 C.F.R. § 90.157(a). Because of the complexities involved in migrating users from the systems operated by the former licensees, PG&E currently is leasing frequencies that have been assigned to it back

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inequitable and unduly burdensome costs. PG&E acquired the licenses by assignment, but is not planning to acquire the former licensees' radio facilities.²¹ Consequently, if the waiver request were denied, PG&E would have to acquire, maintain, and at least periodically operate equipment on the associated frequencies pending implementation of the new system, and then remove and dispose of that equipment once the new system is operational.²² PG&E argues that this effort would be a serious distraction from its massive construction project, and would provide no corresponding benefit other than to maintain technical compliance with the discontinuance of operation rules.²³

6. *Discussion.* We may grant a waiver if the petitioner establishes 1) that the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or 2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²⁴ We conclude that PG&E has demonstrated that grant of its requests is warranted under the first prong of the waiver standard.

7. The purpose of the construction²⁵ and permanent discontinuance²⁶ rules is ensure use of licensed spectrum, and prevent licensees from warehousing spectrum and making it unavailable to other potential licensees. PG&E does not intend to warehouse the spectrum associated with its new Part 90 stations or its Part 22 and 90 stations acquired by assignment. Rather, it will use that spectrum in a new system, and already has taken concrete steps in addition to acquiring spectrum (retaining an engineering firm to assist with system design, preparing a frequency plan, developing an implementation schedule).²⁷ We therefore agree with PG&E that the underlying purpose of the construction and discontinuance rules would not be served by application to the instant case.

8. We also conclude that grant of a waiver of the construction and permanent discontinuance rules would be in the public interest. These licenses will comprise an integral part of PG&E's new wide area radio system, an innovative system that will greatly reduce communications and response times across PG&E's service area, better equipping PG&E to respond to emergencies and to engage in day-to-day maintenance of its electric and gas transmission and distribution systems.²⁸ Moreover, the absence of harmful interference will help protect the safety of PG&E's employees in the field.²⁹ We previously have concluded that the public interest would be served by providing a utility a justified additional period of time to upgrade its PLMR system in order to increase efficiency, improve

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to the former licensees, and has made arrangements for at least periodic use of these frequencies pending action on the present waiver requests. Discontinuance Waiver Request at 4 n.1.

²¹ Discontinuance Waiver Request at 3.

²² *Id.* at 11.

²³ *Id.*

²⁴ 47 C.F.R. § 1.925; *see* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

²⁵ *See* PTC-220, LLC, *Memorandum Opinion and Order*, 24 FCC Rcd 8537, 8540 ¶ 7 (WTB 2009).

²⁶ *See* Northstar Technology, LLC, *Memorandum Opinion and Order*, 24 FCC Rcd 13476, 13479 ¶¶ 8-9 (WTB/OMD 2009).

²⁷ Discontinuance Waiver Request at 6. That PG&E does not intend to warehouse spectrum is further demonstrated by the fact that it has assigned to others licenses it held for spectrum that will not be used in the new system. *Id.*

²⁸ *Id.* at 10.

²⁹ *Id.*

coverage, and allow interoperability, which furthers the provision of reliable service to the public.³⁰

9. *Conclusion.* We grant PG&E's requests for waivers to permit implementation of a wide-area PLMR system in California using Part 22 and Part 90 spectrum. Specifically, we grant its pending requests for an extended construction period until June 30, 2013, and we will grant subsequent requests for extended construction periods until June 30, 2013 in connection with other new or already-licensed Part 90 stations that will be part of PG&E's new PLMR network. In addition, we grant its pending requests for waivers to permit PG&E to discontinue operation of existing Part 90 I/B Pool and Part 22 Paging stations until June 30, 2013, and we will grant subsequent requests to permit PG&E to discontinue operation until June 30, 2013 of other existing Part 90 and Part 22 stations that will be part of its PLMR network. Subsequent requests should reference this *Order* by the DA number in the header.

10. Accordingly, IT IS ORDERED that, 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, the Request for Waiver for Slow Growth Authority filed by Pacific Gas & Electric Company in connection with applications File Nos. 0004269966, 0004269967, 0004269968, and 0004340739, and the Request for Waiver of Discontinuance Rules Authority filed by Pacific Gas & Electric Company in connection with applications File Nos. 0004316492, 0004338881, 0004411788, and 0004316546 ARE GRANTED, and the applications SHALL BE PROCESSED consistent with the Commission's Rules and this *Order*.

11. These actions are taken under delegated authority pursuant to Section 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION



Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

³⁰ See New York State Electric & Gas Corporation, *Order*, 22 FCC Rcd 1787, 1791 ¶ 12 (WTB MD 2007).