



WT 99-8,

Federal Communications Commission
Washington, D.C. 20554

December 19, 2012

Elizabeth Weathers
Senior Counsel
jcpenny Legal Department
6501 Legacy Drive
Plano, TX 75024

Re: Request for FCC Narrowbanding Deadline Waiver

Dear Ms. Weathers:

This letter refers to the above-referenced waiver request. On December 10, 2012, J.C. Penney Corporation, Inc. (JCP) submitted a request¹ for a waiver until July 1, 2013, of the Commission's VHF/UHF narrowbanding deadline, which requires private land mobile radio (PLMR) licensees in the 150-174 MHz and 421-512 MHz bands to operate using channel bandwidth of no more than 12.5 kHz or equivalent efficiency by January 1, 2013.² JCP seeks the extension for the Industrial/Business Pool Stations listed in the supplement to its request. For the reasons set forth below, we grant the request.

Background. JCP is a major national retailer, operating 1,107 department stores in all fifty U.S. states and Puerto Rico. To date, JCP transitioned to narrowbanding all of the individual radios utilized in these facilities. Each store, however, also utilizes a stations identification box to transmit the call sign as required by Section 90.425(a) of the Commission's Rules.³ As of November 30, 2012, there were 671 facilities (about sixty percent) where narrowbanding of station identification boxes had not yet been completed. JCP states that station identification boxes are custom-manufactured, and the vendor is not able to provide the necessary quantity of narrowband-compliant boxes by January 1, 2013. JCP has already ordered the remaining boxes. The vendor can provide twenty-five new station identification boxes per week. At this rate of manufacture, JCP explains, the vendor needs additional twenty-seven weeks to provide the remaining station identification boxes. Therefore, JCP seeks a waiver of the narrowbanding deadline until July 1, 2013.

Discussion. To obtain a waiver of the Commission's Rules a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;⁴ or (ii) in view of unique or

¹ See Request for Waiver (filed December 10, 2012). On December 11, 2012, J.C. Penney Corporation, Inc. filed a supplement for its waiver request, listing all call signs for which a waiver is sought.

² See 47 C.F.R. § 90.209(b)(5); see also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). On April 26, 2012, the Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology waived the January 1, 2013 narrowbanding deadline for 470-512 MHz band frequencies. See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Order*, WT Docket No. 99-87, RM-9332, 27 FCC Rcd 4213 (WTB/PSHSB/OET 2012).

³ 47 C.F.R. § 90.425(a).

⁴ 47 C.F.R. § 1.925(b)(3)(i).

J.C. Penney Corporation, Inc.

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.⁵ Applying this standard to narrowbanding, we have stated in the *Narrowbanding Waiver Guidance Notice*, jointly issued by the Wireless Telecommunications Bureau, the Public Safety and Homeland Security Bureau, and the Office of Engineering and Technology, that narrowbanding waiver requests “will be subject to a high level of scrutiny” under the waiver standard.⁶ We have also provided recommended guidance on the factors that licensees should address in their requests and have recommended that in addressing these factors, licensees should seek to demonstrate that “(i) they have worked diligently and in good faith to narrowband their systems expeditiously; (ii) their specific circumstances warrant a temporary extension of the deadline; and (iii) the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process.”⁷

Based on the record before us, we conclude that JCP has presented sufficient facts to meet the high standard for grant of the requested waiver for an extension of time. If we were to strictly apply the narrowbanding rules, JCP would have to cease use of the station identification boxes by January 1, 2013, and failure to transmit station identification would violate the Commission’s rules. We conclude that strict enforcement of the narrowbanding deadline under these circumstances would not serve the underlying purpose of the rule and that a waiver would be in the public interest. In reaching this conclusion, we place significant weight on the showing that JCP has made with respect to the factors identified in our *Narrowbanding Waiver Guidance Notice*.

JCP has shown diligence in planning and implementing its migration of the current operations to narrowbanding. It has completed the transition for all of its operating radios and a portion of its station identification boxes. The completion of the transition is dependent on the manufacturer of the boxes, which have been timely ordered. Therefore, we conclude that JCP has justified a need for an extension of the January 1, 2013 deadline, and grant a 6-month extension, to July 1, 2013 for the call signs set forth in the supplement to the waiver request.

Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 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 on December 10, 2012 by the J.C. Penney Corporation, Inc. IS GRANTED.

This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 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

⁵ 47 C.F.R. § 1.925(b)(3)(ii).

⁶ Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology Provide Reminder of January 1, 2013 Deadline for Transition to Narrowband Operations in the 150-174 MHz and 421-512 MHz Bands and Guidance for Submission of Requests for Waiver and Other Matters, *Public Notice*, 26 FCC Rcd 9647 (WTB/PSHSB/OET 2011).

⁷ *Id.* at 9649.