



99-87

Federal Communications Commission
Washington, D.C. 20554

December 20, 2012

Elizabeth R. Sachs
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Road, Suite 1200
McLean, VA 22102

Re: Request for FCC Narrowbanding Deadline Waiver

Dear Ms. Sachs:

This letter refers to the above-referenced waiver request. On December 17, 2012, you, on behalf of Eastern Illini Electric Cooperative (EIEC), submitted a request¹ for a waiver until September 30, 2014, 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 EIEC seeks the extension for its Industrial/Business Pool station WNKP742. For the reasons set forth below, we grant the waiver request to the extent stated below.

Background. EIEC is a non-profit, member-owned rural electric cooperative, covering approximately 5,000 square miles over parts of eleven lightly populated counties in east central Illinois. Its land mobile system uses VHF and UHF channels to transmit both voice and data. The voice part of the system, used for communication with personnel in the field, truck-to-truck communication, and communication with the after-hours dispatch center, has already been modified to meet the narrowbanding requirements.

The data part of the system operates on 173.300 MHz and is used exclusively for EIEC's load control radio switch system. When preparing the system for the narrowband operation by changing the repeaters' data transmission to a 12.5 emission, the EIEC's technicians realized that the narrowband repeaters are not technically compatible with switches used for EIEC's load control program to manage electricity demand, because the switches were designed for wideband 25 KHz operation. As a result, EIEC has to replace approximately 4,200 switches, which is an additional and costly step, not originally anticipated. EIEC is currently looking for an appropriate and less costly alternative solution to this problem and seeks a waiver of the narrowbanding deadline until September 30, 2014, to ensure that it has a working data system through the hottest months of 2014.

¹ See Request for Extension of Narrowbanding Deadline (filed December 17, 2012).

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).

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;³ or (ii) 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 or the applicant has no reasonable alternative.⁴ 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.⁵ 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."⁶

Based on the record before us, we conclude that EIEC 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, EIEC would be required to expend significant financial and administrative resources to narrowband its existing VHF wideband facilities by January 1, 2013. 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 EIEC has made with respect to the factors identified in our *Narrowbanding Waiver Guidance Notice*.

EIEC has shown diligence in planning and implementing its transition to narrowbanding. It has already completed narrowbanding of the voice component of the system, and, knowing that it was narrowband-ready, anticipated no problems with completing narrowbanding of the data component before the deadline. However, because the narrowband repeaters are not technically compatible with the load control system's switches, to maintain data functionality of the system operating in the narrowband mode, EIEC will need to replace the load control system entirely. EIEC is currently looking for and evaluating alternative solutions to the problem that would be the most economical as the replacement would have to be funded by EIEC's members.

While EIEC has justified a need for an extension of the January 1, 2013 deadline, we cannot conclude that it has justified a 21-month extension, because it has not provided detailed information regarding its contemplated solution to the problem, as it admits it is still in the process of evaluating all alternatives. Therefore, at this time we grant a 1-year extension, to December 31, 2013. If EIEC needs additional time beyond that, it must, in advance of the expiration of this extension, file a request for further extension that demonstrates that the additional amount of time requested is no more than is

³ 47 C.F.R. § 1.925(b)(3)(i).

⁴ 47 C.F.R. § 1.925(b)(3)(ii).

⁵ 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).

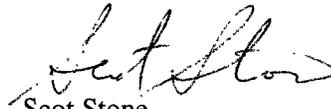
⁶ *Id.* at 9649.

reasonably necessary. We also remind EIEC that the license for Station WNKP742 is due to expire on April 7, 2013, and this waiver does not extend past that date if the license is not timely renewed.

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 Extension of Narrowbanding Deadline, filed on December 17, 2012 by Eastern Illini Electric Cooperative IS GRANTED to the extent stated above.

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
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Wireless Telecommunications Bureau