



Federal Communications Commission
Washington, D.C. 20554

June 11, 2014

Elizabeth Sachs, Esq.
Lukas, Nace, Gutierrez and Sachs
8300 Greensboro Drive
Suite 1200
McLean, VA 22102

DA 14-809

Dear Counsel:

Under consideration is the June 10, 2014 Request for Waiver to Submit Late-Filed Rebanding Upgrade Proposal (Request) filed on behalf of Pima County Community College District (PCC), licensee of public safety 800 MHz stations, call signs WPRI676 and WPTP781. PCC seeks a waiver pursuant to Section 1.925 of the Commission's rules¹ of the requirement that licensees subject to 800 MHz rebanding² must submit requests for system upgrades in lieu of rebanding their facilities no later than the due date for their rebanding cost estimate.³

PCC states that its current 800 MHz communications system "functions adequately" but "operates as a communications island without meaningful interoperability with other public safety agencies in the greater Tucson area . . ." It therefore proposes to migrate "its operations to the Pima County Wireless Integrated Network (PCWIN)."⁴ PCC asserts that "moving to PCWIN will provide seamless interoperability among public safety entities in the area, which capability is particularly critical during crisis situations such as the shooting of Rep. Gabby Giffords in 2011."⁵ What PCC does not explain, is why the decision to migrate to the PCWIN could not have been made before it submitted its cost estimate to Sprint Corporation (Sprint) on January 11, 2014.

¹ 47 C.F.R. § 1.925.

² Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *et al.*, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order*, 19 FCC Rcd 14969 (2004) (*800 MHz Report and Order*); *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) (*800 MHz Supplemental Order*), *review denied sub nom. Mobile Relay Associates v. FCC*, 457 F.3d 1 (D.C. Cir. 2006); *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005); *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467 (2007). *See also Kay v. FCC*, No. 06-1076 (D.C. Cir. filed Feb. 24, 2006) (holding additional appeals in abeyance).

³ Request at 1 and n.1, *citing* Improving Public Safety Communications in the 800 MHz Band, *Fifth Report and Order*, 28 FCC Rcd 4085, 4105 (2013). PCC attaches significance to the *Fifth Report and Order*'s requirement that licensees "**should** notify the TA and Sprint, in writing, no later than the due date for submission of the licensee's cost estimate" if they propose an upgrade. *Id.* (emphasis supplied). Focusing on "should" to the exclusion of the rest of the sentence, Request at 2, PCC argues that notifying Sprint and the TA at the time the cost estimate is filed is only precatory, not obligatory. We disagree and clarify that the context within which "should" is used clearly shows that conformity to the upgrade deadline is not optional for licensees.

⁴ Request at 2.

⁵ *Id.*

Section 1.925(b)(3) of the Commission's rules⁶ provides that "[t]he Commission may grant a request for waiver if it is shown that: (i) The underlying purpose of the rule(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 rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative." Asserting that it meets the first prong of the waiver standard, PCC contends that the Commission required licensees to submit upgrade requests simultaneously with cost estimates to avoid delay in a licensee's rebanding efforts and associated delay in the overall rebanding effort in the Mexico border region.⁷ Those undesirable effects, PCC submits, will not occur in its case because "[a]llowing PCC to propose an upgrade after submission of its cost estimate will not delay, and in fact will accelerate, PCC's clearing of its channels. PCC has already joined PCWIN and purchased the equipment needed to operate on it. The migration is fully funded and users have already migrated to that network."⁸

PCC is correct that one underlying purpose of the requirement to submit upgrade proposals simultaneously with cost estimates is the avoidance of delay in rebanding that occurs when upgrade proposals are untimely made. PCC has successfully shown that such delay will not occur in PCC's case. Therefore, grant of a waiver would not frustrate the purpose of the notification requirement. Additionally, we find that integrating PCC's communications facilities into the PCWIN interoperable system has the public interest benefits claimed by PCC. Therefore, PCC has satisfied the first prong of the Commission's waiver standard. That suffices, given that the waiver criteria are stated in the alternative. Accordingly we need not and do not address whether PCC satisfies the second prong of the waiver standard.

Accordingly IT IS ORDERED that the Request for Waiver to Submit Late-Filed Rebanding Upgrade Proposal submitted June 10, 2014 by the Pima County Community College District IS GRANTED.

IT IS FURTHER ORDERED that Pima County Community College District shall file an upgrade request with the 800 MHz Transition Administrator no later than June 30, 2014.

This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

⁶ 47 C.F.R. 1.925(b)(3).

⁷ Request at 2.

⁸ *Id.* at 3.