

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

In the Matter of )
County of Morris, New Jersey ) File Nos. 0008925343, 0008930926,
) 0008930929
)

ORDER

Adopted: March 12, 2021

Released: March 12, 2021

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The County of Morris, New Jersey (Morris or the County) is the licensee of three 700 MHz trunked public safety stations, call signs WQXD782, WQXD784, and WQXD785. On November 8, 2017, the Bureau granted the County an extended period to construct these authorizations. This extended period ended on February 8, 2020. On January 7, 2020, the County submitted the instant request to extend the construction period for all referenced authorizations through February 8, 2022, and waive the extended implementation requirements under Section 90.629 of the Commission’s rules.1 As discussed below, we grant the County’s extension request.

II. BACKGROUND

2. Extended Implementation. Section 90.551 of the Commission’s rules requires 700 MHz narrowband stations to be constructed and placed into operation within 12 months from the date of grant of the authorization.2 Section 90.629 of the Commission’s rules, however, allows licensees a one-time extended construction period of up to 5 years subject to certain conditions.3

- 3. Morris’s Waiver Request. The County states that it has:
• obtained overall approval and initial funding for the radio project
• contracted with a state contract radio system infrastructure vendor for a core upgrade

1 File Nos. 0008925343, 0008930926, 0008930929 (collectively, Morris Application). See also Waiver Request of Rule Section 90.629 (attachment to Morris Application) (Waiver Request) and n.3 infra. On March 11, 2021, the County provided the Bureau an update on its progress since filing the Waiver Request. See Email from Raymond J. Hayling II, Managing Director, HHW Group, LLC, to Roberto Mussenden (Mar. 11, 2021) (Waiver Update).

2 47 CFR § 90.551.

3 47 CFR § 90.629. The conditions include but are not limited to the following: The applicant must justify an extended implementation period, including a description of the proposed system, the amount of time necessary to construct and place the system in operation, and the number of base stations to be constructed and placed in operation during each year of the extended construction period. The applicant must also show that: (1) the proposed system will require longer than twelve (12) months to construct and place in operation because of its purpose, size, or complexity; or (2) the proposed system is to be part of a coordinated or integrated wide-area system which will require more than twelve (12) months to plan, approve, fund, purchase, construct, and place in operation; or (3) the applicant is required by law to follow a multi-year cycle for planning, approval, funding, and purchasing the proposed system.

- completed the core upgrade
- contracted with a state contract radio system infrastructure vendor for a network upgrade
- completed the network design
- procured new microwave equipment
- completed the installation of the new microwave equipment
- contracted with a state contract radio system infrastructure vendor for the installation of the microwave equipment
- completed the installation of the new microwave network
- upgraded current tie lines with fiber
- engaged with the state contract vendor<sup>4</sup>

4. The County claims that due to unforeseen circumstances outside of the County's direct control, the County is unable to meet its current buildout deadlines. The County cites several factors as contributing to the delayed buildout including, delayed access to the New Jersey state contract to purchase the system and delayed equipment shipments to the County. The County also submits that the release schedule of the County's state contract radio vendor did not make the purchased LMR equipment available for delivery until the third quarter of 2019 putting its phased buildout behind schedule. There were also system design and coverage issues at the County's currently licensed sites.<sup>5</sup>

5. The County contends that it is in the public interest for the Commission to grant this extension of time and allow the County to implement its new 700 MHz digital radio network supporting emergency communications in Morris County. The County updates that they are currently on track to complete the system consistent with their revised slow growth implementation schedule, noting that they have appropriated all funding and procured all equipment and services.<sup>6</sup> The County argues that rejecting this request will only add undue burden and expense to the County in reapplying to the Commission for the already approved and coordinated radio locations once they are ready to construct.<sup>7</sup>

### III. DISCUSSION

6. 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; 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.<sup>8</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>9</sup>

7. We find that the County has met the first prong of the Commission's waiver standard. Here, stringent application of our rule would effectively negate the significant efforts that the County has undertaken to design and construct its radio system. Under these circumstances, we believe the County

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<sup>4</sup> Waiver Request at 3.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> Waiver Update.

<sup>7</sup> *Id.* at 3-4.

<sup>8</sup> 47 CFR § 1.925(a)(3).

<sup>9</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

should be afforded additional time to avoid incurring unnecessary cost in finalizing and implementing its public safety communications system. The requested extension is reasonable in light of the efforts the County has already dedicated to this system, and that it is only seeking a two-year extension.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the waiver request associated with File Nos. 0008925343, 0008930926, and 0008930929 filed by the County of Morris, New Jersey IS GRANTED, and the associated licenses SHALL BE MODIFIED to specify a construction expiration date of February 8, 2022.

9. This action is taken under delegated authority pursuant to Section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c) and Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm  
Chief, Policy and Licensing Division  
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