

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

In the Matter of)
HOWARD COUNTY, MARYLAND) File No. 0003163756
Application for Modification of Travelers')
Information Station WQCR505, Howard County,)
Maryland, and Request for Waiver of Section)
90.242 of the Commission's Rules)

ORDER

Adopted: February 13, 2009

Released: February 13, 2009

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

I. INTRODUCTION

1. Howard County, Maryland (the County) filed an application and request for waiver of Section 90.242(b)(4)(iv) of the Commission's rules seeking to modify its license for Call Sign WQCR505, a Travelers' Information Station ("TIS"), by adding two additional sites. For the reasons stated herein, we conditionally grant the request.

II. BACKGROUND

2. The County explains that it has over 270,000 residents and is located between Baltimore, Maryland and Washington, DC. As presently licensed, the County utilizes a single transmitting site at the Clarksville, MD fire station. According to the County, it "originally planned to provide coverage for key travel areas throughout most of the County using eight TIS sites." However, the County states that testing of its antenna system at the Clarksville Fire Station "demonstrated much greater coverage at ten watts than anticipated." The County, therefore, "believes that it can achieve its objective of almost county-wide coverage for [its TIS] network from only three synchronized transmitter sites."

3. The County seeks to amend its existing TIS license to add two sites: an eastern site at

1 See File No. 0003163756, and accompanying Waiver Request of Howard County, Maryland (filed Sept. 6, 2007; amended May 13, 2008) (Waiver Request).

2 47 C.F.R. § 90.242(b)(4)(iv) (limiting field strength of Travelers' Information Stations).

3 Public safety licensees may use TIS frequencies in the AM broadcast band (530-1700 kHz) to transmit "only noncommercial voice information pertaining to traffic and road conditions, traffic hazards and travel advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest." 47 C.F.R. § 90.242(a)(7).

4 Waiver Request at 2.

5 Id. at 1.

6 Id. at 2. Stations employing a conventional radiating antenna may "not exceed 10 watts" transmitter RF output power to enable the user to comply with the specified field strength. 47 C.F.R. § 90.242(b)(4)(iii).

7 Waiver Request at 1.

Rockburn Branch Park, and a western site in Cooksville.⁸ Because of the efficiency of the antenna systems proposed at the three sites, the County claims that “each of these transmitter sites could provide coverage to an area of more than 4 times that of a typical TIS station at a minimum signal of 2 mV/m without exceeding 10 watts.”⁹ The County also states that “[k]ey travel areas representing more than 15% of the total County area could be covered with a signal level of at least 2 mV/m.”¹⁰ Thus, according to the County, a waiver “would allow the County to install three transmitters at sites that are readily accessible and that provide a reliable system with minimal transmission gaps between sites, without causing interference to commercial AM or TIS stations.”¹¹

4. In connection with this application, the County requests waiver of Section 90.242(b)(4)(iv) pursuant to Section 1.925 of the Commission’s rules.¹² Section 90.242(b)(4)(iv) specifies that the field strength of TIS stations may not exceed 2 mV/m when measured with a standard field strength meter at a distance of 1.50 kilometers (0.93 miles) from the transmitting antenna system.¹³ Because the County’s testing indicates that “the 2 mV/m contour will extend approximately 3 km from each transmitter sites [sic],” it acknowledges that waiver of this rule is required.¹⁴

5. On June 4, 2008, the Public Safety and Homeland Security Bureau placed the County’s application and request for waiver on public notice.¹⁵ We received no comments. On October 14, 2008, the County filed an amendment to provide further narrative on how the three-site system would be used.¹⁶

III. DISCUSSION

6. To obtain a waiver of the Commission’s rules in accordance with Section 1.925 of the 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;¹⁷ 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.¹⁸ An applicant seeking a waiver faces a high hurdle and must

⁸ *Id.* Previously, the County held authorizations for eight transmitter sites under the license for Station WQCR505, and an additional TIS license, Station WQCR506. The County relinquished all but the Clarksville Fire Station site. *Id.* Station WQCR506 is no longer active.

⁹ *Id.* at 3.

¹⁰ *Id.* at 3-4.

¹¹ *Id.*

¹² 47 C.F.R. § 1.925.

¹³ 47 C.F.R. § 90.242(b)(4)(iv).

¹⁴ Waiver Request at 2.

¹⁵ Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver by Howard County, Maryland to Modify its Travelers’ Information Station License, *Public Notice*, 23 FCC Rcd 8675 (PSHSB 2008).

¹⁶ See File No. 0003163756, attached Letter from Ryan A. Miller, Captain, Deputy Director of Emergency Management, Howard County, Maryland, to Mr. Thomas J. Beers, Federal Communications Commission (dated Oct. 14, 2008).

¹⁷ 47 C.F.R. § 1.925(b)(3)(i).

¹⁸ 47 C.F.R. § 1.925(b)(3)(ii).

plead with particularity the facts and circumstances that warrant a waiver.¹⁹ Based on the information before us, we are persuaded that the County has demonstrated that waiver of Section 90.242(b)(4)(iv) is warranted.

7. When the Commission adopted the TIS rules, it stated that TIS “is intended to serve a 3 km zone with generally repetitive information pertinent to travelers.”²⁰ In limiting the TIS coverage zone, the Commission primarily was motivated to minimize the potential for TIS to cause interference to broadcast stations.²¹ The Commission therefore adopted rules to limit the measured field strength at 1.5 kilometers from the transmitting site, limit the maximum antenna height, and limit the transmitter output power to ten watts.²² The Commission stated that “considering the likelihood of interference to broadcast stations, these steps should prevent interference situations from developing without unduly burdening TIS applicants.”²³

8. In support of its request for waiver, the County asserts that the underlying purpose of Section 90.242(b)(4)(iv) would not be served if the rule were applied to its situation. Specifically, the County states that “TIS stations were not meant to duplicate commercial offerings [by broadcast stations]. On the other hand, the noncommercial need was clear enough.”²⁴ In this regard, the County argues that the noncommercial purpose of the rule would be frustrated if, in the absence of waiver relief, the specified 2mV/m contour were confined to 1.5 kilometers around eight transmitters, covering less than ten percent of the county.²⁵ The County states that “[i]t makes more sense to encourage the use of an efficient three-transmitter system that can do the job of more than eight without exceeding the 10 watt power limitation or increasing the risk of interference to other stations.”²⁶

9. In determining whether the underlying purpose of the rule would not be served by application to the instant case, we now examine whether the County’s proposed operations would protect other stations from harmful interference. Each application for TIS must be accompanied by a statement certifying that the proposed station satisfies the minimum separation distances specified in Section 90.242(a)(2)(i).²⁷ Specifically, the proposed station must be located at least 15 kilometers (9.3 miles)

¹⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972), *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 Broadcasting Corporation, Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 ¶ 6 (2003).

²⁰ Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public, *Report and Order*, 67 FCC.2d 917, 925 ¶ 27 (1977) (*TIS Report and Order*).

²¹ *Id.* at 924 ¶ 25.

²² *Id.* at 926 ¶ 31.

²³ *Id.* at 924 ¶ 25.

²⁴ Waiver Request at 4-5 & n.9 citing *TIS Report and Order*, 67 FCC.2d at 918-919 ¶¶ 6-8.

²⁵ Waiver Request at 4.

²⁶ *Id.* at 5.

²⁷ 47 C.F.R. § 90.242(a)(2)(i). At this juncture, we note that the County’s application satisfies the additional general filing requirements for each application for TIS as specified by Section 90.242(a)(2). Specifically, the County satisfies Section 90.242(a)(2)(iii) by providing a map showing the geographical location of the transmitter site and an estimate of the signal strength at the contour of the desired coverage area. *See* Waiver Request at 18; 47 C.F.R. § 90.242(a)(2)(iii). The County also satisfies Section 90.242(a)(2)(iv) by providing technical details about the proposed transmitter sites. *See* Waiver Request at 11-12 and File No. 0003163756 Schedule H; 47 C.F.R. § 90.242(a)(2)(iv). Additionally, the County satisfies Section 90.242(b)(5) by verifying that its sites are located at least 15.0 kilometers from co-channel TIS stations operating under different licenses. 47 C.F.R. § 90.242(b)(5). In (continued....)

outside the measured 0.5 mV/m service contour of any broadcast station operating on the first adjacent channel, or at least 130 kilometers (80.6 miles) for broadcast stations operating on a co-channel basis.²⁸ The County provided an engineering analysis indicating that its closest TIS station would be located 31 kilometers from the 0.5 mV/m service contour of first adjacent channel Station WPTX, Lexington Park, Maryland, operating on frequency 1690 kHz.²⁹ The County also states that its operations would not interfere with the 0.5 mV/m service contour of the nearest co-channel station, Station WEUV, Huntsville, Alabama, operating on frequency 1700 kHz, which is located 992.85 kilometers away.³⁰ Based on the facts before us, we conclude that the County has satisfied the requisite separation distance requirements of Section 90.242(a)(2)(i). After reviewing its engineering analysis, we find that the County has demonstrated that its proposal would protect broadcast operations from potential harmful interference, consistent with the underlying purpose of Section 90.242(b)(4)(iv). Therefore, we find that the underlying purpose of the rule would not be served or would be frustrated by application to the present case.

10. The County also states that grant of its request would be consistent with the public interest by enabling its TIS stations to cover major commuter and evacuation routes in the County.³¹ The County states that the TIS stations would provide useful information on a daily basis to commuters and the traveling public.³² The County maintains that unique or unusual circumstances support waiver relief because of its proximity to potential terrorist targets in Washington, D.C. and Fort Meade, Maryland.³³ Therefore, the County expresses a “potential need for reliable and far-reaching TIS communications with residents, commuters and public safety and health/medical workers in the event of an emergency.”³⁴ Based on the record before us, we find that a grant of the County’s request for waiver would serve the public interest.

11. Consistent with the *TIS Report and Order*, we grant the County’s waiver request. In doing so, we reiterate that TIS stations are licensed on a secondary, non-interference basis.³⁵ Thus, the County may not cause interference to any broadcast station, and it also must accept interference from any broadcast station.³⁶ We also emphasize that grant of the waiver request does not obviate the County’s

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this regard, the County notes that its proposed sites would be located 39.7 kilometers from co-channel TIS Station WQCR563, Arlington County, Virginia. *See* Waiver Request at 11. Finally, the County satisfies Section 90.242(a)(2)(ii), which requires a TIS applicant to certify that it has considered possible cross-modulation and intermodulation interference effects on AM broadcast stations in the vicinity that are operating on the second or third adjacent channel. 47 C.F.R. § 90.242(a)(2)(ii). In this regard, the County states that “[w]e do not find any potential for any cross-modulation and/or intermodulation interference to broadcast second and third adjacent channel stations.” File No. 0003163756, Amendment to Waiver Request, Engineering Certification, dated May 13, 2008.

²⁸ 47 C.F.R. § 90.242(a)(2)(i).

²⁹ Waiver Request at 11, Exhibit B.

³⁰ *Id.* at 12.

³¹ Waiver Request at 5.

³² *Id.* at 2-3, 5-6, and 20, Exhibit D.

³³ *Id.* at 5-6.

³⁴ *Id.* at 6.

³⁵ 47 C.F.R. § 90.242(a)(3).

³⁶ *Id.* Further, the Commission’s rules provide that a TIS authorization may be suspended, modified or withdrawn by the Commission, without prior notice of right to a hearing “if necessary to resolve interference conflicts.” 47 C.F.R. § 90.242(a)(4); *TIS Report and Order*, 67 FCC.2d at 924 ¶ 24.

obligation to comply with the operational and other restrictions imposed by Section 90.242(a)(7).³⁷ That is, the County may use its TIS to broadcast “only noncommercial voice information pertaining to traffic and road conditions, traffic hazard and travel advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest.”³⁸ In this connection, we note that the Commission specifically “precludes an applicant from setting up a ‘network,’ or ‘ribbon’ of transmitting stations along a highway for the purpose of continuously attracting a motorist with what could be superfluous information.”³⁹

12. In consideration of the facts before us, we grant the waiver request because the County has demonstrated that waiver of Section 90.242(b)(4)(iv) is warranted pursuant to Section 1.925. We also find that grant of the waiver request serves the public interest because it ensures that broadcast stations are protected, while providing the County the ability to provide pertinent information to the traveling public.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Section 4(j) 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, that the Request for Waiver of Howard County, Maryland, filed on September 6, 2007 IS GRANTED.

14. IT IS FURTHER ORDERED, that application File No. 0003163756, filed September 6, 2007 by Howard County, Maryland, as amended, SHALL BE PROCESSED in accordance with this Order and the Commission’s rules.

15. 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

Thomas J. Beers
Chief, Policy Division
Public Safety and Homeland Security Bureau

³⁷ 47 C.F.R. § 90.242(a)(7).

³⁸ *Id.*; *TIS Report and Order*, 67 FCC.2d at 923-24 ¶ 23.

³⁹ *TIS Report and Order*, 67 F.C.C. 2d at 923-24 ¶ 23.