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Safecom Program  
U.S. Dept. of Interior

May 27, 2004

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Subject: DA 04-1021, Reply Comments

Dear Ms. Dortch,

The National Public Safety Telecommunications Council (NPSTC) has reviewed the Comments in this pending action and supports Access Spectrum's request for waiver of Section 27.60 of the Commission's Rules, 47 C.F.R. 27.60 to enable operation of a multi-channel trunked system in the 700 MHz band on frequency assignments that are adjacent to KZJL TV and within this station's Grade B contour. Notwithstanding the commercial nature, NPSTC supports this request for a waiver based on its merit. We believe Public Safety entities may benefit from similar relief where possible, in order to utilize its spectrum, pending full clearing of analog TV stations in the 700 MHz band. However, we also urge that the relief sought by Access Spectrum, and potential relief sought in the future by public safety licensees, can and should be granted without a "waiver" of Commission rules.

As specified in the Commission's rules, Access Spectrum conducted an engineering study to justify that interference to the reception of the KZJL TV signal would be virtually non-existent. Access Spectrum has also stated they "would bear full financial obligation to remedy any interference to the reception of KZJL's signal" and "demonstrate there would be no interference to viewers' reception of the KZJL signal." NPSTC believes Access Spectrum has offered reasonable assurances to meet the provisions of Section 27.60 of the Commission's Rules, 47 C.F.R. §27.60. Unfortunately, after conducting an engineering study and providing assurances to KZJL, Access Spectrum was denied concurrence and subsequently filed with the Commission to seek remedy on this matter. Access Spectrum also complied in good faith with the Commission's request to submit a Form 601 and a request for Waiver of the §27.60(a)(2) separation requirements. These requirements are practically identical to those that are found in §90.545, which pertain to the Public Safety 700 MHz allocation.

We understand that Access Spectrum framed its request as a waiver at the recommendation of Commission staff. However, the rules in both Part 27 and Part 90 clearly provide that short-spaced applications can be granted upon a technical showing of non-interference with the relevant television station. There is no requirement that the applicant file a request for waiver, which imposes the additional and unnecessary hurdles set forth in Section 1.925 of the Commission's rules. Thus, we are very concerned that the Commission's action on the Access Spectrum request will provide an unfortunate procedural precedent that may hinder future public safety operations. We urge the Commission, regardless of the merits of the Access Spectrum request, to take this opportunity to clarify that waivers are not necessary to invoke either Section 27.60 or Section 90.545.

In any event, we also believe that, in this case, Access Spectrum satisfied the waiver requirements of Section 1.925 (b)(3)(i) as "the underlying purpose of the rules would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest..."

In addition to granting this specific waiver request, NPSTC also urges the Commission to review its overall Rules on TV interference protection. On April 21, 2003 New York State Office for Technology submitted Comments on FCC 03-08 Notice of Proposed Rulemaking (NPRM): MB Docket No. 03-15 "Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television." These comments, supported by NPSTC, called upon the Commission to examine existing interference protection criteria, which we feel are too conservative. The New York State Office for Technology comments also provided supporting technical documentation to validate its request for examining existing rules in *Annex-A* of the filing, as well as values that could be utilized in an "engineering study." NPSTC asks the Commission to consider this analysis, and move forward with the adoption of more reasonable television protection criteria.

Sincerely,

Marilyn B. Ward, Chair  
National Public Safety Telecommunications Council