

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

In the Matter of)
FIRST STUDENT, INC.) WT Docket No. 99-87
Request for Waiver of Section 90.209(b) of the)
Commission's Rules)

ORDER

Adopted: July 31, 2012

Released: July 31, 2012

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, and Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

1. Introduction. We have before us the request of First Student, Inc. (First Student),¹ a division of FirstGroup America (FGA), for a temporary waiver until January 1, 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 First Student seeks the extension for 279 PLMR stations throughout the United States.³ For the reasons set forth below, we grant the request.

2. Background. FGA is North America's largest school bus transportation services company and transports 6,000,000 students to and from school every day. Its operations include more than 600 locations, and a fleet of approximately 50,000 buses. In December 2011, FGA completed a communications system inventory audit, and concluded that compliance with the PLMR narrowbanding mandate will require replacement of 12,000 radios and reprogramming of 18,000 radios.⁴ FGA commenced the process in April 2012 and plans to narrowband twenty-four systems per month.⁵ It

1 See Request for Waiver of FCC Narrowbanding Requirement (filed May 4, 2012) (Request); Electronic Communications dated June 9, 2012, from Jennifer A. Thullen, Senior Commodity Specialist, First Student, to Scot Stone, Mobility Division, Wireless Telecommunications Bureau (Supplement). On June 19, 2012, comment was sought on the narrowbanding waiver request. See Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on First Student, Inc. Request for Waiver of the January 1, 2013 VHF-UHF Narrowbanding Deadline, Public Notice, WT Docket No. 99-87, DA 12-959 (WTB MD/PSHSB PD rel. June 19, 2012). Enterprise Wireless Alliance filed supporting comments on July 9, 2012.

2 47 C.F.R. § 90.209(b); 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).

3 A list of call signs for which First Student requests a waiver is contained in the Supplement. Most of the stations are licensed to First Student, but approximately one hundred of the call signs are held in the name of the school district or the local communications provider.

4 Request at 2.

5 Id. at 3.

expects to complete narrowbanding for 180 systems by the end of 2012 and does not request an extension for those call signs.⁶ First Student requests an extension of the narrowbanding deadline for the remaining 279 stations subject to the January 1, 2013 deadline because the national scope and complexity of its system will keep FGA from timely completing its narrowbanding efforts.

3. *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;⁷ 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.⁸ 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.⁹ 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."¹⁰ We conclude, under the circumstances presented, that strict enforcement of the deadline would be inequitable, unduly burdensome, and contrary to the public interest. In reaching this conclusion, we place significant weight on the showing that First Student has made with respect to the factors identified in the *Narrowbanding Waiver Guidance Notice*.

4. Based on the record before us, we conclude that First Student has presented sufficient facts to meet the high standard for grant of the requested waiver. First, the record shows that FGA has diligently prepared for the transition to narrowbanding by conducting an audit of over 45,000 owned and operated fixed base, mobile, and hand held radios in order to identify those in need of reprogramming or replacement, and preparing a schedule for the transition.¹¹ It has committed the necessary funds for the narrowbanding implementation, totaling more than \$10,000,000.¹² The system is large, and at some locations the equipment must be replaced rather than reprogrammed. In addition to narrowbanding, FGA also plans to upgrade its systems in order to improve their performance, which will result in improved school bus location service and child safety.¹³ Strict application of the narrowbanding rules could result in interruption of FGA's communications, which could put children's safety at risk. Therefore, based on the scope of FGA's operations, and the necessity to maintain service, we conclude that the twelve-month

⁶ See Supplement.

⁷ 47 C.F.R. § 1.925(b)(3)(i).

⁸ 47 C.F.R. § 1.925(b)(3)(ii).

⁹ 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) (*Narrowbanding Waiver Guidance Notice*); see also Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Provide Supplemental Guidance for Licensees in the 140-174 and 421-512 MHz Bands Seeking Waivers of the January 1, 2013 Narrowbanding Deadline, *Public Notice*, 27 FCC Rcd 1936 (WTB/PSHSB 2012).

¹⁰ *Narrowbanding Waiver Guidance Notice*, 26 FCC Rcd at 9649.

¹¹ Request at 2.

¹² *Id.*

¹³ *Id.* at 3.

waiver period requested by First Student is no more than is reasonably necessary to complete narrowbanding.¹⁴

5. Second, the record indicates that grant of the waiver will not significantly harm neighboring systems as FGA has identified no interoperability or interdependency with other radio systems.¹⁵ Moreover, FGA has pledged to minimize any possible negative impact on neighboring licensees of its continued wideband operation after the narrowbanding deadline by first upgrading its systems in more populated areas, and being willing to modify its location upgrade priorities to accommodate new or current licensees that experience interference.¹⁶

6. *Conclusion and Ordering Clauses.* Based on the foregoing, we conclude that grant of the requested waiver is warranted. Accordingly, we grant First Student, Inc. a waiver of the Commission's January 1, 2013 VHF/UHF narrowbanding deadline until January 1, 2014 for the call signs set forth in the waiver request.

7. 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 Waiver of FCC Narrowbanding Requirement filed by First Student, Inc. on May 4, 2012 IS GRANTED.

8. This action is taken under delegated authority pursuant to Sections 0.131, 0.331, 0.191, and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION



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¹⁴ See *Narrowbanding Waiver Guidance Notice*, 26 FCC Rcd at 9649 (waiver applicant should show that “the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process”).

¹⁵ See *id.* (waiver applicant should show “[p]lans to minimize the negative impact of extended wideband operations on co-channel and adjacent channel operations”).

¹⁶ Request at 3.