

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

In the Matter of Application of)	
)	
CITY OF MIAMI BEACH, FLORIDA)	FCC File No. 0000625164
)	
For Modification of Private Land Mobile)	
Radio Station WNF911 and Request for)	
Waiver of Inter-Category Sharing Freeze)	
in the 806-821/851-866 MHz Bands and)	
Section 90.617 of the Commission's Rules)	

ORDER

Adopted: February 24, 2003

Released: February 25, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order*, we address the above-captioned application and request for waiver (*Request*)¹, submitted by the City of Miami Beach, Florida (Miami Beach or City), seeking to modify the license for trunked 800 MHz Public Safety/Special Emergency Station WNF911, Miami Beach, Florida. In this connection, Miami Beach seeks waiver of the inter-category sharing freeze² and Section 90.617 of the Commission's Rules.³ For the reasons set forth below, we grant the *Request*.

2. *Background.* Private Land Mobile Radio (PLMR) service frequencies in the 806-821/851-866 MHz bands (the "800 MHz band") are divided into the following "categories" or "pools:" (a) Specialized Mobile Radio (SMR), (b) Public Safety, (c) Business, (d) Industrial/Land Transportation (I/LT) and (e) General.⁴ As a general matter, applicants are licensed on frequencies in the category or categories for which they meet the eligibility criteria. However, Section 90.621(e) of the Commission's Rules permits "inter-category sharing" whereby applicants that are eligible for licensing in the 800 MHz band Public Safety, I/LT or Business Categories can be licensed on channels outside of their respective categories if no channels are available in the category for which the applicant is eligible.⁵

¹ The waiver request was submitted as an attachment to the application. See Letter from Joe Leikhim, Sr., Project Manager, RCC Consultants, Inc., to FCC, FCC File No. 0000625164 (filed April 18, 2002) (*Request*).

² See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands, *Order*, 10 FCC Rcd 7350 (WTB 1995) (*Inter-Category Sharing Order*), *recon. denied*, *Memorandum Opinion and Order*, 11 FCC Rcd 1452 (WTB 1995).

³ 47 C.F.R. § 90.617.

⁴ See 47 C.F.R. §§ 90.615, 90.617. Although they are regulated under Part 90 of the Commission Rules, SMR and General frequencies generally are used to provide commercial radio services, rather than private land mobile radio services.

⁵ See 47 C.F.R. § 90.621(e)(1).

3. On April 5, 1995, the Wireless Telecommunications Bureau (Bureau) suspended the acceptance of applications for inter-category sharing of all PLMR service frequencies in the 800 MHz band.⁶ The Bureau determined that the inter-category sharing freeze was warranted to ensure that the successful resolution of the spectrum allocation issues raised in PR Docket No. 93-144, and the future radio spectrum needs of the public safety community would not be compromised.⁷

4. The City, licensee of Station WNF911, is authorized to operate a total of nine Business Category⁸ channel pairs at two sites located in Miami Beach.⁹ The City is not a Business Category eligible; it was licensed for these channels under the inter-category sharing rule prior to adoption of the *Inter-Category Sharing Order*.¹⁰ The above-captioned application seeks to modify, *inter alia*, the City's authority to operate on the nine Business Category channels by adding a third transmitter site in Miami Beach. In this connection, the City requests waiver of the Commission's Rules, *i.e.*, Section 90.617(c), and the *Inter-Category Sharing Order*.

5. *Discussion.* We may grant a request for rule waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹¹

6. Miami Beach explains that it is seeking authority to add a base station, at a third location, that would be functionally integrated with its existing two-site simulcast system to improve the public safety grade of service within the jurisdiction of the City.¹² Specifically, Miami Beach reports that the third base station proposed in the above-captioned application is needed to overcome harmful electrical interference resulting from the operations of Commercial Mobile Radio Service (CMRS) systems, as well as from other similar "cellular" type systems.¹³

⁶ See *Inter-Category Sharing Order*, note 2 *supra*.

⁷ *Id.*, 10 FCC Rcd at 7352 ¶¶ 5-7.

⁸ Business Category channels are designated by Table 3A of Section 90.617(c). For convenience, we refer to channel pairs by identifying the 851-866 MHz base-side frequency of each 806-821/851-866 MHz pair. The City's nine Business Category channels are as follows: 856.7875, 856.9125, 857.9125, 858.7875, 858.9125, 859.7875, 859.9125, 860.7875, 860.9125 MHz. See Radio Station License call sign WNF911 (Station WNF911).

⁹ The City is authorized at both sites to trunk a total of ten channels but the tenth channel is a General Category channel for which a waiver of the *Inter-Category Sharing Order* is not required. See 47 C.F.R. § 90.693 (Grandfathering provisions for incumbent licensees).

¹⁰ See *Request* at 1.

¹¹ 47 C.F.R. § 1.925(b)(3).

¹² *Request* at 1.

¹³ *Id.* at 2. We note that the Commission has recognized problematic interference to 800 MHz public safety radio communications from "cellularized" CMRS systems in the same band. See *Improving Public Safety* (continued....)

7. Miami Beach observes that granting the above-captioned application would have no effect on the availability of the Business Category channels for other applicants because the City has used the subject channels for over fifteen years and the 22 dBuV/m interference contour of the proposed facility would be contained within the 22 dBuV/m contour of existing Station WNFV911.¹⁴ In this connection, the City notes PCIA's consent to the modified operations proposed in the above-captioned application.¹⁵ The City further asserts that no Public Safety Category channels are available in the Miami Beach area and therefore, no alternative channels are available for the new station location.¹⁶ We also note that, when Miami Beach first received authorization for the Business Category channels over fifteen years ago, no in-category frequencies were available. In this connection, the record reflects that the in-category channel situation remains unchanged.¹⁷ Moreover, the City notes that it needs the same channels at the new, third location because it operates a simulcast system.¹⁸

8. Under the circumstances presented, we are persuaded by the City's contention that grant of the Request to permit grant of the above-captioned application will not frustrate the underlying purpose of the inter-category sharing freeze.¹⁹ Our decision to grant Miami Beach's request for waiver in this instance neither dilutes the availability of Public Safety Category channels for prospective non-commercial and public safety use nor encumbers existing SMR channels with shared non-SMR users.²⁰

9. Additionally, we find that the underlying purpose of the inter-category sharing freeze would not be served by application to this case. First, we note that the Bureau imposed the freeze largely to preserve the regulatory landscape pending the resolution of certain spectrum allocation issues regarding the 800 MHz band.²¹ Given that the emphasis of the inter-category sharing freeze was on vacant rather than licensed frequencies, we believe that the City's current request — for continued use of channels that it already occupies — will not undercut the purpose of the inter-category freeze. Moreover, the needs of

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Communications in the 800 MHz Band, WT Docket No. 02-55, *Notice of Proposed Rule Making*, 17 FCC Rcd 4873, 4881 ¶ 14 (2002).

¹⁴ *Request* at 1 citing 47 C.F.R. § 90.621(b)(6). An interference contour study is attached to the *Request*.

¹⁵ *Request* at 2. See Letter from Dawn Daniels-Ross, Personal Communications Industry Association (PCIA) to Wendy Caruthers, APCO (dated Sept. 4, 2001). PCIA is a Commission-certified frequency coordinator for Business Category channels. See also 47 C.F.R. § 90.621(e)(5), which requires frequency coordination from the applicable out-of-category coordinator.

¹⁶ *Request* at 2.

¹⁷ See FCC File No. 0000625164, Form 601 Schedule H, Items 3-7 (APCO Frequency Coordination No. 8YPAP810151784).

¹⁸ *Request* at 2. Miami Beach contends that a simulcast system is the most efficient use of spectrum. *Id.*

¹⁹ See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 9972, 10004-5 ¶ 103 (1997) ("This freeze was intended to stem the increase in inter-category applications for Public Safety channels by I/LT and Business licenses whose own channels were subject to increased demand from SMR applicants.").

²⁰ See *id.* at 10005 ¶ 104.

²¹ *Inter-Category Sharing Order*, 10 FCC Rcd at 7350-7351.

other public safety entities are not compromised as no additional public safety spectrum is being sought and the Business Category channels requested in the above-captioned application are unavailable to other public safety entities, under inter-category sharing, in light of the City's current authorization. Put differently, the facility proposed in the above-captioned application merely fills in a coverage gap within the currently authorized contours of Station WNF911. We also believe that granting a waiver under these circumstances is consistent with precedent.²²

10. For the reasons stated herein, we find that the City has demonstrated that grant of a waiver of the inter-category sharing freeze and Section 90.617 of the Commission's Rules is warranted under the circumstances presented. This *Order* grants Miami Beach's Request and permits the processing of the subject application for license modification. This action serves the public interest in that it will improve the coverage of the City's public safety radio system.

11. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.925 and 90.617 of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.617 of the Commission's Rules, the Request for Rule Waiver filed by the City of Miami Beach, Florida, on April 18, 2002, IS GRANTED, and application FCC File No. 0000606520 SHALL BE REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch, for processing consistent with this *Order*.

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

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

²² See American Medical Response, Inc., *Order on Reconsideration*, 15 FCC Rcd 25,587, 25,590 ¶ 9 (WTB PSPWD 2000) (granted waiver of the inter-category sharing freeze to permit a Public Safety eligible to operate on I/LT frequencies to enhance the licensee's coverage and system reliability). See also Fisher Ranch, *Order*, 17 FCC Rcd 602, 603 (WTB PSPWD 2002) (granted waiver of inter-category freeze to permit I/LT assignee to operate on a public safety channel already being used by I/LT assignor because the I/LT use of the public safety channel would have no adverse impact on public safety systems). In addition, we note that the circumstances of the Request are well within the specific circumstances to warrant a waiver of another processing freeze as indicated by the Commission in PR Docket 93-144. See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Third Report and Order*, 9 FCC Rcd 7988, 8047-8048 ¶ 108 (1994) (dockets omitted). In the *Third Report and Order*, the Commission suspended acceptance of new 800 MHz applications on the 280 SMR category channels and established the following criteria for waiver of that freeze: "We will consider requests for waiver of the application freeze for new station licenses for permanent facilities, provided that operation of such proposed stations affects coverage solely within a geographic area and on a frequency channel that already is licensed permanently to the applicant(s), i.e., there is no infringement of new spectrum or previously uncovered geographical areas."