

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

In the Matter of Applications of)	
)	
STATE OF FLORIDA)	FCC File Nos. 0000696953, 0000696964,
)	0000753533
Requests for Waiver of the Commission's Rules)	
to Permit Licensing of Stations in the 800 MHz)	
Public Safety Category on Non-Standard Channel)	
Centers)	

MEMORADNUM OPINION AND ORDER

Adopted: March 7, 2003

Released: March 11, 2003

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

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address three Requests for Waiver of the Commission's Rules (Waiver Request(s), as applicable) that are associated with the above-captioned applications¹ of the State of Florida (Florida). Florida seeks to use non-standard channel centers on channels that are "offset"² from 800 MHz Public Safety Category channels. For the reasons stated herein, we grant Florida's Waiver Requests.

II. BACKGROUND

2. *Waiver Requests.* In March 2002, Florida filed the above-captioned applications and associated requests for waiver of Section 90.617(a) of the Commission's Rules³ to be licensed at specific sites in central and southwest Florida for a total of ten channel pairs. The Waiver Requests are necessary

¹ On August 2, 2002, Florida filed an application for special temporary authority (STA) (FCC File No. 0000985338) to operate as requested on a permanent basis in FCC File No. 0000696964. Our action today granting the Waiver Request associated with the application for permanent authority moots the similar waiver request filed with the STA application. On August 5, 2002, Florida filed an application for STA and rule waiver (FCC File No. 0000985351) to operate as requested on a permanent basis in FCC File No. 0000753533. On August 21, 2002, the Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division (Division), Wireless Telecommunications Bureau, granted this STA application for a two-week testing period under call sign WPVU360.

² "Off-set" channels refer to operations on channels centered between regularly assignable channels. *See, e.g.*, State of Florida, *Memorandum Opinion and Order*, 16 FCC Rcd 2174 n.1 (WTB 2001) (*State of Florida*). The regularly assignable channels are spaced 25 kHz apart for the 800 MHz Public Safety Category channels, which results in the off-set channels being spaced 12.5 kHz away from the regularly assignable channel. *Id.*

³ 47 C.F.R. §§ 90.617(a) Table 1 (Public Safety Category 806-821/851-866 MHz Band Channels (70 Channels)). *See also* 47 C.F.R. § 90.613 (Frequencies Available), which sets forth channel designations and standard pairing for each standard channel center.

because Florida is requesting authority to use non-standard channel centers that are separated 12.5 kHz from and between standard channel centers of 800 MHz Public Safety Category channels.⁴

3. The above-captioned applications propose operations that would comprise a portion of Phase III of Florida's Joint Task Force Law Enforcement Radio Communications System,⁵ which Florida describes as a statewide 800 MHz digital, trunked radio system that utilizes channels that have been licensed on a wide-area basis for use at multiple sites.⁶ These include thirty "Public Safety National Plan" channels,⁷ twenty channels in the General Category,⁸ and nineteen offset channels in the General Category.⁹

4. Florida states that it attempted to satisfy the channel needs of all sites in the statewide system from its licensed wide-area spectrum resources.¹⁰ In the case of the sites proposed in the above-captioned applications, however, Florida states that it has been unable to overcome the systematic channel shortage resulting from the combined channel demands of central and southwest Florida.¹¹ In this connection, Florida submits that all of the regularly assignable Public Safety Category channels in the areas near the proposed sites are licensed to public safety agencies.¹² Additionally, Florida reports that it is unlikely to receive additional spectrum assignments in the 821-824/866-869 MHz band because the Regional Plan for Region 9 maintains a clear distinction between the thirty channels allotted for the statewide system and the channels allotted for all other (non-statewide) public safety agencies.¹³ Furthermore, although the regional planning committee for Region 9 could allot "non-statewide" channels for the statewide system, Florida notes that it is "hesitant to request for the State a new allotment of

⁴ Specifically, Florida proposes to operate the following offset channel pairs at or near Fort Meade, Florida: 811/856.4500 MHz, 812/857.4750 MHz, 812/857.9750 MHz, 813/858.4750 MHz. *See* FCC File No. 0000696953 (as amended Mar. 4, 2002). Florida proposes to operate the following offset channel pairs at or near Englewood, Florida: 811/856.9500 MHz, 812/857.9500 MHz, 813/858.9500 MHz, 814/859.9500 MHz. *See* FCC File No. 0000696964 (as amended Mar. 4, 2002). Florida proposes to operate the following offset channel pairs at or near Pinecrest, Florida: 809/854.9750 MHz, 810/855.7250 MHz. *See* FCC File No. 0000753533 (as amended Mar. 6, 2002).

⁵ *See, e.g.* FCC File No. 0000696953, Waiver Request at 1. Florida notes that its Joint Task Force Law Enforcement Radio Communications System is subject to an extended implementation or "slow growth" schedule. *See, e.g.*, FCC File No. 0000696953, Attachment 1.

⁶ *See, e.g.* FCC File No. 0000696953, Waiver Request at 2.

⁷ No assignments are made in the 821-824/866-869 MHz band until a regional plan for the area is approved by the Commission. *See* 47 C.F.R. § 90.16 (Public Safety National Plan). The area that comprises the State of Florida is "Region 9," and Florida states that the thirty statewide channels are defined in the Commission-approved Region 9 Public Safety Radio Plan, as amended. *See, e.g.* FCC File No. 0000696953, Waiver Request at n.1.

⁸ *Waiver Request* at n.2.

⁹ *Id.* at n.3 *citing* State of Florida, *Memorandum Opinion and Order*, 16 FCC Rcd 2174 (2001) (nineteen offset channels).

¹⁰ *See, e.g.* FCC File No. 0000696953, Waiver at 2.

¹¹ *Id.* at 1. Florida notes in particular the combined channel demands of Tampa-St. Petersburg and Orlando in central Florida.

¹² *Id.*

¹³ *Id.* at 3.

frequencies which have thus far been preserved by the Region-9 Plan for use by local public safety agencies.”¹⁴

5. Florida contends that grant of the Waiver Requests would not result in interference to incumbent operations and would be consistent with previously granted waivers of Section 90.617(a) (Table 1) to Florida public safety agencies to permit licensing of 12.5 kHz offset frequencies.¹⁵ For each of the requested offset channels, Florida submits interference studies to show that grant of the requested waivers would not result in interference to licensees. Moreover, Florida states that these interference studies were made “without consideration of any existing station contributing to the interference levels of incumbents.” Florida believes that such studies “provided a worse-case scenario with maximum opportunity” for its proposed operations “to interfere with incumbents.”¹⁶ Florida also notes that the existing public safety systems of county and city agencies have coverage over well-defined, fixed, jurisdictions, which indicates that compatible use of the offset channels could be successful over a long period of time.¹⁷ In this connection, Florida states that the above-captioned applications seek authority to operate on a primary basis.¹⁸ On April 5, 2002, we released a *Public Notice* seeking comment on Florida’s Waiver Requests.¹⁹

III. DISCUSSION

6. Section 1.925 of the Commission’s Rules specify that in order to obtain a waiver of the rules a petitioner must demonstrate that (1) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case and that grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or no reasonable alternative exists.²⁰ Based upon our review of the totality of the circumstances presented, we find that Florida has demonstrated that grant of the requested waivers is warranted.

7. First, we find that grant of Florida’s request to use the subject offset channels would not frustrate the underlying purpose of Section 90.617(a) of the Commission’s Rules. We believe, as a

¹⁴ *Id.* With regard to the proposed Fort Meade site, Florida states that only one Public Safety National Plan channel is available that appears to meet the interference criteria of the Florida Region 9 Public Safety Plan. In this connection, Florida contends that it is more appropriate to acquire a single group of four offset channel pairs. *Id.*

¹⁵ Waiver Requests.

¹⁶ See, e.g., Waiver Requests at Interference Study and Affidavit of Gary L. Stanford.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by the State of Florida to Allow Use of Public Safety Offset Channels, *Public Notice*, 17 FCC Rcd 6104 (WTB PSPWD 2002) (*Public Notice*). The *Public Notice* specifically referenced the Waiver Requests associated with the two applications filed on March 4, 2002. The Waiver Request associated with the application filed on March 6, 2002, raises similar if not identical issues to the Waiver Requests filed on March 4, 2002; thus, we address all three Waiver Requests herein. No comments have been filed to date. On August 21, 2002, the Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division (Division), Wireless Telecommunications Bureau granted Florida a limited special temporary authority (STA) for two weeks to allow Florida to test the frequencies requested in application FCC File No. 0000753533. See FCC File No. 0000985351 (filed Aug. 5, 2002). Florida’s STA request to use the frequencies requested in FCC File No. 0000696964, however, remains pending. See FCC File No. 0000985338 (filed Aug. 2, 2002). Since the filing of the waiver requests, Florida notes that it has completed construction of the Englewood and Pinecrest sites in accordance with its slow growth schedule. See, e.g., FCC File Nos. 0000985351, 0000985338 at STA Request.

²⁰ See 47 C.F.R. § 1.925(b)(3)(i)-(ii); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

general matter, that the underlying purpose of Section 90.617(a) is to further the Commission's goals of promoting technical flexibility and spectrum efficiency, while preventing harmful interference to licensed operations. In this regard, the Commission allotted the 800 MHz Public Safety Category channels in an effort to accommodate the spectrum requirements of public safety land mobile radio systems in implementing slow growth communications systems and affording them flexibility regarding technologies employed in utilizing these channels.²¹ In this connection, the Commission noted the rapid growth of 800 MHz systems and public safety spectrum requirements.²² Here, the requested offset frequencies are proposed for use within Florida's 800 MHz digital trunked statewide system at specific mobile relay (FB2) sites and for associated mobiles (MO) and controls (FX1).²³ Granting the Waiver Requests to allow use of the subject offset channels would enable Florida to make more efficient use of its 800 MHz licensed spectrum resources, given that without the waivers the specific offset channels would not be licensed. Moreover, we believe that grant of the requested waivers would help Florida address what it describes as a "systemic channel shortage" in southwest and central Florida²⁴ and without interjecting uncertainty into the planning efforts of local public safety agencies allotted "non-statewide" spectrum under the 800 MHz band Region 9 Plan.²⁵ Therefore, we agree with Florida that grant of the Waiver Requests would improve spectrum efficiency in otherwise congested areas. Against this backdrop, we believe that it would be contrary to the public interest to prohibit Florida from using the subject channels when it is in a position to make use of these channels as part of its statewide system in a manner that would not adversely affect other licensees.

8. Further based on the information before us, we believe that grant of Florida's request would not result in harmful interference to other licensees. In connection with each of the requested offset channels, Florida has submitted interference studies that demonstrate that grant of the requested waivers would not result in harmful interference to incumbent public safety operations in southwest and central Florida. Moreover, given that each of the proposed offset channels is bounded on both sides by Public Safety Category channels, no other service category will be affected.²⁶ Thus, based on the record before us, we agree with Florida that the requested offset frequencies would not cause interference to incumbent licensees.

²¹ See Amendment of Part 90 of The Commission's Rules to Designate Frequencies in the 806-821 and 851-866 MHz Bands for Slow-Growth Land Mobile Radio Systems of Utilities and Public Safety Agencies, PR Docket No. 79-191 *Report and Order*, 48 Rad. Reg. 2d (P&F) 837, 838 ¶ 2 FCC 80-663 (November 25, 1980) (*Slow Growth Report and Order*). The initial allotment to public safety was fifty channels. *Id.* This was later increased to seventy channels. See Amendment of Part 90 of the Commission's Rules to Release Spectrum in the 806-21/851-866 MHz Bands and to Adopt Rules and Regulations Which Govern Their Use, Amendment of Part 90 of the Commission's Rules to Facilitate Authorization of Wide-Area Mobile Radio Communications Systems, An Inquiry Concerning the Multiple Licensing of 800 MHz Radio Systems ('community repeaters'), Amendment of Section 90.385(c) of the Commission's Rules to Allow Transmission of Non-Voice Signals at 800 MHz, PR Docket No. 79-191, PR Docket No. 79-334, PR Docket No. 79-107, PR Docket No. 81-703, *Second Report and Order*, 52 Rad. Reg. 2d (P&F) 11, FCC 82-338 (Aug. 16, 1982) (*Second Report and Order*).

²² See, e.g., *Second Report and Order*, 52 Rad. Reg. 2d (P&F) at 27 ¶ 51.

²³ See, e.g., FCC File No. 0000696953, Form 601, Schedules D and H; Waiver Request at 2.

²⁴ See *supra* note 11 and accompanying text.

²⁵ We note that in instances where there is insufficient spectrum to satisfy the needs of all eligibles, the Commission "leave[s] it to the regional planning committees" to determine which entities should obtain channel assignments. See, e.g., Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821-824/866-869 MHz Bands by the Public Safety Services, GN Docket No. 87-112, *Report and Order*, 3 FCC Rcd 905, 906 ¶ 13 (1987) (*NPSPAC Report and Order*).

²⁶ See, e.g., FCC File No. 0000696953, Waiver Request at 2.

9. Second, we conclude that granting Florida's request is in the public interest. The Commission has stated on numerous occasions that one of its primary goals is to provide for the communications needs of the public safety community.²⁷ We find that it significant the operating authority requested in the Waiver Requests will allow Florida to expand and improve the coverage of its statewide public safety communications system in specific sites central and southwest Florida. This in turn will allow public safety entities to communicate with one another with improved efficiency.²⁸ In sum, we believe that grant of the Waiver Requests will allow Florida to perform its critical public safety responsibilities such as protection of life and property more effectively and efficiently. In light of the importance of the requested channels to Florida's statewide system, which Florida submits will be the primary communications means for all state law enforcement agencies, we agree with Florida that the requested offset channels should be granted primary status. Accordingly, we conclude that granting each of the Waiver Requests associated with the above-captioned applications waiver is in the public interest.

IV. CONCLUSION

10. For the reasons discussed herein, we conclude that grant of Florida's Waiver Requests is warranted and furthers the public interest. We therefore grant Florida's Waiver Requests to allow the use of the ten offset channel pairs requested in the above-captioned applications.

V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) 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, each Request for Waiver filed by the State of Florida, on March 4 and 6, 2002, in the above-captioned applications, ARE GRANTED to the extent indicated herein.

12. IT IS FURTHER ORDERED that, pursuant to Section 4(i) and 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309(f), and Section 1.931 of the Commission's Rules, 47 U.S.C. § 1.931, the Waiver Request filed by the State of Florida, on August 2, 2002, in FCC File No. 0000985338 (Request for Special Temporary Authority), IS DISMISSED as moot.²⁹

13. IT IS FURTHER ORDERED that FCC File Nos. 0000696953, 0000696964, 0000753533, and 0000985338, SHALL BE REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch, for processing consistent with the Commission's Rules and this *Order*.

14. This action is taken pursuant to 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

²⁷ See, e.g., *NPSPAC Report and Order*, 3 FCC Rcd 905.

²⁸ See, e.g., *supra* note 10 and accompanying text.

²⁹ See note 1, *supra*.