

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

In the Matter of Application of	)	
	)	
DELAWARE, STATE OF	)	File No. 0002152028
	)	
Request for Waiver of Intercategory Sharing	)	
Freeze in the 800 MHz Frequency Band	)	

**ORDER**

**Adopted: June 2, 2006**

**Released: June 5, 2006**

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

1. On May 6, 2005, the State of Delaware (Delaware) filed an application for 800 MHz frequencies in the Dover, Delaware area.<sup>1</sup> In connection with this application, Delaware requested a waiver of the Wireless Telecommunications Bureau's (Bureau) freeze on 800 MHz intercategory sharing in order to permit Delaware to utilize certain Business/Industrial/Land Transportation (B/ILT) channel pairs.<sup>2</sup> For the reasons stated below, we grant the intercategory sharing waiver request.

2. *Background.* On April 5, 1995, the Bureau placed a freeze on the filing of new applications for intercategory sharing on all private land mobile radio service frequencies in the 806-821/851-866 MHz frequency bands.<sup>3</sup> The Bureau determined that the inter-category sharing freeze was warranted to curb the increase in inter-category applications for Public Safety channels by I/LT and Business licensees whose own channels were subject to increased demand from Specialized Mobile Radio applicants and to maintain a stable spectrum environment until the geographic licensing issues raised in PR Docket 93-144 had been resolved.<sup>4</sup>

3. The Commission has designated frequencies requested by Delaware for use by eligible applicants in the B/ILT Radio Category.<sup>5</sup> Delaware, as a public safety entity, needs a waiver to utilize the channels. In support of its waiver request, Delaware submits a letter from its 800 MHz frequency coordinator stating that there is no other spectrum allocated to public safety services that is immediately available to satisfy Delaware's proposed use.<sup>6</sup>

4. *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

<sup>1</sup> See FCC File No. 0002152028 (filed May 6, 2005; amended May 13, 2005, December 5, 2005, and December 13, 2005).

<sup>2</sup> Delaware seeks a waiver to use the following frequency pairs: 810/855.5375 MHz, 810/855.7875 MHz, and 812/857.8625 MHz. See attachment to FCC File No. 0002152028.

<sup>3</sup> See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz bands, *Order*, 10 FCC Rcd 7350, 7350 ¶ 1 (WTB 1995).

<sup>4</sup> *Id.* at 7532 ¶ 7.

<sup>5</sup> See 47 C.F.R. § 90.617(b), Table 2A.

<sup>6</sup> See Letter dated December 13, 2005 from Richard R. Reynolds, APCO's Frequency Advisor-Delaware, to Federal Communications Commission (Concurrence Letter).

application to the present case, and that a grant of the waiver would be in the public interest;<sup>7</sup> 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.<sup>8</sup> We conclude that Delaware has demonstrated that its request should be granted under the circumstances presented.

5. With respect to the first prong, Delaware has demonstrated that grant of the waiver would not frustrate the underlying purpose of the freeze—protecting channels for public safety use. Indeed, Delaware, as a public safety entity, is a member of the class whose interests the freeze is intended to protect.<sup>9</sup> Delaware needs the B/ILT channels because there are no other suitable channels within Delaware's normal authorized bands that would not cause interference to co- and adjacent channel users.<sup>10</sup> Moreover, we note that Delaware has received concurrence from B/ILT frequency coordinators demonstrating that grant of the waiver would not harm the interest of those users.<sup>11</sup> We also believe that grant of a waiver would be in the public interest. The frequencies will be part of Delaware's statewide 800 MHz system, which will improve coverage and interoperability throughout Delaware.<sup>12</sup>

6. Accordingly, IT IS ORDERED, pursuant to Sections 2 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152, 154(i), and Section 1.925 of the Communications Act of 1934, as amended, 47 C.F.R. § 1.925, the request for waiver filed on May 6, 2005 by the State of Delaware in connection with FCC File No. 0002152028 IS GRANTED, and application FCC File No. 0002152028 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

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

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau

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<sup>7</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>8</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>9</sup> See, e.g., American Medical Response, Inc., *Order on Reconsideration*, 15 FCC Rcd 25587, 25591 ¶ 10 (WTB PSPWD 2000).

<sup>10</sup> See Concurrence Letter.

<sup>11</sup> See Letter dated January 14, 2005, from Julia R. Biggs, Spectrum Manager, ITA, to Federal Communications Commission; Memorandum dated April 18, 2005 from Klaus Bender, AMTA Spectrum Management Services.

<sup>12</sup> See [www.state.de.us/pscomm/800mhz\\_radio\\_system.htm](http://www.state.de.us/pscomm/800mhz_radio_system.htm); see also Report to Congress on the Study to Assess Short-Term and Long-Term Needs for Allocations of Additional Portions of the Electromagnetic Spectrum for Federal, State and Local Emergency Response Providers, ¶ 12 (Dec. 19, 2005) (noting Delaware's comments that its strategic plan for emergency response is predicated on the availability of 700 MHz and 800 MHz spectrum).