

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

In the Matter of Application of)	
)	
CUMBERLAND, COUNTY OF)	File No. 0001840813
)	
Request for Waiver of Intercategory Sharing)	
Freeze in the 800 MHz Frequency Band)	

ORDER

Adopted: August 8, 2006

Released: August 9, 2006

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

1. *Introduction.* On August 13, 2004, the County of Cumberland (Cumberland) filed an application for certain 800 MHz frequencies in Cumberland County, Pennsylvania.¹ In connection with this application, Cumberland requested a waiver of the Commission's freeze on 800 MHz intercategory sharing in order to permit Cumberland to utilize a Business/Industrial/Land Transportation (B/ILT) frequency pair.² Cumberland also requested a waiver of Section 90.621(b)(4), the co-channel "short spacing" rule.³ For the reasons stated below, we grant the intercategory sharing waiver request and dismiss the "short spacing" waiver request as moot.

2. *Background.* On April 5, 1995, the Bureau suspended (froze) the acceptance of new applications for intercategory sharing on all private land mobile radio services (PLMRS) frequencies in the 806-821/851-866 MHz frequency bands.⁴ The Bureau imposed the freeze in order to preserve the regulatory landscape pending the successful resolution of spectrum allocation issues raised by the public safety community.⁵

3. In its application, Cumberland proposes to operate a new PLMRS system in the 800 MHz band throughout Cumberland County.⁶ Cumberland seeks a waiver of the Commission's freeze on 800 MHz intercategory sharing because Cumberland is ineligible to operate on one of the frequency pairs it requests in its application (810/855.7875 MHz).⁷ Specifically, the Commission has designated the

¹ See FCC File No. 0001840813 (filed August 13, 2004 and amended March 21, 2005).

² See attachment to FCC File No. 0001840813 (Waiver Request).

³ *Id.* See 47 C.F.R. § 90.621(b)(4).

⁴ See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz bands, *Order*, 10 FCC Red 7350, 7353 ¶ 9 (WTB 1995).

⁵ *Id.* at 7352 ¶ 7.

⁶ See FCC File No. 0001840813.

⁷ Waiver Request.

frequency pair 810/855.7875 MHz requested by Cumberland for use by eligible applicants in the B/ILT Radio Category.⁸ Cumberland, as a public safety entity, therefore needs a waiver to utilize this frequency pair. In support of its waiver request, Cumberland submits letters from 800 MHz frequency coordinators stating there is no other spectrum allocated to public safety services that is immediately available to satisfy Cumberland's requested public safety use.⁹

4. Furthermore, Cumberland requests a waiver of the Commission's co-channel short-spacing requirements because Cumberland's proposed station on the B/ILT frequency pair 810/855.7875 MHz will be located 110 kilometers (68 miles) from co-channel Station WPIR214, Baltimore, Maryland licensed to Nextel Communications of the Mid-Atlantic, Inc. (Nextel).¹⁰ Section 90.621(b) states that the minimum separation between co-channel stations is 113 kilometers (70 miles).¹¹ Nonetheless, Section 90.621(b)(4) specifies that co-channel stations may be separated by less than 113 kilometers (70 miles) but not less than 88 kilometers (55 miles) if the proposed station satisfies certain transmitter power and antenna height limits listed in a short-spacing table.¹² Our staff has confirmed that Cumberland's proposed operation on the B/ILT frequency pair 810/855.7875 MHz will comply with the short-spacing table in Section 90.621(b)(4) with respect to Nextel's station. Consequently, Cumberland's short-spacing waiver is moot.

5. *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 grant of the waiver would be in the public interest;¹³ 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.¹⁴ We conclude that Cumberland has demonstrated that its request for waiver of the freeze on 800 MHz intercategory sharing should be granted under the circumstances presented.

6. With respect to the first prong, Cumberland has demonstrated that grant of the waiver would not frustrate the underlying purpose of the freeze—protecting channels for public safety use. Indeed, Cumberland, as a public safety entity, is a member of the class whose interests the freeze is intended to protect.¹⁵ Cumberland needs the B/ILT channels because there are no other suitable channels within Cumberland's normally authorized bands that would not cause interference to co- and adjacent channel

⁸ See 47 C.F.R. § 90.617(b), Table 2.

⁹ See Letter dated August 11, 2005, from John Horsley, Executive Director, American Association of State Highway and Transportation Officials (AASHTO) to Federal Communications Commission; Letter dated December 23, 2005, from Julia Biggs, Enterprise Wireless Alliance to John Horsley, Executive Director, AASHTO (Concurrence Letters).

¹⁰ Waiver Request.

¹¹ 47 C.F.R. § 90.621(b).

¹² 47 C.F.R. § 90.621(b)(4).

¹³ 47 C.F.R. § 1.925(b)(3)(i).

¹⁴ 47 C.F.R. § 1.925(b)(3)(ii).

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

users within their respective approved bands.¹⁶ Moreover, the fact that Cumberland received concurrence from a B/ILT frequency coordinator demonstrates that grant of the waiver would not be inimical to B/ILT interests.¹⁷ Cumberland has established that it has no reasonable alternative other than intercategory sharing because there is no spectrum allocated to public safety services immediately available to satisfy Cumberland's requested public safety use. In addition, grant of the requested waiver will be in the public interest, because it will improve public safety communications in Cumberland County.¹⁸

7. 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 1.3 of the Communications Act of 1934, as amended, 47 C.F.R. § 1.3, the waiver request by the County of Cumberland dated August 13, 2004 and filed in connection with FCC File No. 0001840813 SHALL BE GRANTED to the extent indicated herein.

8. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) 309(a) that application FCC File No. 0001840813, filed on August 13, 2004 SHALL BE PROCESSED in accordance with this decision.

9. This action is taken pursuant to delegated authority granted under the provisions of 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
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Wireless Telecommunications Bureau

¹⁶ See Concurrence Letters.

¹⁷ *Id.*

¹⁸ *Cf.* State of Delaware, *Order*, 21 FCC Rcd 6332, 6333 ¶ 5 (WTB PSCID 2006).