

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

In the Matter of)	
)	
HALL AND BARTLEY)	FCC File Nos. 0002094603, 0002058468
)	
Requests for Waiver of the Application Freeze in the)	
900 MHz Band)	

ORDER

Adopted: December 11, 2006

Released: December 11, 2006

By Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order*, we address requests for waiver¹ of the 900 MHz application freeze² filed by Hall and Bartley (HB). For the reasons stated below, we grant the waiver requests, and will process the above-captioned applications.

2. *Background.* HB was granted licenses for 900 MHz Business Radio Service Stations WPPE708, Middletown, California, and WPPE870, Hopland, California, in November 1999, for a five-year license term. On August 23, 2004, the Commission sent renewal reminder letters to HB.³

3. On September 17, 2004, the Wireless Telecommunications Bureau (Bureau) instituted a freeze on new 900 MHz applications because it feared that the exceptionally large number of applications it had received could compromise its ability to accommodate displaced systems during the 800 MHz band reconfiguration process designed to resolve interference to public safety communications.⁴ The Bureau stated that it would continue to accept applications for license modification and would entertain requests for waiver of the 900 MHz application freeze.⁵ The Commission subsequently released a *Notice of Proposed Rulemaking* seeking comment on geographic licensing in the 900 MHz band, which reaffirmed

¹ Waiver Requests filed in association with FCC File Nos. 0002058468 (filed Feb. 23, 2005), 0002094603 (filed Mar. 21, 2005) (Petitions). The requests are erroneously captioned as petitions for reconsideration, but were properly filed in the Universal Licensing System as waiver requests, and will be treated as such.

² See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC 18277 (WTB 2004) (*900 MHz Freeze PN*); see also Amendment of Part 90 of the Commission’s Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pools, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 05-62, 20 FCC Rcd 3814 (2005) (*900 MHz NPRM*).

³ See FCC Ref. Nos. 2989334, 2989335.

⁴ See *900 MHz Freeze PN*, 19 FCC Rcd at 18277-78.

⁵ *Id.* at 18278 n.7.

the freeze and reiterated that it would consider requests for waiver of the freeze.⁶

4. HB's licenses for Stations WPPE708 and WPPE870 expired by their own terms in November 2004.⁷ HB filed the instant applications for new stations and associated waiver requests in early 2005. The applications seek authorization for the same locations and frequencies as were authorized to Stations WPPE708 and WPPE870. HB states that it is a local government architecture and planning operation, and that it utilized Stations WPPE708 and WPPE870 to provide emergency building regulatory services on a twenty-four hour basis for county and city projects where cellular service is either unavailable or unreliable.⁸ It asserts that its services are critical to guaranteeing efficient and safe operation of city and county services that have no alternative options for reliable communications.⁹ Presently HB is operating the facilities formerly licensed under Call Signs WPPE708 and WPPE870 pursuant to Special Temporary Authority (STA) under Call Signs Station WQCE414 and WQCE472.¹⁰

5. *Discussion.* The Commission will grant a waiver of its rules if (a) it is in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case, or (b) 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 the applicant has no reasonable alternative.¹¹ We conclude that a waiver is warranted in the present matter under the first prong of the waiver standard.

6. We do not believe the underlying purpose of the 900 MHz application freeze would be frustrated if a waiver is granted in this case, because HB only seeks to obtain licenses for the exact facilities it operated prior to the institution of the application freeze.¹² We find it significant that the applications do not request to modify any aspect of its former licenses. As a result, we believe that grant of the waiver will not interfere with the spectrum needs associated with the 800 MHz proceeding because HB was an established 900 MHz licensee before the 800 MHz reconfiguration decision and, had it filed timely renewal applications, would not have been affected by the application freeze or the *900 MHz NPRM*. Thus, grant of the waivers will not interfere with the purpose of the 900 MHz freeze. We also agree with HB that grant of the instant waiver requests is in the public interest, as grant of the waivers will promote the safety of life and property.¹³

⁶ See *900 MHz NPRM*, 20 FCC Rcd at 3836 ¶ 67.

⁷ HB suggests that it failed to file timely renewal applications because its station records were damaged in a flood. See Petitions at 2. However, HB does not state when the flood occurred, or explain how the flood impaired HB's ability to respond to the renewal reminder letters mailed in August 2004. Thus, we are unable to conclude, based on the information before us, whether and to what extent the flood is relevant to the matter at hand.

⁸ See *id.* at 1.

⁹ See *id.* at 2.

¹⁰ The STAs currently are scheduled to expire on May 13, 2007.

¹¹ See 47 C.F.R. § 1.925(b)(3).

¹² See *Disneyland Resort, Order*, 21 FCC Rcd 536, 539 ¶ 9 (WTB PSCID 2006).

¹³ Notwithstanding our decision in this particular case, we caution that a licensee must abide by the Commission's filing deadlines. All licensees are responsible for filing renewal applications and related petitions in a timely (continued....)

7. 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, the requests for waiver filed in association with applications FCC File Nos. 0002094603, 0002058468 ARE GRANTED, and the applications SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

8. 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

Scot Stone
Deputy Chief, Mobility Division
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manner. Thus, we admonish HB to conform to this requirement in the future and to take any necessary steps to avoid future occurrences, because the Commission does not routinely grant such waiver requests.