

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

In the Matter of )
GEORGIA PACIFIC CORPORATION )
For Authority to Operate an Industrial Land ) FCC File No. 0002355177
Transportation Station in Cedar Springs, Georgia )
and )
Request for Waiver of 900 MHz Application )
Filing Freeze )

ORDER

Adopted: December 28, 2006

Released: December 29, 2006

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. We address a request for waiver filed by the Georgia Pacific Corporation (GPC).1 GPC seeks a waiver of the 900 MHz application freeze2 prohibiting the filing of new license applications. GPC requests a waiver to permit the processing of its application for frequencies formerly authorized to GPC under 900 MHz Trunked, Industrial Land Transportation Station WPPW335 in Cedar Springs, Georgia. For the reasons stated below, we grant the request for waiver and permit the processing of GPC's application.

2. Background. On February 7, 2000, the Commission authorized GPC to operate the facilities authorized under Call Sign WPPW335. GPC operates the station to facilitate security, safety and maintenance activities at its paper manufacturing plant.3 GPC claims that the facilities were constructed and operation commenced shortly thereafter and the facilities had been in continuous use since.4

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.5 The Bureau

1 See FCC File No. 0002355177 (Oct. 21, 2005) Request for Waiver of 900 MHz Freeze (Waiver Request).

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 Waiver Request at 2.

4 Id. at 1.

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

stated that it would continue to accept applications for license modification and would entertain requests for waiver of the 900 MHz application freeze.<sup>6</sup> The Commission subsequently released a *Notice of Proposed Rulemaking* seeking comment on geographic licensing in the 900 MHz band, which reaffirmed the freeze and reiterated that it would consider requests for waiver of the freeze.<sup>7</sup>

4. On November 15, 2004, the Commission sent GPC a license renewal reminder letter.<sup>8</sup> GPC, however, failed to file a timely license renewal application.<sup>9</sup> On February 7, 2005, the authorization for Call Sign WPPW335 expired by its own terms. On October 21, 2005, GPC filed the subject application, which seeks a new permanent authorization to cover its operation of the existing facilities.<sup>10</sup> GPC requests a waiver of the freeze on new 900 MHz licenses applications to permit the processing of its application.<sup>11</sup>

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 a grant of the waiver would be in the public interest;<sup>12</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>13</sup> We conclude that GPC has demonstrated that its waiver request would not frustrate the underlying purpose of the freeze.

6. The purpose of the 900 MHz Freeze is to preserve adequate spectrum resources during band reconfiguration as well as to preserve the spectrum landscape until the Commission resolves the geographic licensing issues raised in the *900 MHz NPRM*.<sup>14</sup> GPC contends that grant of the instant application to continue existing operations will not reduce the amount of unoccupied spectrum.<sup>15</sup> GPC argues that because the freeze was intended to preserve vacant channels rather than to clear occupied channels, and that GPC's request is only for continued use of channels that it already occupies and occupied prior to the enactment of the freeze, the underlying purpose of the freeze would not be served by applying it in this case.<sup>16</sup> We agree. As noted above, GPC was licensed for Station WPPW335 for five years until its license expired. Thus, GPC was authorized to operate Station WPPW335 prior to the decision to institute the 900 MHz freeze. GPC does not seek to modify any of its formerly licensed channels. Because grant of the underlying application will restore the channels and exact operating

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<sup>6</sup> *Id.* at 18278 n.7.

<sup>7</sup> *See 900 MHz NPRM*, 20 FCC Rcd at 3836 ¶ 67.

<sup>8</sup> *See* FCC Renewal Reminder Letter 3136139 (Nov. 15, 2005).

<sup>9</sup> *See* Waiver Request at 1.

<sup>10</sup> *See id.* In a separate application, GPC filed for Special Temporary Authority (STA) to operate the facilities pending resolution of the instant application for permanent authority. *Id.* *See* FCC File No. 0002362908 (Oct. 28, 2005) and STA Request and Request for Waiver. GPC's STA request stated that it was seeking to operate under the same parameters as the previously licensed Call Sign WPPW335. *See* STA Request at 1. GPC was granted an STA under Call Sign WQDU215.

<sup>11</sup> *See* Waiver Request.

<sup>12</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>13</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>14</sup> *See 900 MHz Freeze PN*, 19 FCC Rcd 18277; *900 MHz NPRM*, 20 FCC Rcd at 3836 ¶ 67

<sup>15</sup> *See* Waiver Request at 1.

<sup>16</sup> *Id.*

parameters of the previous authorization, we believe that grant of this waiver will not interfere with the spectrum needs associated with the 800 MHz proceeding. Given that GPC was an established 900 MHz licensee before the 800 MHz reconfiguration decision, it would not have been affected by the application freeze had it filed a timely renewal application. Thus, grant of the waiver will not interfere with the purpose of the 900 MHz freeze.<sup>17</sup>

7. Grant of the waiver request would serve the public interest. The waiver would permit the processing of an application that seeks to preserve critical communications used daily by paper mill employees to coordinate and perform work activities efficiently and safely. Furthermore, one use of the radio system is to facilitate the mill's emergency response crew, which is responsible for responding to fires, hazardous materials spills or other accidents that could occur on the 700-acre site, which is located in an isolated area.<sup>18</sup> Accordingly, we believe that grant of a waiver of the 900 MHz Freeze is important for the safe operation of GPC's paper mill. For the aforementioned reasons, we grant GPC's request for waiver of the 900 MHz Freeze and permit the processing of its application. To the extent that GPC has operated on the subject frequencies without Commission authorization during periods after the expiration of the license for Station WPPW335 when GPC did not have an STA, our decision is without prejudice to any Enforcement Bureau action.<sup>19</sup>

8. Accordingly, IT IS ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Section 1.925 of the Commission's Rules 47 C.F.R. § 1.925, the waiver request filed by the Georgia Pacific Corporation in connection with FCC File No. 0002355177 and dated October 21, 2005 IS GRANTED.

9. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) that application FCC File No. 0002355177, filed on October 21, 2005, SHALL BE PROCESSED in accordance with this *Order*.

10. This action is taken under delegated authority 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

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>17</sup> See, e.g., Disneyland Resort, *Order*, 21 FCC Rcd 536 (WTB PSCID 2006) (*Disneyland Resort*).

<sup>18</sup> GPC adds that grant of the waiver request would enhance the accuracy of the Commission's licensing database, thus promoting the public interest goal in efficient utilization of the spectrum. See Waiver Request at 2.

<sup>19</sup> See 47 C.F.R. § 1.903 (authorization required). 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 manner. Thus, we admonish GPC 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.