



Federal Communications Commission  
Washington, D.C. 20554

July 10, 2007

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DA 07-3129

Chief Jack Murphy  
City of Brooklyn Police  
7619 Memphis Avenue  
Brooklyn, Ohio 44144

Charles P. Adams  
Director, Emergency Management Agency  
Medina County, Ohio  
555 Independence Drive  
Medina, Ohio 44256

Re: Petition for Reconsideration to set aside the modification application for 800 MHz  
Public Safety Station WPQF782, State of Ohio

Dear Sirs:

This letter is in response to a petition for reconsideration,<sup>1</sup> filed on May 26, 2005, by the City of Brooklyn, Cuyahoga, Ohio and the County of Medina, Ohio (Joint Petitioners). The Petition seeks to set aside the Commission's grant of the State of Ohio's application for modification for Station WPQF782.<sup>2</sup> For the reasons stated below, we dismiss the Petition.

*Background.* Ohio is authorized to use Station WPQF782 as part of a wide-area public safety communications system operated by the State and serving police, fire, EMS and other governmental agencies in and around Cuyahoga and Medina counties.<sup>3</sup> On March 30, 2005, the State of Ohio (Ohio) filed an application to modify Station WPQF782.<sup>4</sup> Ohio filed the modification application to add two frequencies (866.7625 MHz and 868.7375 MHz) to its authorization for Station WPQF782 in order to increase the State's footprint at Cleveland Hopkins International Airport from three to five voice channels. On April 26, 2005, the Licensing and Technical Analysis Branch of the Wireless Telecommunications Bureau granted Ohio's modification application.<sup>5</sup>

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<sup>1</sup> Petition for Reconsideration to Deny the Grant of Modification, filed by City of Brooklyn, Cuyahoga, Ohio and the County of Medina, Ohio, dated May 24, 2004 (Petition). The Joint Petitioners raise several arguments regarding the actions taken by the State of Ohio, Region 33 and IMSA. To the extent that we find these arguments beyond the scope of our consideration of the instant Petition, we hereby decline to address such allegations in this order.

<sup>2</sup> See File No. 0002106060 (filed Mar. 30, 2005, amended on April 22, 2005). The Wireless Telecommunications Bureau granted the application on April 26, 2005.

<sup>3</sup> Fixed location address and mobile area of operation specifications for WPQF782, indicate five site locations in the City of Cleveland, City of Warrensville, City of Brunswick and statewide.

<sup>4</sup> See File No. 0002106060 (filed Mar. 30, 2005), Notice of Return Letter, Ref. No. 3429957 dated Apr. 6, 2005 sent to State of Ohio advising that frequencies added to locations 1, 3, and 4 show an ERP near the Canadian Border region that exceeded the allowed ERP, and the antenna EAH must be revised. The licensee was directed to amend its application accordingly.

<sup>5</sup> See File No. 0002106060 (filed Mar. 30, 2005, amended on April 22, 2005). The Wireless Telecommunications Bureau granted the application on April 26, 2005.

The Petition states that “in the early part of March 2004,” the City of Brooklyn, Cuyahoga, Ohio, submitted an application to IMSA for coordination of a NPSAC Region 33 request for three frequencies (866.7625 MHz, 868.7375 MHz, and 866.8250 MHz).<sup>6</sup> Joint Petitioners also claim that the International Municipal Signal Association (IMSA) misrepresented its qualifications as an FCC certified frequency coordinator, by contracting its duties to a third party, ACD Telcom.<sup>7</sup> Joint Petitioners state that the “questionable practices” of IMSA’s contractor resulted in the denial of its application.<sup>8</sup>

Joint Petitioners assert that Ohio unfairly applied for and received “more than its share” of frequencies.<sup>9</sup> Joint Petitioners also claim that the Region 33 Chair, who holds many “influential positions” in Ohio’s statewide communications network, “eliminates the checks and balances required by the FCC to ensure a fair and unbiased approach to frequency allocation.”<sup>10</sup>

On June 21, 2005, Ohio and the Region 33 800 MHz Planning Committee filed comments in response to the Petition.<sup>11</sup> The Response notes that two of the frequencies at issue (866.7625 MHz and 868.7375 MHz) are pre-allocated in the Region 33 plan for “turnpike operations” and were added to multi-agency radio communications (MARC)s system.<sup>12</sup> Specific “turnpike” channels pre-allocated in the Region 33 plan means that they are clear of other allocations in the entire northern portion of Ohio and could be used anywhere along and in the vicinity of the Ohio Turnpike to provide needed coverage.<sup>13</sup> The third frequency, 866.8250 MHz, remains unused and is pre-allocated to in the Region 33 plan for Cuyahoga County.<sup>14</sup> Region 33 further states that agencies planning to expand their systems should (1) investigate their existing resources as well as the resources of other potential participating agencies, and (2) investigate what, if any, spectrum is available in the desired frequency band in their geographic area.<sup>15</sup>

On June 27, 2005, Joint Petitioners filed reply comments to the initial comments of Ohio and Region 33.<sup>16</sup> On July 8, 2005, Ohio filed reply comments to Joint Petitioners reply to Ohio’s initial comments.<sup>17</sup> Also, on July 8, 2005, IMSA filed comments addressing the claims raised by Brooklyn with respect to IMSA’s frequency coordination of the above referenced application.<sup>18</sup> On July 18, 2005, Joint

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<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.* at 5-7.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 4, 15.

<sup>10</sup> *Id.*

<sup>11</sup> State of Ohio and Region 33 Comments, filed June 21, 2005.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2-3.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> City of Brooklyn and Medina County Reply Comments, filed June 27, 2005.

<sup>17</sup> State of Ohio and Region 33 Reply Comments, filed July 8, 2005.

<sup>18</sup> International Municipal Signal Associations (IMSA) Comments, filed July 8, 2005.

Petitioners filed a motion to strike comments filed by IMSA and the reply comments of Ohio and Region 33, as defective, irrelevant and without merit.<sup>19</sup> On July 25, 2005, IMSA filed its opposition to the motion to strike by Brooklyn.<sup>20</sup>

*Discussion.* The sole issue before us is whether the Commission acted properly in granting Ohio's application for modification for Station WPQF782. Based on our review of the record, we find no error in the Commission's action. In reaching this determination, we note that the Commission approved the Region 33 (Ohio) 800 MHz NPSPAC public safety plan on February 6, 1993.<sup>21</sup> The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Ohio. Our analysis confirms that frequencies 866.7625 and 868.7375 are in fact designated in the plan for "turnpike operations."<sup>22</sup> Because the Region 33 plan specifically identifies use of these frequencies in the entire northern portion of Ohio anywhere along and in the vicinity of the Ohio Turnpike, and given that Ohio sought to use the subject frequencies for turnpike operations to augment its existing state authorization, we find no error in the Commission's action to grant Ohio's modification application. In this connection, we note that assignments must be made within the regional plan as adopted by the Regional Planning Committee according to its Commission-approved procedures.<sup>23</sup> Based on the foregoing, we conclude that the Commission's action in granting Ohio's application for modification is consistent with the Region 33 plan and therefore proper.

Accordingly, IT IS ORDERED, pursuant to Section 1.939 of the Commission's rules, 47 C.F.R. § 1.939 and Sections 4(i) and 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 309(d)(1), the Petition for Reconsideration to Deny the Grant of the State of Ohio's Application for Modification for Station WPQF782, File No. 00021006060, filed by the City of Brooklyn, Cuyahoga, Ohio and County of Medina, Ohio on May 26, 2005, IS DISMISSED.

This action is taken under delegated authority pursuant to Section 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Dana Shaffer  
Deputy Chief, Public Safety and Homeland Security Bureau

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<sup>19</sup> Joint Petitioners' Motion to Strike, filed July 18, 2005.

<sup>20</sup> Opposition of the International Municipal Signal Association, filed July 25, 2005.

<sup>21</sup> See In the Matter of Ohio Public Safety Plan, *Order*, PR Docket 91-258, FCC Rcd 1395 (PRB 1992).

<sup>22</sup> See Region 33 (Ohio) Public Safety Plan, Appendix C – Ohio Frequency Allocation Plan at C-7 and C-17.

<sup>23</sup> To assign frequencies 866.7625 and 868.7375 to another entity other than Ohio would have required an amendment to the Region 33 plan, subject to review and approval by the Public Safety and Homeland Security Bureau.

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cc: Ms. Sandra L. Black, EMR Consulting, 46 Allendale, Terre Haute, IN 47802