

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

In the matter of Applications of)
COUNTY OF TUSCARAWAS, OHIO)
For Modification of Licenses for Private Land)
Mobile Radio Service Station WPDU278 and)
Request for Waiver of the Inter-Category Sharing)
Freeze in the 806-821/851-866 MHz Band)
FCC File Nos. 0002183000, 0002183001

ORDER

Adopted: January 30, 2007

Released: January 31, 2007

By the Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, we address the above-captioned applications and waiver request filed by the County of Tuscarawas, Ohio (County) to modify its license for Public Safety Station WPDU278. The County requests a waiver of the 800 MHz inter-category sharing freeze to enable it to exchange ("swap") certain channels with Sprint Nextel Communications, Inc. (Sprint). It also seeks to expand its operations on General Category frequency 854.4625 MHz but has not requested a waiver of the General Category freeze. We dismiss the request for waiver of the inter-category sharing freeze as moot because the requested swap may now be carried out through the 800 MHz rebanding process. We also grant a General Category freeze waiver on our own motion to allow the County to expand operations on 854.4625 MHz.

II. BACKGROUND

2. The County operates an 800 MHz radio system (call sign WPDU278) to support public safety services in and around New Philadelphia, Ohio. Station WPDU278 is authorized to operate on three General Category frequencies, 851.5125, 852.4625, and 853.4375 MHz, that must be vacated under the Commission's 800 MHz rebanding order. The order further requires Sprint to provide the County with comparable facilities on other 800 MHz channels in the interleaved portion of the 800 MHz band. Sprint is the licensee of three Business/Industrial Land Transportation (B/ILT) frequencies, 854.8875, 856.7875, and 857.7875 MHz, in the New Philadelphia area. In April 2005, before the rebanding process

1 FCC File Nos. 0002183000-01.

2 800 MHz frequencies in the 851-866 MHz band are used for base station transmissions, and are paired with frequencies in the 806-821 MHz band for mobile transmissions. For ease of reference, we designate frequency pairs in this Order by reference to the base station frequency.

3 Under the rebanding plan, these three frequencies must be vacated Sprint because they fall in the new NPSPAC band (851-854 MHz), which is reserved for public safety. See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, Report and Order, 19 FCC Rcd 14969 (2004) (800 MHz Report and Order).

had begun, the County and Sprint filed a request for waiver of the inter-category sharing freeze to enable Tuscarawas to operate on Sprint's B/ILT frequencies as part of a frequency swap.⁴

3. The County is also licensed under WPDU278 for General Category frequency 854.4625 MHz at three locations. Unlike the other three General Category frequencies noted above, this frequency is not subject to rebanding.⁵ The County has applied to use this frequency at five new locations in Tuscarawas County to improve its radio communications capability. Use of the frequency at these new locations would be short-spaced to Sprint operations on this frequency.⁶ Sprint, however, has consented to the County's expanded use of this frequency.⁷ Granting the County's application for General Category frequency 854.4625 MHz necessitates a waiver of the freeze on new site-based General Category applications that was imposed when the Commission converted the General Category to geographic area licensing.

III. DISCUSSION

4. *Inter-Category Frequency Swap.* As noted above, the County seeks authorization to operate on B/ILT frequencies as part of a frequency swap with Sprint. Historically, the Commission has permitted this type of arrangement under its "inter-category sharing" rule, whereby applicants that are eligible for licensing in the 800 MHz Public Safety or B/ILT categories can be licensed on channels outside their respective categories if no channels are available in the category for which the applicant is eligible.⁸ In 1995, however, the Wireless Telecommunications Bureau imposed a freeze on inter-category sharing in connection with the establishment of geographic licensing of the B/ILT and SMR portions of the 800 MHz band.⁹

5. The County and Sprint seek a waiver of the inter-category sharing freeze to enable the County to operate on Sprint's B/ILT frequencies.¹⁰ However, we need not reach the parties' arguments on this point, because the freeze does not apply to applications that are necessary to implement 800 MHz band reconfiguration once the reconfiguration process begins in the relevant region.¹¹ At the time that the County filed its waiver request, band reconfiguration had not yet begun in Ohio, but the reconfiguration

⁴ See Letter dated April 1, 2005 from Kerry Metzger, Tuscarawas County Commissioner, and Charles Anderson, Assistant Regulatory Counsel, Nextel Communications, Inc., to Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (County/Nextel Letter). See also Letter dated August 4, 2005 from Kerry Metzger, Tuscarawas County Commissioner, and Allison Jones, Regulatory Counsel, Nextel Communications, to Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

⁵ General Category frequencies from 854 to 854.75 MHz are not subject to rebanding because they are not needed to accommodate relocating NPSPAC licensees. See 47 C.F.R. § 90.615.

⁶ Nextel is the Economic Area (EA) license of block FF, which includes the frequency 854.4625 MHz in the area where the County wants to expand.

⁷ See Letter dated March 29, 2005 from Karen Garth to Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

⁸ See 47 C.F.R. § 90.621(e)(1).

⁹ See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands, *Order*, 10 FCC Rcd 7350, *aff'd on recon., Memorandum Opinion and Order*, 11 FCC Rcd 1452 (WTB 1995).

¹⁰ County/Nextel Letter at 2.

¹¹ See *800 MHz Report and Order* at ¶ 198. See also 47 C.F.R. § 90.677. Applications filed after the start of the reconfiguration process in a particular region are considered "reconfiguration" applications and are not subject to the inter-category freeze.

process in Ohio was initiated as part of the “Wave 4” reconfiguration in July 2006.¹² Since the applications in question are for operation in a region where the reconfiguration process is ongoing, a waiver of the inter-category sharing freeze is not needed. Hence, the County’s request for a waiver of the inter-category sharing freeze is moot.

6. *Expansion on General Category Frequency 854.4625 MHz.* The County has applied to use frequency 854.4625 MHz at five new locations in Tuscarawas County to improve its radio communications capability. The County requires, but has not requested, a waiver of the freeze on new site-based General Category applications that was imposed in 1995 when the Commission converted the General Category to geographic area licensing.¹³ However, because a waiver of the General Category freeze is a prerequisite to grant of the County’s application and because waiving the freeze is consistent with our waiver criteria, we are waiving the freeze on our own motion.¹⁴

7. We conclude that grant of a waiver of the General Category freeze is warranted in this case. The freeze on General Category channels was put in place to preserve the licensing landscape when the Commission adopted geographic licensing rules for the General Category. In the 800 MHz rebanding proceeding, however, as part of the Commission’s restructuring of the band, the Commission provided for the eventual resumption of site-based licensing in the 854-854.75 MHz post-rebanding General Category segment of the band.¹⁵ The Commission further required that Sprint, the holder of the geographic license covering 854.4625 MHz in the New Philadelphia area, vacate this band segment at the conclusion of the rebanding process.¹⁶ Although the General Category freeze remains in effect while the rebanding process is under way, Sprint has given its consent for the County to use the frequency immediately at the five new locations specified in the County’s application. For these reasons, we believe a waiver of the General Category freeze will not frustrate the underlying purpose of the freeze and is warranted.¹⁷ Further, we find that grant of the waiver is consistent with our public interest goal to facilitate effective public safety communications.

IV. ORDERING CLAUSES

8. 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 Sections 1.925 and 90.621 of the Commission’s Rules, 47 C.F.R. §§ 1.925, 90.621, the request for waiver of the inter-category freeze filed by the County of Tuscarawas is DISMISSED as moot. It is FURTHER ORDERED that a waiver of the General Category freeze for station WPDU278 IS GRANTED, and applications FCC File Nos. 0002183000-01 filed by the County of Tuscarawas SHALL BE REFERRED for processing consistent with this *Order*.

¹² Wireless Telecommunications Bureau Announces that 800 MHz Band Reconfiguration for Non-NPSPAC Channels Will Commence July 3, 2006, in the NPSPAC Regions Assigned to Wave 4, *Public Notice*, DA 06-1183 (WTB rel. June 2, 2006).

¹³ See Licensing of General Category Frequencies in the 806-809.750/851-854.750 MHz Bands, *Order*, 10 FCC Rcd 13190 (1995).

¹⁴ A waiver may be granted where (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case and a grant of the requested waiver would not be in the public interest; or (ii) in view of the 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. 47 C.F.R. § 1.925(b)(3)(i), (ii).

¹⁵ Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25146 ¶ 60 (2004).

¹⁶ *800 MHz Report and Order*, 19 FCC Rcd 15046-47 at ¶ 146.

¹⁷ See New Jersey Transit Authority, *Order*, DA 99-384 (WTB rel. Mar 22, 1999).

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

FEDERAL COMMUNICATIONS COMMISSION

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