

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

In the Matter of)
)
CITY OF BEAUMONT, TEXAS) File No. 0004431564
)
Request for Waiver)

ORDER

Adopted: July 25, 2011

Released: July 25, 2011

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

I. INTRODUCTION

1. We have before us an application filed by the City of Beaumont, Texas (Beaumont) seeking authority to expand its public safety land mobile operations on frequency 854.3625 MHz as part of a shared regional simulcast system.¹ Beaumont seeks a waiver in order to use this frequency at two new sites prior to Sprint Nextel Corp. (Sprint) vacating this channel in NPSPAC Region 51, and becoming available for public safety use. For the reasons discussed herein, we grant Beaumont’s waiver request.

II. BACKGROUND

2. Beaumont operates public safety trunked station WPMG304 at several locations in Jefferson County, TX.² In 2009, Beaumont added frequency 854.3625 MHz to call sign WPMG304 in order to replace frequency 860.7375 MHz as part of the 800 MHz rebanding process.³ Beaumont now seeks to expand its operation on this frequency by adding this frequency to two new sites on Beaumont’s public safety trunked station WPMJ575.⁴

3. To facilitate the licensing of 800 MHz spectrum vacated by Sprint as part of 800 MHz rebanding, the Bureau released a *Public Notice* announcing application and licensing procedures for the channels relinquished by Sprint in the 809-809.5/854-854.5 MHz Band.⁵ The Bureau noted that Sprint-vacated channels would become available for licensing to public safety in multiple stages and that Sprint initiated the process for making frequency 854.3625 MHz available in non-border NPSPAC regions in the first stage.⁶ The Bureau also advised licensees to consult the Vacated Channel Search Engine

¹ The system is to be shared by the Cities of Port Neches, Port Arthur, and Beaumont, as well as Jefferson and Hardin Counties, Texas.

² See license WPMG304.

³ See FCC File No. 0003921428 (Aug. 4, 2009).

⁴ FCC File No. 0004431564 at Waiver Request (filed Oct. 26, 2010 amended Dec. 3, 2010 amended June 30, 2011).

⁵ See Public Safety and Homeland Security Bureau Announces Application and Licensing Procedures for Channels Relinquished by Sprint Nextel Corporation in the 809-809.5/854-854.5 MHz Band, *Public Notice*, 23 FCC Red 18343 (PSHSB 2008) (*Initial Interleaved Public Notice*).

⁶ *Id.* at Table 1.

(VCSE) to identify specific channels that are available for licensing.⁷ According to the VCSE, however, frequency 854.3625 MHz is unavailable for licensing in the Beaumont area. Thus, Beaumont requires a waiver to expand its operations on this frequency.

4. In support of its waiver request, Beaumont states that it has been engaged in efforts to bring various jurisdictions in Jefferson County into a shared regional radio system “to resolve shortcomings in the capacity and coverage of their current system.”⁸ Beaumont explains that “frequency, 854.3625, is the primary control channel for the expanded regional radio system that serves all of Jefferson and Hardin counties.”⁹ Beaumont states that this frequency “is programmed into over 3,000 radios served by our system.”¹⁰ Beaumont states that “Police, Fire and EMS in both counties depend on the regional radio system for Public Safety communications and need the expanded coverage.”¹¹ Thus, Beaumont claims, that “[n]o other frequency was able to be found in place of 854.3625 and even if one somehow became available it would be an enormous burden and cost to have to reprogram all of our subscriber radios.”¹² Finally, Beaumont submits that it the Region 51 Regional Planning Committee (RPC) approved Beaumont’s proposed use of this frequency as part of the expanded regional system and “[i]f the waiver is granted the frequency is fully constructed and we will be able to activate it and make use of it immediately.”¹³

III. DISCUSSION

5. 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; 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 Beaumont’s request should be granted under this waiver standard.

6. Specifically, we find that Beaumont has demonstrated a compelling need to expand its operations on frequency 854.3625 MHz before the VCSE makes this channel available. Beaumont has successfully retuned its existing license (WPMG304) to this frequency as part of band reconfiguration, but it cannot expand its operations on WPMJ575 by adding new sites on the same frequency until the Commission updates the VCSE. We believe that requiring Beaumont to delay its expansion would be unduly burdensome and contrary to the public interest. Beaumont has demonstrated that it has no

⁷ *Id.* at 18343-44. The Bureau and the Wireless Telecommunications Bureau established the VCSE to help public safety and critical infrastructure industry (CII) entities, frequency coordinators, and the public to identify specific 800 MHz channels in the Interleaved Band (809-815/854-860 MHz) that are available for licensing. *See* Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Establish New 800 MHz Vacates Spectrum Channel Search Engine for Identifying Vacated Channels in the 800 MHz Interleaved Band that will be Available for Licensing to Public Safety and Critical Infrastructure Industry Entities, WT Docket No. 02-55, *Public Notice*, 23 FCC Rcd 16481 (PSHSB and WTB 2008).

⁸ Waiver Request at 1. Beaumont states that “[t]hese efforts have resulted in plans to deploy a new regional P25 network that will serve [Beaumont] as well as several neighboring jurisdictions (Hardin County, Jefferson County and remaining cities within Jefferson County) with costs paid in part by Federal grant money.” *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* *See* Letter to Bart Bartkowiak, Chief Technology Officer, City of Beaumont from Doug Frankhouser, NPSAC Region 51, Chairman (Feb. 19, 2010).

¹⁴ 47 C.F.R. §§ 1.925(b)(3)(i-ii).

reasonable alternative to using this frequency because no Public Safety Pool frequency is available that could be substituted for its control channel. Granting the requested waiver serves the public interest because it will enable Beaumont to expand its regional shared simulcast system to meet immediate public safety needs in Region 51. It will also have minimal impact on other public safety entities in Beaumont that might have an interest in obtaining new channels given that Beaumont has already obtained Region 51 approval for its proposed sites. The waiver only applies to a single channel in a limited geographic area, and this channel would be of limited utility to other public safety entities in any event because they would have to protect Beaumont's existing sites that already use the channel and the RPC has already approved Beaumont's use.

IV. CONCLUSION

7. Based on the information before us, we find that Beaumont has satisfied the Commission's waiver criteria in support of its request for a waiver.¹⁵ Thus, we grant Beaumont's request to add the requested sites to station WPMJ575 on frequency 854.3625 MHz.¹⁶

V. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, 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, that the Waiver Requests filed by the City of Beaumont with respect to application FCC File No. 0004431564 **IS GRANTED** as noted herein.

9. **IT IS FURTHER ORDERED** that the Policy Division of the Public Safety and Homeland Security Bureau **SHALL PROCESS** application FCC File No. 0004431564 in accordance with this *Order* and the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
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Policy and Licensing Division
Public Safety and Homeland Security Bureau

¹⁵ As a condition on Beaumont's license for WPMJ575, Beaumont must provide Sprint 60 days notice prior to commencing operations on any channel or channels specified under this authorization. Sprint must cease operation on the channel specified in the notice by the intended date to the extent necessary to comply with the Commission's co-channel spacing requirements, after which Beaumont may activate the channel(s). Sprint established an email box to receive these notifications at 800mhzinterleavedspectrum@sprint.com.

¹⁶ Compare State of Minnesota, *Order*, 22 FCC Rcd 17485 (PSHSB 2007) (granting the State of Minnesota's waiver request to use a non-public safety frequency prior to Sprint vacating the frequency).