

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

In the Matter of )  
 )  
GEAUGA COUNTY SHERIFF’S OFFICE ) File Nos. 0005111586 and 0005111590  
 )  
Petition for Reconsideration and Request for )  
Waiver of the Wave 4 Freeze on New Applications )  
in the U.S.–Canada Border Region )

ORDER

Adopted: November 2, 2012

Released: November 2, 2012

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

I. INTRODUCTION

1. On March 9, 2012, the Geauga County Sheriff’s Office (Gauga County) submitted two applications<sup>1</sup> requesting multiple frequency pairs in the 800 MHz band throughout the County of Geauga, Ohio. The Commission’s Public Safety and Homeland Security Bureau (Bureau) dismissed Gauga County’s applications, without prejudice, on August 16, 2012 for failure to request a waiver of the freeze on applications along the U.S.–Canada border.<sup>2</sup> Gauga County now seeks reconsideration of the dismissal of the applications and requests a waiver of the border area freeze.<sup>3</sup> For the reasons stated herein, we deny the petition for reconsideration and waiver request.

II. BACKGROUND

2. In 2004, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band.<sup>4</sup> To keep control over the spectral environment during this reorganization, the Commission placed a freeze on applications for any new or modified 800 MHz licenses as it implemented rebanding on a regional basis.<sup>5</sup>

<sup>1</sup> See FCC File Nos. 0005111586 and 0005111590 (filed March 9, 2012).

<sup>2</sup> Notice of Dismissal Ref. No.5428086 (dated Aug. 16, 2012) *re* FCC File No. 0005111586 and Notice of Dismissal, Ref. No. 5428087 (dated Aug. 16, 2012) *re* FCC File No. 005111590.

<sup>3</sup> Petition for Reconsideration filed by Gauga County Sheriff’s Office (Aug. 20, 2012) at 1 (Gauga County Petition) *re* FCC File Nos. 0005111586 and 0005111590.

<sup>4</sup> See Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*800 MHz R&O*).

<sup>5</sup> *800 MHz R&O* at 15078 ¶ 204.

3. In 2008, the Bureau established a reconfigured 800 MHz band plan in the U.S.–Canada border regions in order to accomplish the Commission’s goals for band reconfiguration.<sup>6</sup> Consistent with the Commission’s approach to maintaining a stable spectrum environment during rebanding, the Bureau established a freeze on new applications in the U.S.–Canada border regions.<sup>7</sup> Specifically, the Bureau stated that:

The freeze applies only to applications for new facilities or modification applications that involve a change of frequency or expand a station’s existing coverage area. Applications that do not affect frequency or coverage (*e.g.*, administrative updates, assignments/transfers, and renewal-only applications) are not subject to the freeze. In addition, licensees may seek Special Temporary Authorization (STA) to expand their facilities or add channels during the freeze, based on an appropriate showing of public interest need as described in the Bureau’s December 2006 *STA Guidance PN*.<sup>[8]</sup>

4. Geauga County is located in NPSPAC Region 33 along the Canadian border and is therefore subject to the freeze on new or modified license applications in the 800 MHz band.<sup>9</sup> On March 9, 2012, Geauga County filed two new applications for 800 MHz frequencies in the border area. On August 16, 2012, the Bureau dismissed the applications because Geauga County failed to request a waiver of the application freeze.

5. On August 20, 2012, Geauga County submitted a petition for reconsideration and a request for waiver of the application freeze.<sup>10</sup> Geauga County states that “[t]he waiver attached below was originally attached to our application when we submitted it to the frequency coordinator [International Municipal Signal Association].<sup>11</sup> Geauga County adds that “it’s unknown why the

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<sup>6</sup> Improving Public Safety Communications in the 800 MHz Band, New 800 MHz Band Plan for U.S.–Canada Border Regions, *Second Report and Order*, WT Docket No. 02-55, 23 FCC Rcd 7605 (PSSHB 2008) (*Canada Border R&O*).

<sup>7</sup> Public Safety and Homeland Security Bureau Announces That the 30-Month Transition Period for 800 MHz Band Reconfiguration in Regions Along the U.S.–Canada Border Will Commence on October 14, 2008, *Public Notice*, WT Docket No. 02-55, 23 FCC Rcd 14877, 14878-9 (2008) (*U.S.–Canada Border Rebanding PN*). See also Public Safety and Homeland Security Bureau Extends 800 MHz Application Freeze for Wave 4 Border Area NPSPAC & Non- NPSPAC Licensees Along the U.S.–Canada Border, *Public Notice*, WT Docket No. 02-55, DA 12-1630 (PSSHB, Oct. 12, 2012).

<sup>8</sup> *U.S.–Canada Border Rebanding PN* at 14879, citing Public Safety and Homeland Security Bureau Provides Guidance for Public Safety Licensees With Regard to License Application and Special Temporary Authorization Procedures and Payment of Frequency Relocation Costs for Public Safety Facilities Added During 800 MHz Band Reconfiguration, *Public Notice*, WT Docket No. 02-55, 21 FCC Rcd 14658 (2006).

<sup>9</sup> See *Canada Border R&O*.

<sup>10</sup> Geauga Petition.

<sup>11</sup> *Id.*

frequency coordinator removed the waiver from our application.”<sup>12</sup> Geauga County requests that “the Commission review our waiver and reconsider the dismissal of our applications.”<sup>13</sup>

6. In its waiver request, Geauga County explains that the purpose of its applications is to add frequency pair 809/854.0125 MHz to all its existing sites authorized under call signs WNGS649 and WQNC532 and add this frequency to two new sites.<sup>14</sup> Additionally, Geauga County seeks to “add all post-rebanding frequencies currently authorized to WNGS649/WQNC532 to the same two new sites.”<sup>15</sup> Geauga County states it also intends to move the current WNGS649 site to a new location a short distance away and subsequently delete the former site from the WNGS649 license once the move is completed.<sup>16</sup>

7. Geauga County argues that grant of its waiver request will not adversely impact other licenses or the rebanding process.<sup>17</sup> Specifically, Geauga County states “[t]he addition of two new sites and the relocation of a third will have little impact to co-channel or adjacent channel users.”<sup>18</sup> Geauga County claims that “[c]overage plots indicate that our coverage and interference contours will have no expansion.”<sup>19</sup> Geauga County submits that “[t]he additional sites will improve in building coverage within our currently authorized coverage area.”<sup>20</sup> Geauga County also observes that “[t]he requested additional channel is already licensed to the Sheriffs [sic] Office at a single site (WNZH919).”<sup>21</sup> Geauga County adds that “[c]overage plots indicate that our interference contours for the proposed application will not impact co-channel users.”<sup>22</sup>

8. Geauga County states that the Sheriff’s Office radio system has successfully completed rebanding.<sup>23</sup> Geauga County claims that “[t]he requested additional frequency of 854.0125 is not impacted by rebanding in [Canadian Border Region 3] and is an appropriate post rebanding assignment for our non-NPSPAC public safety system.”<sup>24</sup> Geauga County reasons that “[s]ince the Sheriffs [sic]

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

<sup>13</sup> Geauga Petition.

<sup>14</sup> Request for Waiver.

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

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

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

Office already holds the authorization for 854.0125 at a single site this frequency will not be used as a replacement frequency for any other system in the area that has not completed rebanding.”<sup>25</sup> Finally, Geauga County submits that “[t]he Sheriffs [sic] Office will not request or require any financial assistance from Sprint/Nextel for the frequencies in the attached application.”<sup>26</sup>

### III. DISCUSSION

9. The Bureau has reviewed Geauga County’s petition for reconsideration and concludes that Geauga County fails to satisfy the requirements of Section 1.106(d) of the Commission’s rules.<sup>27</sup> Under Section 1.106(d)(1), petitioners must “state with particularity the respects in which petitioner believes the action taken by the Commission ... should be changed.”<sup>28</sup> Section 1.106(d)(2) also requires petitions for reconsideration to cite, where appropriate, “the findings of fact and/or conclusions of law which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and conclusions should be changed.”<sup>29</sup> Geauga County’s reconsideration petition lacks such particulars. Geauga County does not request that the Commission make any changes in the action dismissing Geauga County’s application, nor does it cite findings of fact or conclusions of law which it believes to be erroneous. Instead, Geauga County argues that, but for IMSA’s unexplained deletion of the waiver request from Geauga County’s application, it would have requested waiver of the application freeze. Thus, Geauga County implicitly acknowledges that the Bureau correctly dismissed its applications in the first instance.

10. Section 1.925 of the Commission’s rules states that 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 waiver would be in the public interest,<sup>30</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>31</sup> The applicant faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>32</sup>

11. Based on the record before us, we find that Geauga County has not demonstrated that it is entitled to waiver relief. Considering the first prong of our waiver standard, Geauga County has failed to show that strict application of the rule here would disserve or frustrate the underlying purpose of the

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> 47 C.F.R. § 1.106(d).

<sup>28</sup> 47 C.F.R. § 1.106(d)(1).

<sup>29</sup> 47 C.F.R. § 1.106(d)(2).

<sup>30</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>31</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>32</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

freeze and that a grant of waiver would be in the public interest. The purpose of the licensing freeze is to maintain a stable spectral *status quo* while rebanding is executed.<sup>33</sup> Thus, the freeze applies to new facilities or modification applications that involve a change of frequency or expand a station's existing coverage area.

12. Here, Geauga County seeks to add a new frequency pair at multiple sites. Our staff conducted its own analysis of Geauga County's applications and determined that Geauga County's proposal *would* expand its coverage contours, contrary to Geauga County's assertions. The staff determined that the existing contour of Geauga County's station, call sign WNZH919, does not cover the new sites under file numbers 0005111586 and 0005111590. Additionally, the staff observed that Geauga County's own graphical representation of its contours shows its new sites are not contained within the existing contour of call sign WNZH919.

13. Geauga County also claims that there will be no adverse impact to the rebanding process, but offers no independent support to bolster this assertion. In other cases we have given considerable weight to a licensee obtaining concurrence from the TA that its applications will not impair rebanding.<sup>34</sup> However, Geauga County did not obtain the TA's concurrence in connection with its waiver request and has not otherwise shown that its plan will not disturb the spectral environment along the U.S.–Canada border area in Region 33. Thus, Geauga County offers no proof that the underlying purpose of the freeze would not be served or would be frustrated if applied here.

14. The request also fails the second prong of our waiver standard. Geauga County does not claim any unique or unusual circumstances that would render application of the freeze inequitable, unduly burdensome, or contrary to the public interest or that it lacks reasonable alternatives. To the contrary, Geauga County has the alternatives of seeking Special Temporary Authority to operate on these channels,<sup>35</sup> or it can resubmit its applications with concurrence from the TA in support of its waiver request.<sup>36</sup> Thus, based on the foregoing, we find that Geauga County failed to meet the Commission's waiver criteria. Accordingly, we deny Geauga County's request for waiver of the 800 MHz application freeze.

#### IV. CONCLUSION

15. We conclude that Geauga County has failed to make a sufficient showing that reconsideration of the Bureau's findings and conclusions in the Notice of Dismissal is warranted. In addition, the waiver relief requested by the petitioner is inconsistent with the Commission's waiver standard. We therefore deny Geauga County's petition for reconsideration and request for waiver.

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<sup>33</sup> See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120, 25159 ¶ 87 (2004), citing *800 MHz R&O* at 15078 ¶ 204.

<sup>34</sup> See, e.g., State of Ohio, *Order*, 27 FCC Rcd 8251, 8253 (PSHSB 2012) (granting waiver of the Wave 4 application freeze, noting specifically that the TA submitted a letter of approval and concurrence that Ohio's application would not affect band reconfiguration along the Canadian Border Region).

<sup>35</sup> *800 MHz R&O* at 15078 ¶ 204.

<sup>36</sup> Applicants seeking a concurrence letter from the TA may email a PDF copy of their application to [AppReview@800TA.org](mailto:AppReview@800TA.org).

**V. ORDERING CLAUSES**

16. Accordingly, IT IS ORDERED pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by the Geauga County Sheriff's Office on August 20, 2012 IS DENIED.

17. IT IS FURTHER 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, as amended, 47 C.F.R. § 1.925, that the Request for Waiver filed by the Geauga County Sheriff's Office on August 20, 2012 IS DENIED.

18. 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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