

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

In the Matter of Application of
ALLEGANY, COUNTY OF
Modification of Private Land Mobile Radio
Stations WQNA318 and WQME708 and Requests
for Special Temporary Authority
File Nos. 0004666772, 0004666773,
0005775375 and 0005778896

ORDER

Adopted: June 21, 2013

Released: June 21, 2013

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

I. INTRODUCTION.

1. We have before us two modification applications and two Special Temporary Authority (STA) applications filed by Allegany County Emergency Services, New York (Allegany County). Allegany County filed the two modification applications to add frequencies 151.235 MHz and 155.145 MHz to Private Land Mobile Radio (PLMR) Stations WQNA318 and WQME708. Because officials from Canada object to Allegany County's proposed use of frequency 151.235 MHz, staff from the Public Safety and Homeland Security Bureau (Bureau) directed Allegany County to seek STA to operate on frequency 151.025 MHz in lieu of frequency 151.235 MHz. Endless Mountains Transportation Authority (EMTA), however, filed a Petition to Deny Allegany County's STA request to operate on frequency 151.025 MHz alleging potential interference to its station, call sign WQFA896, Athens Pennsylvania.

2. For the reasons set forth herein, we dismiss EMTA's Petition and grant Allegany's STA applications. We also direct Allegany County to amend its pending applications to modify PLMR Stations, call signs WQNA318 and WQME708, by deleting frequency 151.235 MHz and substituting frequency 151.025 MHz no later than July 12, 2013. During this time Allegany County and EMTA may wish to negotiate an arrangement for sharing frequency 151.025 MHz.

II. BACKGROUND.

3. On March 25, 2011, Allegany County filed two applications in connection with its police, fire and EMS operations seeking to add frequencies 151.235 MHz and 155.145 MHz to PLMR stations WQNA318 and WQME708. Because Allegany County is near the U.S.-Canada border and some of its base stations are located above Line A, it must secure concurrence from Canada prior to activating any

1 See FCC File Nos. 0004666772 and 0004666773 (filed Mar. 25, 2011) (Modification Applications); FCC File Nos. 0005775375 and 0005778896 (filed May 10, 2013 and May 14, 2013) (STA Requests).

2 See Petition to Deny filed by Endless Mountains Transportation Authority attached to STA Requests (dated May 16, 2013) (EMTA Petition).

3 Modification Applications.

4 "Line A" defines the coordination zone in the U.S. along the border between Canada and the lower 48 states of the U.S. See 47 C.F.R. § 1.928(e).

operations above Line A in the 150 MHz band with greater than five watts effective radiated power.⁵ Without obtaining Canadian approval, however, Allegany County began operating on the two new frequencies both above and below Line A, which resulted in an interference incident to a licensee in Canada on frequency 151.235 MHz.⁶

4. In April 2011, officials from Canada objected to Allegany County's proposal to operate on frequency 151.235 MHz above Line A.⁷ After being notified of Canada's objection, Bureau staff worked with Canadian officials, Allegany County and Allegany County's frequency coordinator, Forestry Conservation Communications Association (FCCA), to find a suitable substitute for frequency 151.235 MHz. Staff instructed FCCA to examine alternative frequencies in the 150 MHz band from the Public Safety and Industrial/Business Pools. After an extensive search, staff and FCCA concluded that 151.025 MHz is the only frequency available domestically on a shared basis at the locations proposed by Allegany which would clear coordination with Canada.

5. On May 10, 2013, at the direction of Bureau staff, Allegany County filed two STA applications seeking temporary authority to operate on frequency 151.025 MHz in lieu of frequency 151.235 MHz.⁸ The STA applications also sought authority to operate on frequency 155.145 MHz.⁹ The STA applications proposed operation on the two new frequencies at the base station locations authorized under call signs WQNA318 and WQME708.¹⁰ The purpose of the STA applications was to pursue concurrence from Canada for operation above Line A and to afford Allegany County the opportunity to test the two new frequencies. Allegany County notes in its STA applications that—if the applications are approved by Canada—Allegany County intends to “delete its request to use the frequency 151.235 MHz and to substitute instead the proposed use of the frequency assignment 151.025 MHz.”¹¹

6. In conjunction with its STA applications, Allegany County requested concurrence from EMTA for Allegany County's proposed operation on frequency 151.025 MHz.¹² EMTA is licensed to operate on frequency 151.025 MHz at a location in Tioga County, PA under call sign WQFA896.

7. On May 16, 2013, EMTA filed a Petition to Deny Allegany County's STA request.¹³ EMTA takes issue with Allegany's STA request because it “demonstrates that the County's sole concern is whether the subject frequency can be cleared with Canada for future use.”¹⁴ Because EMTA “assume[s]” that Allegany County filed its STA request without regard to EMTA's operations, EMTA claims that the

⁵ See 47 C.F.R. § 1.928 (detailing FCC rule requirements pursuant to the Above 30 MHz Agreement with Canada).

⁶ Section 90.159(b) of the Commission's Rules allows an applicant for modification of an existing land mobile radio station license to operate under the proposed modification during the pendency of the application provided that the proposed station is located south of Line A. See 47 C.F.R. § 90.159(b).

⁷ See Letters from the Federal Communications Commission to Allegany County Emergency Services (Apr. 15, 2011 and Apr. 20, 2011) (attached to Modification Applications).

⁸ See STA Requests.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See attachment to STA Requests labeled “STA Justification.”

¹² See Letter from Office of the Sheriff, Allegany County to WQFA896, Endless Mountain Transportation Authority (May 7, 2013) (attached to EMTA Petition).

¹³ See EMTA Petition.

¹⁴ Letter from Robert H. Schwaninger, Jr., Counsel for Endless Mountains Transportation Authority to Ricky L. Whitney, Sheriff, Allegany County (EMTA Objection) attached to EMTA Petition at 1.

“information contained within the applications for STA is incomplete and not provided in accord with Section 1.17(a)(1) of the Commission’s Rules insofar as the applications contain intentional and relevant omissions.”¹⁵

8. Typically, EMTA submits, a request for concurrence to use a frequency would include “the applicant’s entire proposal as will ultimately appear on an FCC application for use of the channel.”¹⁶ EMTA further argues that Allegany County “continues to refuse to provide sufficient information upon which any concurrence might be based.”¹⁷ EMTA adds that “it has not been shown that the frequency is the most appropriate frequency for the County’s use, which is required under Section 90.175(a) of the Commission’s Rules.”¹⁸ EMTA submits that the frequency was chosen simply because it would be “acceptable to Canada, without regard to any coordination within the United States.”¹⁹ Such an approach, EMTA argues, “does not equate to acceptable to existing U.S. licensees, nor would the fact that Canada might accept the proposed use equate to the ‘most appropriate’ for satisfaction of the frequency coordination requirements.”²⁰ Therefore, EMTA objects to Allegany County’s STA request unless Allegany County is willing to demonstrate that its use will not cause harmful interference to EMTA’s operations.²¹

9. On May 28, 2013, Allegany County filed an Opposition to EMTA’s Petition.²² Allegany County argues that grant of the STA request is appropriate under the circumstances. First, Allegany County submits that the purpose of the STA request is to conduct tests in accordance with Section 1.931 of the Commission’s Rules to determine if permanent authorization is appropriate and to engage in the domestic and international coordination process.²³ Allegany County affirms that it is interested in addressing potential interference concerns to Canada and to EMTA from shared use of frequency 151.025 MHz.²⁴

10. Second, Allegany County states that, should it seek permanent authorization for 151.025 MHz, then it will then seek frequency coordination.²⁵ However, Allegany County notes that the Commission’s rules do not require Allegany County to obtain EMTA’s concurrence for permanent use of frequency 151.025 MHz, let alone on a temporary basis.²⁶ Allegany County also points out that the rules cited by EMTA in its Petition apply only to applications for permanent authorization and that Allegany County intends to provide the necessary information regarding its proposed use of 151.025 MHz should it amend its pending modification application.²⁷ Allegany County argues that the Commission has routinely

¹⁵ *Id.* at 1-2 citing 47 C.F.R. § 1.17(a)(1).

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 3.

²² See Opposition of Allegany County Emergency Services (dated May 28, 2013) attached to STA Requests (Opposition).

²³ *Id.* at 2 citing 47 C.F.R. § 1.931(b)(2)(iii).

²⁴ *Id.*

²⁵ *Id.* at 3.

²⁶ *Id.* at 3-4.

²⁷ *Id.* at 4.

rejected petitions to deny STA applications based on claims of interference.²⁸ Finally, Allegany County observes that all STAs are issued on a secondary, non-interference basis and that applicants are required to discontinue operations if they cause harmful interference to others.²⁹ Allegany County reaffirms that should EMTA experience any harmful interference from Allegany County's operations on frequency 151.025 MHz, while the STA is in effect, Allegany County will take immediate action to correct the problem.

11. On May 30, 2013, officials from Canada approved Allegany's operation on the frequencies 151.025 MHz and 155.145 MHz above Line A under the STA applications.³⁰

12. On June 4, 2013, EMTA filed a Reply to Allegany County's Opposition.³¹ EMTA reiterates that Allegany County bears the burden to prove that its proposed operations will not cause harmful interference to EMTA and that Allegany has not demonstrated that frequency 151.025 MHz is the most suitable one for its proposed operations.³² In support of its interference concerns, EMTA submits propagation studies prepared by Allegany County that purportedly show that Allegany County's proposed operations will cause interference.³³ EMTA claims that Allegany County has thus far failed to provide sufficient information to ameliorate the threat of interference.³⁴ EMTA urges the Bureau to deny the STA applications and to "encourage the parties to continue their dialogue to resolve equitably and through shared information this situation."³⁵

III. DISCUSSION.

A. Petition to Deny

13. As an initial matter, we note that "neither the Communications Act of 1934, as amended, nor the Commission's rules provide for the filing of petitions to deny PLMR applications."³⁶ We therefore dismiss EMTA's Petition.

14. Nevertheless, we treat EMTA's filing as an informal objection under Section 1.41 of the Commission's rules³⁷ and are considering the arguments presented in the EMTA and Allegany County pleadings in order to clarify our licensing procedures regarding shared spectrum. As discussed herein we find that EMTA has not established sufficient grounds to deny Allegany County's STA request. EMTA challenges Allegany County's STA request on three general grounds: (1) Allegany County lacked candor in filing the STA request; (2) Allegany County's concurrence request based on Section 90.175 of the

²⁸ *Id.* at 5.

²⁹ *Id.* at 6.

³⁰ See COSER numbers listed in STA Requests.

³¹ Reply of Endless Mountain Transportation Authority (dated June 4, 2013).

³² *Id.* at 1-3.

³³ *Id.* at 3 and Attachment.

³⁴ *Id.*

³⁵ *Id.* at 4.

³⁶ See generally 47 U.S.C. §§ 309(b), 309(d)(1); 47 C.F.R. §§ 1.901-1.981; cf. Interstate Consolidation, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 3330, 3333 ¶ 8 (2000) (*Interstate*) (Commission's rules contain no provision for filing a petition to deny against private land mobile radio license applications); City of Compton Police Department, *Order on Reconsideration*, 15 FCC Rcd 16563, 16567 ¶ 10 (WTB 2000) (*City of Compton*) (formal petitions to deny do not lie against STA applications).

³⁷ 47 C.F.R. § 1.41.

Commission's Rules allegedly contained defects; and (3) Allegany County's operation has the potential to cause harmful interference to EMTA's operations.

15. We reject EMTA's suggestion that Allegany County lacked candor in filing its request for an STA. EMTA argues, for example, that the STA request lacks technical and operational information. Contrary to EMTA's contentions, however, Allegany County was not obligated to inform EMTA of the STA request or to furnish EMTA with technical and operational information regarding its proposed operations. We are not aware of a regulation or statute, and EMTA has cited none, that requires Allegany County to serve EMTA with a copy of its STA request.³⁸ Nor are we aware of a regulation or statute that requires Allegany County to inform EMTA that it was considering filing an STA request specifying a frequency different than those listed on its pending modification application.

16. EMTA places unwarranted reliance on Section 90.175 of the Commission's rules³⁹ for the proposition that there are defects in Allegany County's concurrence request. Section 90.175 deals with frequency coordination, which is not required for STA requests. Moreover, the Commission's rules do not require an STA applicant to seek concurrence from incumbent licensees – Allegany's notification to EMTA was a courtesy. Additionally, the purpose of the STA request is to allow Allegany County to determine whether its pending modification applications should be amended. Allegany County's approach is consistent with Section 1.931(b)(2) of the Commission's rules, which allows applicants such as Allegany County “[t]o conduct tests to determine data for the preparation of an application for regular authorization.”⁴⁰

17. EMTA has failed to present sufficient, specific allegations of fact supporting its claims of potential harmful interference. The mere addition of a user to a shared channel does not in and of itself present grounds for denying an application.⁴¹ Additionally, STAs are conditioned on a secondary, non-interference basis.⁴² Should EMTA experience harmful interference from Allegany County's STA on frequency 151.025 MHz, the Commission's rules would require Allegany County to discontinue operations. Additionally, we agree with Allegany County that its STA request does not require frequency coordination because the frequency coordination requirement applies only to applications for permanent authorization, including modification applications.⁴³ Therefore, we find that EMTA's allegations do not merit denial of Allegany County's STA request. Consequently, treating it as an informal request for Commission action pursuant to Section 1.41 of the Commission's rules, we deny EMTA's Petition.

18. Although we dismiss EMTA's Petition and deny it as an informal request for Commission action, we believe the public interest would be served if Allegany County and EMTA reach a mutual agreement on sharing frequency 151.025 MHz on a permanent basis. We note that frequency 151.025 MHz is available for shared use and the Commission's rules do not provide “first-in-time preference” to current users of shared channels.⁴⁴ In fact, Section 90.173(a) of the Commission's rules explicitly states that “[e]xcept as otherwise specifically provided in this part, frequencies assigned to land mobile stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee.”⁴⁵ In

³⁸ *City of Compton*, 15 FCC Rcd at 16567 ¶ 10.

³⁹ 47 C.F.R. § 90.175.

⁴⁰ 47 C.F.R. § 1.931(b)(2)

⁴¹ *Interstate*, 15 FCC Rcd at 3336 ¶ 13.

⁴² 47 C.F.R. § 1.931(b)

⁴³ 47 C.F.R. §§ 90.135 and 90.175.

⁴⁴ *Interstate*, 15 FCC Rcd at 3337 ¶ 14; 3338 ¶ 17.

⁴⁵ 47 C.F.R. § 90.173(a).

this instance, EMTA has no exclusive rights to frequency 151.025 MHz.⁴⁶ Furthermore, both EMTA and Allegany County are eligible to be licensed on this frequency pursuant to Section 90.20 of the Commission's Rules.⁴⁷

19. Since it has obtained approval from Canada for its STA applications, we envision Allegany County will promptly test the use of frequency 151.025 MHz at the locations specified in the STA authorizations, and, if the tests prove successful, will amend its pending modification application accordingly. During the testing period we expect Allegany County to share information with EMTA in order to minimize the potential for disruption to EMTA's operations. We remind both Allegany County and EMTA that under Commission rules "[a]ll applicants and licensees shall cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities."⁴⁸

20. Furthermore, we emphasize that Allegany County is not required to obtain EMTA's concurrence prior to amending its pending modification applications. However, any amendment to Allegany County's pending modification applications must be coordinated by an FCC-certified frequency coordinator pursuant to Section 90.175 of the Commission's rules.⁴⁹ Should the parties reach a mutual understanding on sharing frequency 151.025 MHz, Allegany County's amendment may reflect any adjustments to its system the parties agree to, *e.g.*, the use of tone squelch or other selective calling equipment, reduced effective radiated power, use of directional antennas at Allegany's base stations, *etc.* If the parties fail to reach an agreement, we instruct Allegany County to attach a statement to its pending modification applications detailing its efforts to come to an agreement with EMTA.⁵⁰

B. Modification Applications.

21. Section 90.173(b) of the Commission's rules provides that the Commission may deny the use of any frequency at a given location if its use in that location is not in the public interest.⁵¹ As noted above, Allegany County began operating on frequency 151.235 MHz above Line A without Canadian approval, thereby causing harmful interference to a licensee in Canada. Moreover, Canada objects to Allegany's proposal to operate on frequency 151.235 MHz. Based on the information before us, we conclude that Allegany County's operation on frequency 151.235 MHz should cease in order to prevent interference to stations operating on frequency 151.235 MHz in Canada. Accordingly, we direct Allegany County to, no later than July 12, 2013: (1) discontinue operations on frequency 151.235 MHz; (2) delete frequency 151.235 MHz from its pending modification applications and (3) substitute frequency 151.025 MHz on its pending modification applications.

22. If Allegany County fails to remove frequency 151.235 MHz from its pending modification applications by July 12, 2013, Bureau staff will dismiss Allegany's pending applications. Finally, we note that resolution of this issue in no way absolves Allegany County of its unauthorized operations above Line A during the pendency of its modification applications. The Bureau may refer this matter to the Commission's Enforcement Bureau for further investigation and potential sanctions.

⁴⁶ Licensees who have exclusive use of a frequency are denoted with a station class code of FB8. EMTA, however, is licensed on frequency 151.025 MHz with a station class code of FB2. See license WQFA896.

⁴⁷ 47 C.F.R. § 90.20.

⁴⁸ 47 C.F.R. § 90.173(b).

⁴⁹ 47 C.F.R. § 90.175.

⁵⁰ Allegany County's frequency coordinator may attach a statement with the application noting its policy for seeking letters of concurrence from co-channel licensees.

⁵¹ 47 C.F.R. § 90.173(b).

IV. ORDERING CLAUSES.

23. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, 1.106, that the Petition to Deny filed May 16, 2013 by Endless Mountains Transportation Authority IS DISMISSED as an unauthorized pleading.

24. IT IS FURTHER ORDERED, that the Petition to Deny, filed May 16, 2013 by Endless Mountains Transportation Authority, treated as an informal request for Commission action under Section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, IS DENIED.

25. IT IS FURTHER ORDERED that requests for Special Temporary Authority, FCC File Nos. 0005775375 and 0005778896, filed by the Allegany County Emergency Services SHALL BE GRANTED consistent with this *Order* and the Commission's Rules.

26. IT IS FURTHER ORDERED that Allegany County Emergency Services SHALL MODIFY its pending modification applications, FCC File Nos. 0004666772 and 0004666773, by deleting frequency 151.235 MHz and substituting frequency 151.025 MHz no later than July 12, 2013.

27. IT IS FURTHER ORDERED that applications, FCC File Nos. 0004666772 and 0004666773 SHALL BE DISMISSED if Allegany County Emergency Services fails to amend these applications as directed.

28. This action is taken under delegated authority granted 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

Michael J. Wilhelm
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