

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

In the Matter of Application of	)	
	)	
WELD, COUNTY OF	)	File No. 0005556908
	)	
Request for Waiver of Intercategory Sharing	)	
Freeze in the 800 MHz Frequency Band	)	

**ORDER**

**Adopted: April 5, 2013**

**Released: April 5, 2013**

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

1. *Introduction.* On December 18, 2012, the County of Weld, Colorado (Weld) filed an application seeking to license twelve 800 MHz channel pairs at three base station locations in the Greeley, Colorado area.<sup>1</sup> In connection with its application, Weld requests a waiver of the freeze on 800 MHz intercategory sharing in order to include two Business/Industrial/Land Transportation (B/ILT) channel pairs among the twelve channel pairs it seeks to license at the three fixed locations.<sup>2</sup> For the reasons stated below, we grant the intercategory sharing waiver request.

2. *Background.* Generally, the Commission licenses Private Land Mobile Radio (PLMR) applicants on frequencies in the category or categories for which they satisfy eligibility criteria. Section 90.621(e) of the Commission's Rules, however, permits "intercategory sharing" whereby applicants that are eligible for licensing in the 800 MHz Public Safety or Business/Industrial/Land Transportation (B/ILT) Categories can obtain licenses on channels outside of their respective categories if certain criteria are met, *inter alia*, the applicant must demonstrate that no channels are available in the category for which the applicant is eligible.<sup>3</sup> On April 5, 1995, however, the Wireless Telecommunications Bureau placed a freeze on the filing of new applications for intercategory sharing on all private land mobile radio service frequencies in the 806-821/851-866 MHz frequency bands.<sup>4</sup> The Bureau determined that the intercategory sharing freeze was warranted to curb the increase in intercategory applications for Public Safety channels by I/LT and Business licensees whose own channels were subject to increased demand

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<sup>1</sup> See FCC File No. 0005556908 (filed December 18, 2012; amended December 27, 2012 and March 25, 2013). We note that Weld currently operates a 7-channel 800 MHz trunked system under Special Temporary Authority (STA). Weld County began designing a system to improve radio coverage within the county in late 2011 with the goal of becoming operational in early 2013. See FCC File No. 0005683981 (filed Mar. 11, 2013, amended Mar. 25, 2013). On December 18, 2012, Weld filed the above-captioned application to permanently license seven NPSPAC channel pairs, three channel pairs available to public safety through the Vacated Channel Search Engine and an additional two B/ILT channel pairs. The two requested B/ILT channel pairs, however, require a waiver of the freeze on intercategory sharing.

<sup>2</sup> Weld seeks a waiver to use the following B/ILT frequency pairs: 856.3875/811.3875 MHz and 857.3875/812.3875 MHz. See waiver attachment to FCC File No. 0005556908 (Waiver Request).

<sup>3</sup> See 47 C.F.R. § 90.621(e)(1).

<sup>4</sup> See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz bands, *Order*, 10 FCC Rcd 7350, 7350 ¶ 1 (WTB 1995).

from Specialized Mobile Radio applicants.<sup>5</sup>

3. The Commission has designated two of the frequency pairs requested by Weld for use by eligible applicants in the B/ILT Category.<sup>6</sup> Weld, as a public safety entity, requires a waiver of the intercategory sharing freeze to obtain a license for the requested B/ILT channels. In its waiver request, Weld states that the channels applied for are needed to increase coverage and remedy “inadequate” in-building penetration of its existing trunked PLMR system.<sup>7</sup> Citing the number of active users of its system, Weld argues “the original allotment of NPSPAC channels is not sufficient to handle the load as a simulcast cell.”<sup>8</sup> Consequently, Weld seeks to add two B/ILT Category channels to its trunked PLMR system, which is integrated into the Colorado Statewide Radio Network.<sup>9</sup>

4. In support of its waiver request, Weld submits a letter from its 800 MHz frequency coordinator, the Association of Public Safety Communications Officials-International, Inc. (APCO) stating that due to short spacing issues, there are no Public Safety channels that can be used at all three of Weld’s locations.<sup>10</sup> Additionally, the United Telecom Council (UTC), a certified frequency coordinator for B/ILT Category channels, concurs with Weld’s waiver request to license frequencies 856.3875 MHz and 857.3875 MHz.<sup>11</sup>

5. *Discussion.* 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;<sup>12</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>13</sup> We conclude that Weld has demonstrated that its request should be granted under the circumstances presented.

6. With respect to the first prong, Weld has demonstrated that grant of the waiver would not frustrate the underlying purpose of the freeze—protecting channels for public safety use. Indeed, Weld, as a public safety entity, is a member of the class whose interests the freeze is intended to protect.<sup>14</sup> Weld requires the B/ILT channels because, as APCO confirms, there are no 800 public safety channels available that would not impermissibly short-space co-channel users.<sup>15</sup> Moreover, UTC has concurred in Weld’s waiver request. We find that grant of a waiver would be in the public interest because Weld’s system will be integrated into the Colorado statewide digital trunked radio system, thereby enhancing statewide interoperability, and will provide improved in-building coverage in Greeley and enhanced

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<sup>5</sup> *Id.* at 7532 ¶ 7.

<sup>6</sup> *See* 47 C.F.R. § 90.617(b), Table 2.

<sup>7</sup> Waiver Request.

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

<sup>9</sup> *Id.*

<sup>10</sup> *See* Letter from Carol DiCaro, AFC Processor, APCO International, Inc., to Federal Communications Commission (Concurrence Letter) (dated Dec. 17, 2012).

<sup>11</sup> *See* Letter from Kathy Garrett, UTC Spectrum Services (dated Dec. 19, 2012).

<sup>12</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>13</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>14</sup> *See, e.g.,* State of Delaware, *Order*, 21 FCC Rcd 6332, 6333 ¶ 5 (WTB 2006).

<sup>15</sup> *See* Concurrence Letter.

coverage throughout Weld County.<sup>16</sup> Additionally, as to the second prong of the waiver standard, we find that Weld has no reasonable alternative for improving coverage of its system, other than using the requested B/ILT channels.

7. Accordingly, IT IS ORDERED, pursuant to Sections 2 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152, 154(i), and Section 1.925 of the Communications Act of 1934, as amended, 47 C.F.R. § 1.925, the request for waiver filed on December 18, 2012 by the County of Weld, Colorado in connection with FCC File No. 0005556908 IS GRANTED, and application FCC File No. 0005556908 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

8. 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  
Deputy Chief, Policy and Licensing Division  
Public Safety and Homeland Security Bureau

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<sup>16</sup> See Waiver Request; *see also* Letter from William F. Garcia, Chair, Board of County Commissioners, County of Weld, Colorado, to Federal Communications Commission (dated Mar. 6, 2013) attached to FCC File No. 0005683981.