

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

In the Matter of)	
)	
CLEVELAND HEIGHTS, CITY OF)	FCC File No. 0006125791
)	
Request for Waiver of Sections 90.613 and)	
90.619(c)(4) of the Commission's Rules, and)	
Public Notice DA 12-2027)	

ORDER

Adopted: July 30, 2014

Released: July 30, 2014

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

I. INTRODUCTION

1. We have before us a new application filed by the City of Cleveland Heights, Ohio (Cleveland Heights) seeking authority to operate mobile units on six 800 MHz band frequencies in Cuyahoga County, Ohio.¹ In connection with this application, Cleveland Heights seeks a waiver of Section 90.613 of the Commission's rules² so that it can operate its mobile units in simplex mode without an associated base station.³ It also requests waiver of a freeze on applications along the U.S.-Canada border⁴ and a waiver of Section 90.619(c)(4) of the Commission's rules so that it may operate its mobile units on channels primary to Canada.⁵ For the reasons discussed below, we grant the Cleveland Heights waiver request with respect to Section 90.613. We find its request for waiver of the application freeze and Section 90.613(c)(4) moot.

II. BACKGROUND

2. On January 30, 2014, Cleveland Heights filed an application seeking to licensee as many as 300 mobile units on six 800 MHz frequencies for operation throughout Cuyahoga County.⁶ Cleveland Heights proposes to operate its mobile units without an associated base station on frequencies from the

¹ See FCC File No. 0006125791 (filed Jan. 30, 2014). The six frequencies are 857.3125 MHz, 857.7625 MHz, 857.9875 MHz, 858.3625 MHz, 859.2625 MHz, and 859.3375 MHz.

² 47 C.F.R. § 90.613 (indicating the channel designations of 800 MHz frequencies available for assignment to eligible applicants and that frequencies shall be assigned in pairs, with mobile and control station transmitting frequencies taken from the 806–824 MHz band with corresponding base station frequencies being 45 MHz higher and taken from the 851–869 MHz band).

³ See Letter from Eric Bartholomew, Cleveland Heights Fire Department, Eastcom Regional Dispatch Center to Federal Communications Commission (Dec. 26, 2013) (attached to ULS Application No. 0006125791) (Waiver Request).

⁴ See Public Safety and Homeland Security Bureau Extends 800 MHz Application Freeze for Certain Wave 4 Border Area NPSPAC and Non-NPSPAC Licensees Along the U.S.-Canada Border, WT Docket 02-55, *Public Notice*, 28 FCC Rcd 14098 (2013) (*Freeze Extension Notice*).

⁵ 47 C.F.R. § 90.619(c)(4).

⁶ See FCC File No. 0006125791.

851-869 MHz segment of the band.⁷ Cleveland Heights requests a waiver of Section 90.613 of the Commission's rules which specifies that frequencies in the 800 MHz band will be assigned in pairs with mobile stations transmitting on frequencies in the 806-824 MHz band segment while corresponding base stations transmit on frequencies 45 MHz higher in the 851-869 MHz band segment.⁸ In support of its waiver request, Cleveland Heights explains that it "has no need to operate base stations" and intends to use its mobile units only for "low power simplex voice communications at the scene of emergencies."⁹

3. Furthermore, Cleveland Heights seeks to operate its mobile units on channels which are primary to licensees in Canada. Cuyahoga County is located along the border with Canada and is included within a "Sharing Zone" in which primary access to channels in the 800 MHz band is divided between licensees in the U.S. and licensees in Canada.¹⁰ Cleveland Heights states that "Canadian primary spectrum has been selected to avoid interference from high power operations on US primary spectrum and to avoid issues with the rebanding process."¹¹

4. Cleveland Heights seeks a waiver of Section 90.619(c)(4) of the Commission's rules¹² which specifies the conditions under which a U.S. licensee may operate on channels primary to licensees in Canada.¹³ In support of its request, Cleveland Heights notes there is a "sizable buffer of 35 km from the international border to the closet point of the requested area of operation, with an additional 30 km from the international border to the closest Canadian shoreline."¹⁴ It argues that "Canadian operations are protected from interference due to the applicants' request for very low power and mobile only operation" and says it will "accept restrictions on using Canadian spectrum" and take "immediate steps to remove harmful interference to any Canadian licensee."¹⁵

5. Finally, Cleveland Heights seeks a waiver of a freeze on applications along the border with Canada. On October 18, 2013, the Public Safety and Homeland Security Bureau (Bureau) extended a freeze on the filing of non-rebanding related 800 MHz applications along the U.S.-Canada border until April 18, 2014.¹⁶ Cleveland Heights argues that its request cannot wait until the rebanding freeze is lifted, because the frequencies currently "used for low power simplex on scene operation are plagued with interference putting firefighters at risk as they operate in hazardous locations."¹⁷ Additionally, Cleveland

⁷ *Id.*

⁸ 47 C.F.R. § 90.613.

⁹ Waiver Request at 1.

¹⁰ The "Sharing Zone" is an area extending 100 kilometers into each country from the U.S.-Canada border. Each country is assigned primary access to specific band segments within the Sharing Zone. *See* Sharing Arrangement Between the Department of Industry of Canada and the Federal Communications Commission of the United States of America Concerning the Use of the Frequency Bands 806-824 MHz, and 851-869 MHz by the Land Mobile Service Along the Canada-United States Border (July 2011) at ¶¶ 3-4. Cuyahoga County is located in the "Sharing Zone" within Canada Border Region 3 as defined by the Commission's rules. *See* 47 C.F.R. § 90.619(c)(1).

¹¹ Waiver Request at 1.

¹² 47 C.F.R. § 90.619(c)(4).

¹³ Waiver Request at 1-2.

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Freeze Extension Notice*, 28 FCC Rcd 14098.

¹⁷ Waiver Request at 2.

Heights states that it does not request any rebanding assistance from Sprint, nor does it seek any type of rebanding funding.¹⁸

III. DISCUSSION

6. 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 interest¹⁹; or (ii) in view of unique or unusual or 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 not reasonable alternative.²⁰ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²¹ We find that Cleveland Heights satisfies the first prong of the waiver standard with regard to its request for a waiver of Section 90.613 and that its other waiver requests are moot.

7. *Mobile-Only Operation.* We first turn to Cleveland Heights' request for a waiver of Section 90.613 of the Commission's rules so that it may operate its mobile units without an associated base station on frequencies from the 851-869 MHz segment of the band. The underlying purpose of Section 90.613 is to promote spectrum efficiency by reducing the possibility of harmful interference between licensed land mobile radio stations.²² For instance, the Commission generally designs land mobile radio band plans so that the base station transmit frequencies are spectrally separate from the mobile radio station transmit frequencies.²³

8. In this regard, Section 90.613 requires base stations in the 800 MHz band to transmit in the 851-869 MHz band, while corresponding mobile radio stations must transmit on frequencies forty-five megahertz lower in frequency.²⁴ The Commission's rules recognize that if a mobile radio station is assigned to a frequency that would normally be assigned to a base station, the mobile radio station may be subject to interference that would otherwise not occur.²⁵ It also follows that if a mobile radio station

¹⁸ *Id.*

¹⁹ 47 C.F.R. § 1.925(b)(3)(i).

²⁰ 47 C.F.R. § 1.925(b)(3)(ii).

²¹ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *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).

²² See *Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz; and Amendment of Parts 2, 18, 21, 73, 74, 89, 91, and 93 of the Rules Relative to Operations in the Land Mobile Service Between 806 and 960 MHz*, Docket No. 18262, *Second Report and Order*, 46 FCC 2d 752, 770 ¶ 71 (1974) (*Land Mobile Second Report and Order*) (establishing that the spacing between associated mobile and base station frequencies is uniformly 45 MHz); See also *Amendment of Part 90 of the Commission's Rules to Release Spectrum in the 806-821.851-866 MHz Bands to Adopt Rules and Regulations to Govern Their Use*, Docket 18262, 52 RR 2d11; 90 FCC2d 1281, note 7 (1982). See, e.g., *Commonwealth of Pennsylvania, Order*, 22 FCC Rcd 1773 (PSHSB 2007) (*Pennsylvania Order*) (granting Pennsylvania a waiver of Section 90.613 of the Commission's Rules to permit the use of 800 MHz base station frequencies for vehicular mobile repeaters on a secondary basis).

²³ See *id.* at 1775-76 ¶ 7 citing *Land Mobile Second Report and Order*, 46 F.C.C. 2d at 769 ¶ 61 (stating that in the 800 MHz band, there will be uniform 25 kHz channeling and the spacing between associated mobile and base station frequencies, in each instance, will be 45 MHz).

²⁴ See 47 C.F.R. § 90.613; *Land Mobile Second Report and Order*, 46 F.C.C. 2d at 769 ¶ 61.

²⁵ See *Pennsylvania Order*, 22 FCC Rcd at 1776 ¶ 7.

transmits on a frequency normally assigned to a base station, the mobile radio station could create interference to other mobile radio units that are monitoring the base station transmit frequency.²⁶

9. Here, Cleveland Heights seeks to operate mobile units without assignment of a corresponding base station but states that it has no need to operate a base station since it intends to use the mobile units solely for simplex communications on a mobile-unit to mobile-units basis.²⁷ Cleveland Heights also states it chose frequencies primary to licensees in Canada in order to avoid interference from “high power operations on US primary spectrum.”²⁸

10. Bureau staff has analyzed Cleveland Heights’ application and we find the frequencies it selected well suited for the type of low-power operation it proposes. For instance, we believe it unlikely that Cleveland Heights will create interference to other licensees operating mobile units which are monitoring the transmit frequency of an associated base station. This is because no licensee would likely be able to operate a base station of any significant power on these channels in Cuyahoga County due to the signal strength limit which applies to any U.S. licensees operating in the “Sharing Zone” on a frequency primary to Canada.²⁹

11. Bureau staff has confirmed that no other licensee is authorized to operate in Cuyahoga County on the frequencies Cleveland Heights selected. We also note that Cleveland Heights includes with its application concurrence letters from the 800 MHz Transition Administrator and Sprint confirming that its proposal will have no negative impact on band reconfiguration.³⁰

12. Consequently, under the circumstances presented, we find that granting Cleveland Heights a waiver of Section 90.613 would not frustrate the underlying purpose of the rule because its use of mobile units without an associated base station would have no adverse impact on spectrum efficiency in Cuyahoga County by creating harmful interference to other users. We also find it appropriate for Cleveland Heights to operate its mobile units on frequencies from the 851-869 MHz segment of the band since licensees typically use the base transmit side of the base/mobile frequency pair for “talk around” purposes (*i.e.* mobile-to-mobile communications).³¹

13. We also conclude that grant of the request is in the public interest, as the new frequencies will upgrade Cleveland Heights’ communications capabilities at the scene of emergencies and resolve ongoing interference that puts emergency responders at risk.³²

²⁶ *Id.*

²⁷ Waiver Request at 1.

²⁸ *Id.*

²⁹ U.S. licensees are permitted to operate in the Sharing Zone on channels primary to Canada provided they satisfy a signal strength limit at the border. *See* 47 C.F.R. § 90.619(c)(4). The signal strength limit listed in Commission rules is -107 dB(W/m²) per 25 kHz. *Id.* After adoption of Section 90.619, however, the U.S. and Canada reached agreement on an alternate value of -124 dB(W/m²) per 25 kHz of bandwidth. Applicants may demonstrate compliance with the new value by using generally accepted terrain-sensitive propagation models rather than free space calculation which was the only method previously accepted. *See* Arrangement F at ¶ 7.1.

³⁰ *See* Letter from Brett Haan, 800 MHz Transition Administrator to Cleveland Heights (Nov. 18, 2013); email from Garrie Losee, Legal Analyst, Sprint Corporation to Eric Bartholomew (Dec. 18, 2013) *re* FCC File No. 0006125791.

³¹ *See* 47 C.F.R. §§ 90.621(a)(1)(ii) and (a)(2)(ii) (permitting mobile stations to transmit on any frequency assigned to its associated base station).

³² Waiver Request at 1-2.

14. Finally, we note that licensees in the 800 MHz band typically receive exclusive use of their channels within a certain distance of their base station locations.³³ In this instance, because Cleveland Heights is operating without an associated base station, we do not believe it should have exclusive use of its channels. Therefore, we grant its authorization on a secondary basis to licensees operating traditional base/mobile communications.³⁴

15. *Canada Primary Channels.* Next, we turn to Cleveland Heights' request for a waiver to operate its mobile units on channels primary to licensees in Canada. As noted above, Commission rules permit U.S. licensees to operate along the border on channels primary to Canada but only if they satisfy a certain signal strength limit at the border.³⁵ Bureau staff performed an engineering analysis of Cleveland Heights' application and determined that its mobile units operating in Cuyahoga County with a maximum effective radiated power of three watts would comply with the applicable signal strength limit.³⁶ Consequently, Cleveland Heights' application complies with the provisions of Section 90.619(c)(4) and, thus, its request for a waiver of this section is moot. Cleveland Heights' authorization will be granted on a secondary basis to licensees in Canada per the agreement with Canada and Section 90.619(c)(4).³⁷

16. *Application Freeze.* Finally the freeze on applications along the Canada border is no longer in effect for applicants seeking to license facilities in Ohio. On April 18, 2014, the Bureau announced that the freeze for NPSPAC Region 33 (Ohio) expired.³⁸ Due to its expiration, Cleveland Heights no longer needs a waiver of the application freeze and its request is moot.

IV. ORDERING CLAUSES

17. 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(b)(3) of the Commission's rules, 47 C.F.R. § 1.925(b)(3), the request for a waiver of 47 C.F.R. § 90.613 of the Commission's rules filed on January 30, 2014 by the City of Cleveland Heights IS GRANTED.

18. 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, 47 C.F.R. § 1.925(b)(3), the request for a waiver of 47 C.F.R. § 90.619 of the Commission's Rules and the application freeze imposed by Public Notice DA 12-2027 filed on January 30, 2014 by the City of Cleveland Heights IS DISMISSED AS MOOT.

19. IT IS FURTHER ORDERED that application FCC File No. 0006125791 SHALL BE PROCESSED in accordance with this *Order* including the conditions noted herein and the Commission's rules.

³³ See 47 C.F.R. § 90.621(b).

³⁴ See *Pennsylvania Order*, 22 FCC Rcd at 1776-77 ¶ 10.

³⁵ See *supra* n. 29.

³⁶ Staff used a terrain-sensitive propagation model to determine that Cleveland Heights' mobile units would produce a signal strength less than -124 dB(W/m²) per 25 kHz of bandwidth at the border to Canada.

³⁷ Arrangement F at ¶ 7.1(b); 47 C.F.R. § 90.619(c)(4).

³⁸ See Public Safety and Homeland Security Bureau Extends 800 MHz Application Freeze for NPSAC Region 43 (Washington State). Freeze Lifted for Other U.S./Canada Border Regions, WT Docket 02-55, *Public Notice*, 29 FCC Rcd 3886 (PSHSB 2014).

20. This action is taken on 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

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