

**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	)	

**MEMORANDUM OPINION AND ORDER ON RECONSIDERATION**

**Adopted: May 27, 2014**

**Released: May 27, 2014**

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

**I. INTRODUCTION.**

1. On April 5, 2013, we granted the County of Weld, Colorado (Weld County) a waiver of the freeze on intercategory sharing<sup>1</sup> to license two Business/Industrial/Land Transportation (B/ILT) channel pairs in the Greeley, Colorado area.<sup>2</sup> On April 16, 2013, the Enterprise Wireless Alliance (EWA) filed a Request for Reconsideration (Request) of the *Order* granting Weld County's waiver request to deploy the two B/ILT channels.<sup>3</sup> For the reasons stated below, we grant the Request in part and deny it in part.

**II. BACKGROUND.**

2. When Weld County filed its application and request for waiver of the intercategory sharing freeze, on December 18, 2012,<sup>4</sup> it accurately stated that there were no suitable public safety frequencies available for its proposed operations.<sup>5</sup> Then, one month after Weld County submitted its waiver request and application, Sprint-vacated channels became available for application for public safety use in the Weld County area.<sup>6</sup> Subsequently, Weld County amended its application with a certification from its Commission-certified public safety frequency coordinator, APCO.<sup>7</sup> APCO did not inform Weld County that the original APCO certification stating that no suitable public safety channels were available was no

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

<sup>2</sup> See Weld County, Colorado, *Order*, 28 FCC Rcd 4369 (PSHSB 2013) (*Order*).

<sup>3</sup> See Letter from Ila R. Dudley, Executive V.P., Spectrum Solutions, EWA, to Michael J. Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, April 16, 2013 (Request).

<sup>4</sup> See FCC File No. 0005556908 (filed Dec. 18, 2012; amended Dec. 27, 2012 and Mar. 25, 2013).

<sup>5</sup> The determination of no suitable public safety channels was made by Commission-certified public safety frequency coordinator, the Association of Public Safety Communications Officials, International (APCO). The suitability of the channels requested by Weld County was confirmed by Commission-certified B/ILT frequency coordinator, the Utilities Telecom Council.

<sup>6</sup> See Public Safety and Homeland Security Bureau Announces Application and Licensing Procedures for Channels in Non-Border Regions Relinquished by Sprint Nextel Corporation in the 809.5-815/854.5-860 MHz Band, *Public Notice*, 27 FCC Rcd 14785 (PSHSB 2012).

<sup>7</sup> The amendments changed station class and emission designator. APCO coordination, File No. 40YEAP120228758 was amended on March 23, 2013.

longer correct.<sup>8</sup> The Public Safety and Homeland Security Bureau (Bureau) reached the Weld County waiver request on April 5, 2013 and, without reference to the Sprint-vacated channels, granted the waiver and application.<sup>9</sup> Weld County constructed the facilities authorized by the Bureau's action.

3. EWA filed a timely request for reconsideration of the Bureau's grant of the waiver and application, contending that two Sprint-vacated public safety channels were available for Weld County's use and that the Bureau should require Weld County to use those Sprint-vacated channels in lieu of the two B/ILT channels the Bureau had granted it.<sup>10</sup> Weld County replied to the EWA request, pointing out, *inter alia*, that the Sprint-vacated channels that EWA had identified were closely spaced, such that accommodating them in Weld County's system would require redesign of its combiners<sup>11</sup> and additional antennas.<sup>12</sup> Weld County also noted that "[i]n addition to cost there is an operational impact to all State and Local government agencies as far as interruption in communications service to accomplish the re-work and the time and effort to coordinate this activity."<sup>13</sup> In a subsequent filing, EWA stated it would withdraw its reconsideration request if the Commission assigned the Sprint-vacated channels EWA had identified, to the B/ILT pool.<sup>14</sup>

### III. DISCUSSION

4. We have not before encountered a situation in which Sprint-vacated spectrum became available between the time a licensee submitted a request for waiver of the intercategory sharing freeze and the Bureau reached that request. Had the Bureau recognized that the Sprint-vacated channels had become available, that would have factored into its decision whether to grant Weld County's waiver request. However, the Bureau lacked that recognition, as did Weld County, until after the Bureau issued its waiver order and Weld County, in reliance on that order, constructed facilities on the channels authorized by the order. APCO, however, having coordinated Weld County's amended application after Sprint-vacated spectrum became available was in a position to check if its initial determination that no suitable public safety channels were available was still valid. It did not do so. According to Weld County – and not disputed by EWA – it would cost Weld County approximately \$30,000 in public funds to modify its facilities to operate on the Sprint-vacated channels identified by EWA.<sup>15</sup>

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<sup>8</sup> APCO contends it did not notify Weld County of the availability of frequencies 858.0375 MHz and 858.0875 MHz because, although site-based licenses on those frequencies had been canceled, they had not yet been noted as vacated in the FCC's database. Letter from Farokh Latif, Director, AFC-APCO Spectrum Management Division, to Michael J. Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Apr. 17, 2013. It also mistakenly contended that it did not regard the two channels identified by EWA as available because they were still considered SMR channels "even though they will be given to Public Safety at the conclusion of rebanding." *Id.* at 1-2.

<sup>9</sup> *Order*, 28 FCC Rcd at 4371.

<sup>10</sup> Request at 2.

<sup>11</sup> Letter from Michael R. Wallace, ENP, Weld County Director of Public Safety Communications to Michael J. Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, May 17, 2013 (Weld County Letter). Combiners are devices used to combine the output of multiple transmitters into a single antenna. Normally, the input signals to a combiner must be separated by approximately 250 kilohertz. The two Sprint-vacated channels identified by EWA are separated by only 50 kHz, precluding their use in a single combiner. In such instances, a separate antenna must be used for one of the channels.

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

<sup>13</sup> *Id.*

<sup>14</sup> Letter from Mark E. Crosby, President/CEO of EWA, to Michael J. Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, Sept. 30, 2013, at 2 (Crosby Letter).

<sup>15</sup> Weld County Letter.

5. Herein, we determine that, going forward; requests for waiver of the intercategory sharing rule will not be granted if, at the time the Bureau reaches the request, the premise of the waiver request – that no suitable channels in the petitioner’s service are available – is no longer factually correct. We are reluctant, however, to apply that principle retroactively to Weld County given the substantial financial burden such a decision would entail as well as the potential disruption to public safety services. We note, but reject, EWA’s suggestion that we compromise this matter by re-designating the Sprint-vacated channels identified by EWA to the B/ILT pool.<sup>16</sup> The Commission was clear in the *800 MHz Report and Order* that Sprint-vacated channels were to be reserved for public safety use for three years following completion of rebanding in a National Public Safety Planning Advisory Committee (NPSPAC) region and for public safety and critical infrastructure use through the fourth and fifth year.<sup>17</sup> We have neither the authority nor the inclination to revise that Commission determination.

#### IV. DECISION

6. We decline to undo the waiver granted to Weld County and will not require it to modify its facilities to operate on the Sprint-vacated channels identified by EWA. The immediate financial and disruptive consequences to Weld County in doing so outweigh the speculative possibility that our designating two B/ILT channels for use by Weld County could result in a shortage of channels for B/ILT use sometime in the future.

7. We emphasize, however, that going forward, proponents of waivers of the intercategory sharing freeze must keep their waiver requests current and report to the Bureau if any material assertions therein – including, without limitation, unavailability of suitable public safety channels – prove no longer correct.<sup>18</sup> Involved frequency coordinators should assist their customers in that endeavor. Waiver proponents who fail to keep their waiver requests current assume the risk of the waiver request being denied or, if granted, revoked.

#### V. ORDERING CLAUSE

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 and 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, that the Request for Reconsideration filed by the Enterprise Wireless Alliance on April 16, 2013 IS GRANTED as provided herein and DENIED in all other respects.

9. This action is taken under delegated authority pursuant to Sections 0.191(a) and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191(a), 0.392.

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> Crosby Letter at 2.

<sup>17</sup> Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order and Order*, 19 FCC Rcd 14969, 15051 (2004).

<sup>18</sup> 47 C.F.R. § 1.65 (“Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application.”)