

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

In the Matter of
DENVER, CITY AND COUNTY OF
Request for Waiver of Inter-Category Sharing
Freeze in the 800 MHz Frequency Band
File No. 0006750075

ORDER

Adopted: October 2, 2015

Released: October 2, 2015

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

I. INTRODUCTION

1. In this Order we grant a request by the City and County of Denver, Colorado (Denver) for a waiver of the freeze on 800 MHz inter-category sharing in order to allow it to license two Business/Industrial/Land Transportation (B/ILT) channels for public safety communications.

II. BACKGROUND

2. Denver operates a simulcast system on sixty-three Private Land Mobile Radio (PLMR) service frequencies in the 806-821/851-866 MHz band (the "800 MHz band") at eleven sites throughout the County of Denver, Colorado serving a population of over 600,000 people. Denver says that all the cities and communities within its county boundaries rely on its simulcast system for their police, fire and EMS communications but notes that it is experiencing "coverage deficiencies" at various locations within its service area. In particular, Denver states that its fire department experiences both "in-building" and outdoor "coverage deficiencies."

3. Consequently, Denver seeks to address its coverage deficiencies by adding two new 800 MHz channels to its simulcast system. Specifically, it seeks to license the new channels at a fixed location on Josephine Street in the City of Denver. It also seeks to license these same two channels for temporary fixed operations within an 80-kilometer radius of the Josephine Street site for use by vehicular

1 See ULS application file no. 0006750075 (Denver Application). See also attachment to Denver Application labeled "Wavier Request" (Denver Waiver Request).

2 Denver Waiver Request at 1.

3 Id. at 1-2.

4 Id. at 1

5 See Denver Application.

6 Id.

repeaters.<sup>7</sup> Denver submits that by adding two 800 MHz channels to its system it will be able to correct its coverage deficiencies, as well as enhance the coverage for other public safety departments.<sup>8</sup>

4. Denver claims, however, that it is unable to identify any available Public Safety Pool channels for its proposed upgrade.<sup>9</sup> Therefore, it seeks to add two channels to its simulcast system from the B/ILT Pool.<sup>10</sup>

5. PLMR channels in the 800 MHz band are divided into “categories” or “pools” including: (a) Specialized Mobile Radio (SMR), (b) Public Safety, (c) B/ILT and (d) General.<sup>11</sup> Conventionally, applicants are licensed on frequencies in the category or categories for which they meet the eligibility criteria. Section 90.621(e) of the Commission’s Rules, however, permits “inter-category sharing” whereby applicants that are eligible for licensing in either the Public Safety or B/ILT Pools can license channels outside of their respective pool if no channels are available in the pool for which the applicant is eligible.<sup>12</sup>

6. On April 5, 1995, however, the Wireless Telecommunications Bureau (Wireless Bureau) suspended the acceptance of applications for inter-category sharing of all PLMR service frequencies in the 800 MHz band.<sup>13</sup> At that time, the Wireless Bureau determined that an inter-category sharing freeze was warranted to successfully resolve spectrum allocation issues raised in PR Docket No. 93-144 and to preserve spectrum for future needs of the public safety community.<sup>14</sup>

7. Because Denver operates its simulcast system to support public safety communications, it is eligible only to operate on channels from the Public Safety Pool. Thus, it needs a waiver of the freeze on inter-category sharing in order to add two channels to its simulcast system from the B/ILT Pool. In support of its waiver request, Denver includes a channel study which purports to demonstrate that no Public Safety Pool channels are available for use at its Josephine Street site.<sup>15</sup> It includes a statement from AASHTO, its frequency coordinator, confirming the lack of available Public Safety Pool channels.<sup>16</sup> It also includes a statement from AAA, a B/ILT frequency coordinator, confirming that the B/ILT Pool channels which Denver seeks to license were coordinated properly.<sup>17</sup>

8. Denver argues that its request for a waiver of the freeze on inter-category sharing is in the public interest because the additional channels will help it resolve its fire department’s coverage issues while enhancing coverage for other public safety departments.<sup>18</sup>

---

<sup>7</sup> *Id.*

<sup>8</sup> Denver Waiver Request at 2.

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

<sup>10</sup> *Id.* at 1.

<sup>11</sup> See 47 C.F.R. §§ 90.615, 90.617.

<sup>12</sup> See 47 C.F.R. § 90.621(e)(1).

<sup>13</sup> See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands, *Order*, 10 FCC Rcd. 7350 (1995)(*Inter-Category Sharing Freeze Order*).

<sup>14</sup> *Id.*

<sup>15</sup> Waiver Request at 3-45.

<sup>16</sup> See letter from RS/AASHTO to Wireless Telecommunications Bureau (May 18, 2015) (attached to Denver Application) (AASHTO Letter).

<sup>17</sup> See letter from Radiosoft, Inc. to Federal Communications Commission (Sept. 14, 2015) (attached to Denver Application) (AAA Letter).

<sup>18</sup> Waiver Request at 2.

9. On June 26, 2015, the Public Safety and Homeland Security Bureau (Bureau) released a public notice seeking comment on Denver's application and waiver request.<sup>19</sup> The Bureau received one comment from the Enterprise Wireless Alliance (EWA) which concurred with Denver that no Public Safety Pool channels are available for assignment at the fixed location requested in the application and stated that it did not object to the requested waiver.<sup>20</sup>

10. Nonetheless, EWA questions Denver's need to address its coverage issues by licensing two B/ILT Pool channels at the Josephine Street site. EWA notes that Denver is already licensed to operate at this site. Therefore, it argues that "authorizing additional frequencies would not appear to resolve any coverage issues it is experiencing."<sup>21</sup> EWA also notes that Denver is authorized for temporary fixed operations under call signs WPEI989 and WQOT841 so it questions why Denver is unable to address its coverage issues using its currently licensed temporary fixed sites.<sup>22</sup>

11. In response, Denver states that the additional channels will increase capacity of its Josephine Street site and, once licensed, can be used at temporary locations using vehicular repeaters to "solve in-building coverage problems."<sup>23</sup>

### III. DISCUSSION

12. 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>24</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>25</sup> We conclude that Denver has demonstrated that its request should be granted under the first prong of the waiver standard.

13. As an initial matter, we agree with Denver that there are no Public Safety Pool channels available for use at its Josephine Street site. We base our conclusion on the channel study Denver attached to its waiver request and the statement from its frequency coordinator which it included with its application.<sup>26</sup>

14. Having concluded that no Public Safety Pool channels are available for Denver's proposed operation, we now turn to whether or not it has met the standard for a waiver of the freeze on inter-category sharing. One of the underlying purposes of the freeze was to preserve channels from the Public Safety Pool which, at the time, were the subject of a dramatic increase in demand by B/ILT licensees.<sup>27</sup> The Wireless Bureau indicated that, without an immediate freeze on inter-category sharing,

---

<sup>19</sup> See Public Safety and Homeland Security Bureau Seeks Comment on Application and Waiver Request Filed by City and County of Denver, Colorado for 800 MHz Business/Industrial/Land Transportation Frequencies, *Public Notice*, 30 FCC Rcd 6486 (PSHSB 2015).

<sup>20</sup> See Letter from Mark E. Crosby, President/CEO of Enterprise Wireless Alliance to Marlene H. Dortch, Secretary, Federal Communications Commission (July 27, 2015) (attached to Denver application) (EWA Letter).

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

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

<sup>23</sup> See Letter from Alan S. Tilles, Esq. to Brian Marengo, Public Safety and Homeland Security Bureau, Federal Communications Commission (Sep 18, 2015) (attached to Denver application) (Denver Response Letter).

<sup>24</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>25</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>26</sup> See Waiver Request at 3-45; AASHTO Letter.

<sup>27</sup> *Inter-Category Sharing Freeze Order*, 10 FCC Rcd 7350 at ¶1.

the availability of Public Safety Pool channels as a resource for the future radio needs of public safety agencies “could be compromised.”<sup>28</sup>

15. Denver explains in its waiver request and supplemental statement that it seeks authority to add the two B/ILT channels to its simulcast system in order to increase the capacity and address coverage deficiencies experienced by its fire department.<sup>29</sup> The agencies operating on Denver’s simulcast system, including the fire department, are the class of users the Wireless Bureau sought to protect when it froze inter-category sharing.

16. Thus, in this instance, waiving the freeze would not frustrate its underlying purpose because it will allow Denver to increase capacity and enhance coverage for the class of users the freeze is intended to protect.

17. We also note that its use of the two B/ILT channels at the Josephine Street site should have little or no impact on the availability of B/ILT Pool channels throughout the state because Denver will operate short-spaced to co-channel licensee the Denver Public Schools.<sup>30</sup> Denver obtained concurrence for the short-spacing from the Denver Public Schools.<sup>31</sup> Thus, no other user would have been able to license the two B/ILT channels in the vicinity of the Josephine Street absent concurrence from the Denver Public Schools.

18. Furthermore, in considering Denver’s waiver request, we found persuasive the fact that it obtained concurrence from a B/ILT Pool frequency coordinator.<sup>32</sup> Thus, Denver’s proposed operation on the two B/ILT Pool channels will likely cause no harmful interference to other users on the channels.

19. Finally, we find it in the public interest to grant Denver a waiver of the freeze on inter-category sharing so that it can increase capacity of its simulcast system and address the in-building and outdoor coverage issues experienced by its fire department.<sup>33</sup>

#### IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that the waiver request associated with ULS File No. 0006750075 filed by City and County of Denver, Colorado, pursuant to Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925, IS GRANTED and the associated application SHALL BE PROCESSED accordingly.

21. 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

Michael J. Wilhelm  
Deputy Chief, Policy and Licensing Division

---

<sup>28</sup> *Id.* at 7352-53 ¶ 7.

<sup>29</sup> Denver Waiver Request at 2.

<sup>30</sup> See Letter from Brian Szutkowki, Communications Technician, Denver Public Schools to Federal Communications Commission (Jan 21, 2015) (attached to Denver application).

<sup>31</sup> Waiver Request at 2.

<sup>32</sup> See AAA Letter.

<sup>33</sup> See Denver Response Letter.

Public Safety and Homeland Security Bureau