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

In the Matter of	)
NORTH CAROLINA STATE HIGHWAY PATROL	) File No. 0006768268
Request for Waiver for Early Access to Expansion Band Channels	) ) ) )
(	ORDER

Adopted: October 9, 2015 Released: October 9, 2015

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

#### I. INTRODUCTION

In this *Order* we deny a request for waiver filed by the North Carolina State Highway Patrol (North Carolina) for early access to Expansion Band channels.<sup>1</sup>

#### **BACKGROUND** II.

- North Carolina operates a trunked radio system serving federal, state and local law enforcement officials throughout the state on numerous Private Land Mobile Radio (PLMR) frequencies in the 806-821/851-866 MHz band (the "800 MHz band").<sup>2</sup> North Carolina states that due to a lack of Public Safety or other "out-of-service" channels it is unable to expand the capacity of, or offer adequate coverage from, its Concord, North Carolina site.<sup>3</sup> Consequently, it seeks to add three channels to its Concord site from what it describes as the "quiet Expansion Band allocations."
- As a general matter, PLMR channels in the 800 MHz band are divided into categories or 3 pools including: (a) Specialized Mobile Radio (SMR), (b) Public Safety, (c) B/ILT and (d) General.<sup>5</sup> Applicants are typically licensed on frequencies in the category or categories for which they meet the eligibility criteria.
- When the Commission established the Expansion Band as part of 800 MHz band reconfiguration, it reclassified twelve Public Safety Pool channels above 816/861 MHz as SMR channels.<sup>6</sup> It did so in order to establish a home for interference-resistant PLMR systems which would

<sup>&</sup>lt;sup>1</sup> See ULS application file no. 0006768268 (North Carolina Application). See also attachment to North Carolina Application labeled "Wavier – Expansion Band early access" (Early Access Waiver Request).

<sup>&</sup>lt;sup>2</sup> Early Access Waiver Request. North Carolina is licensed for over 200 PLMR call signs under FRN 0001913888.

<sup>&</sup>lt;sup>3</sup> Early Access Waiver Request.

<sup>&</sup>lt;sup>4</sup> *Id. See also* North Carolina Application.

<sup>&</sup>lt;sup>5</sup> See 47 C.F.R. §§ 90.615, 90.617.

<sup>&</sup>lt;sup>6</sup> The Expansion Band consists of forty channels in the 815-816/860-861 MHz segment of the 800 MHz band intended for PLMR systems that would not be adversely affected by ESMR and other cellular-architecture systems operating on frequencies above 817/862 MHz. See Improving Public Safety Communications in the 800 MHz

not be adversely affected by proximity to the ESMR segment of the band in which cellular architecture systems operate.<sup>7</sup> Despite the reclassification, the Commission permitted public safety licensees operating on Expansion Band channels to elect to remain in the Expansion Band.<sup>8</sup>

- 5. In April 2007, the Public Safety and Homeland Security Bureau (Bureau) clarified the rights of public safety licensees that elected to remain on their Expansion Band channels. It permitted such licensees to modify their operations, including expanding coverage contours, without the need to request a rule waiver. It also permitted public safety licensees that elected to remain in the Expansion Band to add additional Expansion Band channels to their operations provided they included with their application a request for inter-category sharing or other relief which would permit use of channels designated for other services.
- 6. In April 2015 the Bureau further clarified the conditions under which it would accept, on a going forward basis, applications for expanded coverage or additional channels from public safety licensees that elected to remain in the Expansion Band.<sup>13</sup> Specifically, it stated that it would accept such application only after the Bureau and the Wireless Telecommunications Bureau (collectively the Bureaus) established a filing date upon completion of band reconfiguration in each National Public Safety Planning Advisory Committee (NPSPAC) region.<sup>14</sup> The Bureau further specified that applications for expanded coverage or additional channels in the Expansion Band would be subject to "pre-coordination."<sup>15</sup>
- 7. The Bureau explained that it restricted the date upon which public safety licensees could file Expansion Band applications because—since its initial guidance—it had established a process for licensing channels in the Expansion Band to all eligible entities. That process depends upon a stable spectral environment in the Expansion Band prior to the filing date so that frequency coordinators can pre-coordinate applications and resolve conflicts.<sup>16</sup>
- 8. The Bureau advised public safety licensees with an urgent need to expand coverage or add channels that they could seek a waiver for early access but would need to demonstrate "a compelling reason why it is unable to wait for the filing date to submit its application."

 $<sup>^{7}</sup>$  *Id.* at 15053 ¶ 154.

<sup>&</sup>lt;sup>8</sup> *Id*.

<sup>&</sup>lt;sup>9</sup> See Public Safety and Homeland Security Bureau Clarifies the Rights of 800 MHz Public Safety Licensees Electing to Remain in the 800 MHz Expansion Band, *Public Notice*, 22 FCC Rcd 6803 (PSHSB 2007)(2007 Expansion Band Guidance PN).

<sup>&</sup>lt;sup>10</sup> *Id* 

<sup>&</sup>lt;sup>11</sup> In general, inter-category sharing requests from public safety entities require a demonstration that no other suitable public safety channels are available to the applicant. *See* 47 C.F.R. § 90.617(d).

<sup>&</sup>lt;sup>12</sup> 2007 Expansion Band Guidance PN, 22 FCC Rcd at 6803-04.

<sup>&</sup>lt;sup>13</sup> See Public Safety and Homeland Security Bureau Clarifies the Process for Accepting Applications from Public Safety Licensees that Elected to Remain in the 800 MHz Expansion Band, *Public Notice*, 30 FCC Rcd 3021 (PSHSB 2015) (2015 Expansion Band Guidance PN).

<sup>&</sup>lt;sup>14</sup> *Id.* at 3022.

<sup>&</sup>lt;sup>15</sup> *Id*.

<sup>&</sup>lt;sup>16</sup> *Id*.

<sup>&</sup>lt;sup>17</sup> *Id*.

9. Because the Bureaus have yet to establish a date for accepting Expansion Band applications in North Carolina's NPSPAC region, North Carolina seeks a waiver for early access.<sup>18</sup> In support of its waiver request, it includes a letter certifying that it elected to remain in the Expansion Band and is thus eligible to expand coverage or request additional channels.<sup>19</sup> It also states that the geography surrounding the Concord, North Carolina site offers "no natural separation between any of the nearby sites for any short spacing of the normal 800 MHz channels." Consequently, it argues that it has no choice but to seek channels from the Expansion Band.<sup>21</sup>

### III. DISCUSSION

- 10. 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>22</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>23</sup> We conclude that North Carolina has satisfied neither the first nor the second prong of the waiver standard.
- 11. As noted above, the underlying purpose of the Bureaus' policy regarding acceptance of Expansion Band applications is to maintain a stable spectrum environment prior to establishing a filing date.<sup>24</sup> Granting North Carolina early access to channels in the Expansion Band would undermine that goal. Further, we find spectrum congestion in the 800 MHz band is neither a unique nor an unusual circumstance.
- 12. In addition, the Bureau stated that a licensee seeking a waiver for early access must demonstrate a compelling reason why it is unable to wait for the filing date.<sup>25</sup> North Carolina presents no such compelling reason. It does state it needs additional coverage and capacity at its Concord, North Carolina site. Nonetheless, in its application, it proposes to delete three NPSPAC channels currently licensed at that site and replace them with three Expansion Band channels.<sup>26</sup> The exchange would not result in net additional channels at the Concord, North Carolina site. North Carolina offers no reason why it prefers Expansion Band channels to its currently licensed NPSPAC channels. Neither does it explain how the Expansion Band channels would improve either coverage or capacity at the site.
- 13. Therefore, because North Carolina has not provided the requisite compelling reason why we should grant it early access to Expansion Band channels, and because doing so would be inequitable to other potential licensees of those channels that must await completion of rebanding in the region, we find that North Carolina has not justified its requested waiver.

## IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that the waiver request associated with ULS File No. 0006768268 filed by North Carolina State Highway Patrol, pursuant to Section 1.925 of the

<sup>22</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>&</sup>lt;sup>18</sup> Early Access Waiver Request.

<sup>&</sup>lt;sup>19</sup> See letter from Wayne E. Eberhard, Frequency Service Manager, North Carolina State Highway Patrol to Federal Communications Commission (Apr 13, 2015) (attached to North Carolina Application).

<sup>&</sup>lt;sup>20</sup> Early Access Waiver Request.

<sup>&</sup>lt;sup>21</sup> *Id*.

<sup>&</sup>lt;sup>23</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>&</sup>lt;sup>24</sup> 2015 Expansion Band Guidance PN, 30 FCC Rcd at 3022.

<sup>25</sup> LA

<sup>&</sup>lt;sup>26</sup> See North Carolina Application.

Commission's rules, 47 C.F.R.  $\S$  1.925, IS DENIED and the associated application SHALL BE DISMISSED.

15. 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 Public Safety and Homeland Security Bureau