

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

In the Matter of)
)
NORTH CAROLINA STATE HIGHWAY) File No. 0006736772
PATROL)
)
Request for Waiver of Freeze on Inter-Category)
Sharing)

ORDER

Adopted: October 14, 2015

Released: October 14, 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 North Carolina State Highway Patrol (North Carolina) for a waiver of the freeze on 800 MHz inter-category sharing in order to allow it to license a Business/Industrial/Land Transportation (B/ILT) channel for public safety communications.

II. BACKGROUND

2. North Carolina operates a trunked radio system throughout the state serving its highway patrol operations on numerous Private Land Mobile Radio (PLMR) frequencies in the 806-821/851-866 MHz band (the "800 MHz band"). North Carolina indicates that two channels currently licensed at its High Peak site in Burke County, North Carolina are "impacted by interference from the City of Salisbury, North Carolina" and that "on-air experience showed these two channels un-useable." Consequently, it seeks to replace the two channels receiving interference with two alternate channels. It also seeks to add a third channel to the site to compensate for "increased traffic."

3. North Carolina includes with its application a letter from its frequency coordinator, APCO International, Inc., (APCO), stating that its channel search identified frequencies 854.5375 MHz, 858.3875 MHz, and 859.7875 MHz as the only available channels for the High Peak site. The three channels identified by APCO were vacated by Sprint Corporation (Sprint) as part of 800 MHz rebanding. APCO identified the Sprint-vacated channels because they are reserved for public safety use inside the F(50,10) 22 dBu contour of the original Sprint station for a three-year period after they become available

1 See ULS application file no. 0006736772 (North Carolina Application). See also attachment to North Carolina Application labeled "Wavier" (North Carolina Waiver Request).

2 North Carolina is licensed for over 200 PLMR call signs under FRN 0001913888.

3 See letter from North Carolina to Federal Communications Commission (dated May 26, 2015) (attached to the North Carolina Application) (North Carolina Explanation Letter).

4 Id. North Carolina explains in a supplemental statement that it seeks authority to add three channels to its High Peak site in order to alleviate interference and increase capacity at the site.

5 See letter from APCO International, Inc., to Federal Communications Commission (dated March 24, 2015) (attached to North Carolina Application) (APCO Vacated Certification).

for licensing.⁶ Outside the contour, however, the channels continue to be available for licensing in their original category or pool.

4. As a general matter, 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.⁷ Applicants are typically licensed on frequencies in the category or categories for which they meet the eligibility criteria. North Carolina is eligible to license the Sprint vacated channels and deploy them for public safety communications in its trunked PLMR system but only, as noted above, if the F(50,10) 22 dBu contour at the proposed site remains within the F(50,10) 22 dBu contour of the original Sprint station.

5. APCO states that North Carolina’s contour will remain within the Sprint contour on two of the three requested channels but on frequency 858.3875 MHz the proposed contour will extend beyond the F(50,10) 22 dBu contour of the original Sprint station.⁸ Outside the Sprint contour, frequency 858.3875 MHz is assigned to the B/ILT Pool.⁹ Since North Carolina intends to use the channel to support public safety communications it is not eligible to license channels from the B/ILT Pool. Therefore, North Carolina seeks to license the channel through inter-category sharing.¹⁰ To do so, it requires a waiver of the current freeze on the acceptance of applications involving inter-category sharing.

6. On August 10, 2015, the Public Safety and Homeland Security Bureau (Bureau) released a public notice seeking comment on North Carolina’s application and waiver request.¹¹ In the public notice, the Bureau requested comment from any party that would be affected by North Carolina’s use of the B/ILT frequency at its High Peak site.¹² The Bureau received no comments.

III. DISCUSSION

7. 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;¹³ 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.¹⁴ We conclude that North Carolina has demonstrated that its request should be granted under the first prong of the waiver standard.

⁶ See Public Safety & Homeland Security Bureau Announces Application & Licensing Procedures for Channels in Non-Border Regions Relinquished by Sprint Nextel Corp. in the 809.5-815/854.5-860 MHz Band, WT Docket No. 02-55, *Public Notice*, 27 FCC Rcd 14785, 14788 (2012) (permitting public safety eligible entities to license Sprint-vacated site-based channels provided the 22 dBu F(50,10) contour of the proposed facilities remains within the 22 dBu F(50,10) contour of the Sprint-vacated facilities).

⁷ See 47 C.F.R. §§ 90.615, 90.617.

⁸ APCO Vacated Certification at 1.

⁹ See 47 C.F.R. § 90.617(b).

¹⁰ North Carolina Waiver Request.

¹¹ See Public Safety and Homeland Security Bureau Seeks Comment on Application and Waiver Request Filed by North Carolina State Highway Patrol for 800 MHz Business/Industrial/Land Transportation Frequencies, *Public Notice*, 30 FCC Rcd 8309 (PSHSB 2015).

¹² *Id.* at 8310.

¹³ 47 C.F.R. § 1.925(b)(3)(i).

¹⁴ 47 C.F.R. § 1.925(b)(3)(ii).

8. Section 90.621(e) of the Commission's rules¹⁵ governing inter-category sharing provides, in pertinent part:

(e) Frequencies in the 809–817/854–862 MHz bands listed as available for eligibles in the Public Safety and Business/Industrial/Land Transportation Categories are available for inter-category sharing under the following conditions:

(1) Channels in the Public Safety and Business/Industrial/Land Transportation categories will be available to eligible applicants in those categories only if there are no frequencies in their own category and no public safety systems are authorized on those channels under consideration to be shared.

(5) The frequency coordinator must certify that frequencies are not available in the applicant's own category, and coordination is required from the applicable out-of-category coordinator.

9. We find that North Carolina has satisfied the provisions of Section 90.621(e)(5). Its frequency coordinator, APCO, has demonstrated that “frequencies are not available in the applicant’s own category” because APCO examined all Public Safety Pool channels and found that none met the Commission’s rules respecting the minimum distance that must be maintained from North Carolina’s proposed site to existing stations, *i.e.*, all Public Safety Pool channels are “short spaced” to existing authorizations.¹⁶ Also, North Carolina has satisfied the provision of Section 90.621(e)(5) that requires coordination from an “out-of-category” coordinator, *i.e.*, UTC.¹⁷ Hence the 858.3875 MHz B/ILT channel proposed by North Carolina is “available for intercategory sharing” within the meaning of Section 90.621(e) of the Commission’s rules. However, in order to grant North Carolina’s application, we must determine whether North Carolina merits a waiver of the 1995 freeze on the acceptance of intercategory sharing applications.

10. The inter-category sharing application freeze was put into place because Specialized Mobile Radio (SMR) applicants had obtained numerous intercategory sharing authorizations primarily for channels in the B/ILT Pool, leading to a shortage of B/ILT Pool channels.¹⁸ This, in turn, led to “a dramatic increase in the number of Business and I/LT entities filing applications for inter-category sharing to use Public Safety channels . . .”¹⁹ To “ensure that adequate frequencies are made available to public safety licensees”²⁰ and in recognition that the “Congress also is concerned with the adequacy of spectrum to meet the communications needs of public service agencies,”²¹ the Wireless Telecommunications Bureau stemmed the encroachment of B/ILT licensees into Public Safety Pool spectrum by imposing the freeze.

11. To grant North Carolina a waiver of the inter-category sharing freeze under the first prong of the waiver standard, we must determine whether “the underlying purpose of the [freeze] 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.” Because the underlying purpose of the freeze was to protect the Public Safety Pool channels against inter-category sharing applications from B/ILT applicants -- which is not the

¹⁵ 47 C.F.R. § 90.621(e).

¹⁶ APCO Contour Letter at 1. *See also* attachment to North Carolina Application labeled “frequency search.”

¹⁷ *See* letter from UTC to North Carolina State Highway Patrol (dated April 1, 2015) (attached to North Carolina Application) (UTC Concurrence).

¹⁸ Inter-Category Sharing of Private Mobile Frequencies in the 806-821/851-856 MHz Bands, *Order*, 10 FCC Rcd 7350, 7351 (WTB 1995).

¹⁹ *Id.* at 7352.

²⁰ *Id.*

²¹ *Id.* at 7351.

case here -- we find that applying the freeze to North Carolina's application would not serve the purpose of the freeze. We also find that granting North Carolina's application would further the public interest by providing North Carolina with interference-free channels and expanded capacity for use by highway patrol officers in North Carolina's 800 MHz communications system, not only in the vicinity of the proposed site, but statewide. Therefore, consistent with precedent,²² we grant North Carolina a waiver of the freeze on inter-category sharing and order that its application be processed to grant.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that the waiver request associated with ULS File No. 0006736772 filed by North Carolina State Highway Patrol, 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.

13. 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

²² See, e.g., Denver, City and County of, Request for Waiver of Inter-Category Sharing Freeze in the 800 MHz Frequency Band, *Order*, DA 15-1104 (PSSB Oct. 2, 2015); Weld, County of, Waiver of Intercategory Sharing Freeze in the 800 MHz Frequency Band, *Order*, 28 FCC Rcd 4369 (PSSB 2013), *reconsideration granted in part and denied in part, Memorandum Opinion and Order*, 29 FCC Rcd 5748 (PSSB 2014); Cumberland, County of, Request for Waiver of Intercategory Sharing Freeze in the 800 MHz Frequency Band, *Order* 21 FCC Rcd 9089 (WTB 2006); Delaware, State of, Request for Waiver of Intercategory Sharing Freeze in the 800 MHz Frequency Band, *Order* 21 FCC Rcd 6332 (WTB 2006).