

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

In the Matter of)
)
DPE, LLC) File Nos. 0006831242 and 0006831244
)
Request for Waiver)

ORDER

Adopted: January 14, 2016

Released: January 14, 2016

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us the above-captioned applications and a waiver request filed by DPE, LLC (DPE) seeking authority to relocate certain Specialized Mobile Radio (SMR) operations on frequencies 856/7/8/9/60.1125 MHz and 856/7/8/9/60.5375 MHz in western Colorado.¹ Section 90.617(g) of the Commission’s rules provides that these frequencies currently are available only to eligible applicants in the Public Safety or Critical Infrastructure Industry (CII) Categories.² For the reasons discussed herein, we grant DPE’s waiver request.

2. *Background.* In the *800 MHz Report and Order*, the Commission ordered 806-24/851-69 MHz (800 MHz) rebanding to resolve interference between commercial and public safety systems in the band.³ The Commission provided for the rebanding process to be completed on a region-by-region basis.⁴ In connection with the reconfiguration of the 800 MHz band, channels vacated by Sprint in the interleaved portion of the band (809-15/854-60 MHz) are reserved for Public Safety applicants for three years from the release of a public notice announcing the completion of band reconfiguration in that region, and for Public Safety and CII applicants for two years thereafter.⁵ After that five-year period, the channels revert to their original pool categories.⁶ A public notice announcing the completion of band

¹ See Waiver Justification and Modification of WNKL319 and WPEE822 (attached to applications 0006831242 and 0006831244) (Waiver Request).

² 47 CFR 90.617(g). DPE requested a waiver of Section 90.615 of the Commission’s rules, 47 CFR 90.615, but this provision does not apply to the channels at issue.

³ See *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, 14971-73 ¶¶ 1-3 (2004) (*800 MHz Report and Order*).

⁴ *Id.* at 15072 ¶ 195; see also *Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth in the Transition Administrator’s 800 MHz Regional Prioritization Plan*, Public Notice, 20 FCC Rcd 5159 (WTB 2005).

⁵ *800 MHz Report and Order*, 19 FCC Rcd at 15052 ¶ 152; see also 47 CFR 90.615, 90.617(g).

⁶ 47 CFR 90.615(a)(3), 90.617(g)(3).

reconfiguration in Colorado was released on November 27, 2012.⁷ Consequently, the SMR channels requested by DPE currently are reserved for Public Safety and CII applicants.

3. DPE operates an 800 MHz SMR system in western Colorado.⁸ It seeks authorization to relocate two transmitter sites, to replace locations that have become unusable. Specifically, DPE reports that (i) site access to the Lower Red Mountain site (location 4 under call sign WNKL319, operating on frequencies 856/7/8/9/60.5375 MHz) has become problematic, because the location is near residential properties and the local government has restricted any helicopter access; and (ii) DPE has lost its lease for the Doghead Mountain site (location 1 under call sign WPEE822, operating on frequencies 856/7/8/9/60.1125 MHz).⁹ It seeks to relocate the transmitters to Sunlight Peak (fifty-two kilometers from Lower Red Mountain) and Mt. Callahan (fourteen kilometers from Doghead Mountain), respectively. DPE states that in both cases, “containing the proposed service and interference area within the existing footprint of the frequencies involved is impossible, even with directional antennas.”¹⁰

4. *Discussion.* 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; 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.¹¹ We conclude that DPE’s request should be granted.

5. In support of its waiver request, DPE provides a study demonstrating that there is an abundance of spectrum available to Public Safety users in western Colorado,¹² and that there are no channels currently available to SMR applicants at the proposed sites.¹³ Further, given that DPE is abandoning both existing locations, there will be little or no effect on the overall amount of spectrum available for Public Safety and CII entities in western Colorado.¹⁴ DPE also contends “that lease termination and site access problems causing these removals were not of the applicant’s making.”¹⁵

6. Based on the information before us, we conclude that DPE has satisfied the Commission’s waiver criteria. The proposed relocations will enable DPE to continue to provide its existing services. We conclude that it would be inequitable and unduly burdensome, and not serve the public interest, to require DPE to wait until 2017 to relocate these operations, or to change the channels on which hundreds

⁷ See *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSPAC Regions*, Public Notice, 27 FCC Red 14775 PSHSB/WTB 2012).

⁸ Waiver Request at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 47 C.F.R. §§ 1.925(b)(3).

¹² Attached to the Waiver Request are frequency studies showing more than fifty channels available at each proposed site. See Waiver Request at 2-3.

¹³ See Waiver Request at 1.

¹⁴ *Id.*

¹⁵ *Id.*

of mobile units operate in order to relocate the operations sooner.¹⁶ Thus, we grant a waiver Section 90.617(g)(3) to allow DPE to modify its licenses as proposed.

7. 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 of the Commission's rules, 47 C.F.R. § 1.925, that the Waiver Requests filed on June 2, 2015 by DPE, LLC with respect to applications FCC File Nos. 0006831242 and 0006831244 ARE GRANTED, and applications FCC File Nos. 0006831242 and 0006831244 SHALL BE PROCESSED in accordance with this *Order* and the Commission's rules.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁶ *Intelsat LLC*, Order and Authorization, 26 FCC Rcd 3459, 3461-62 ¶ 8 (IB SD 2011) (granting waiver to allow grandfathered status for sites that were relocated due to loss of lease).