

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

In the Matter of)	
)	
KIRK O'BRIAN ASSET MANAGEMENT, INC.)	File No. 0007588193
)	
SIERRA CAPITAL MANAGEMENT, INC.)	File No. 0007588194
)	
WIRELESS ACQUISITIONS GROUP, INC.)	File No. 0007605231
)	
Applications and Requests for Waiver to Operate)	
800 MHz Specialized Mobile Radio Stations)	

ORDER

Adopted: October 17, 2017

Released: October 18, 2017

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

1. *Introduction.* We have before us the above-captioned applications, accompanied by near-identical waiver requests, filed by Kirk O'Brian Asset Management, Inc. (KOAMI),¹ Sierra Capital Management, Inc. (Sierra),² and Wireless Acquisitions Group, Inc. (WAG)³ (collectively "Applicants"), seeking a total of 15 channels in the 806-824/851-869 MHz (800 MHz) band for three new Specialized Mobile Radio (SMR) stations at a single location in Las Vegas, Nevada. The Applicants seek a waiver of the 800 MHz application freeze currently in effect for that location. In addition, a waiver of section 90.617 of the Commission's rules is requested because the period during which the requested channels are reserved for Public Safety or critical infrastructure industry (CII) entities has not elapsed.⁴ For the reasons discussed herein, we deny the waiver requests and will dismiss the applications.

2. *Background.* In the *800 MHz Report and Order*, the Commission ordered 800 MHz rebanding to resolve interference between commercial and public safety systems in the band.⁵ The

¹ See FCC File No. 0007588193 (filed Dec. 12, 2016, amended Dec. 15, 2016), Public Interest Statement and Request for Waiver (KOAMI Waiver Request). KOAMI requests frequency pairs 811/856.1125 MHz, 811/856.5375 MHz, 811/856.5875 MHz, 811/856.6125 MHz, and 812/857.5375 MHz.

² See FCC File No. 0007588194 (filed Dec. 12, 2016, amended Dec. 15, 2016), Public Interest Statement and Request for Waiver (Sierra Waiver Request). Sierra requests frequencies 812/857.6125 MHz, 813/858.1125 MHz, 813/858.5375 MHz, 813/858.5625 MHz, and 813/858.5875 MHz.

³ See FCC File No. 0007605231 (filed Dec. 29, 2016, amended Mar. 2, 2017), Public Interest Statement and Request for Waiver (WAG Waiver Request). WAG requests frequencies 813/858.1875 MHz, 814/859.1125 MHz, 814/859.1875 MHz, 814/859.5375 MHz, and 814/859.5625 MHz.

⁴ See 47 CFR § 90.617(g)(1)-(2).

⁵ 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, paras. 1-3 (2004).

Commission provided for the rebanding process to be completed on a region-by-region basis.⁶ Applications for new or modified 800 MHz stations in National Public Safety Planning Advisory Committee (NPSPAC) regions along the U.S.-Mexico border currently are frozen in order to preserve vacant channels for licensees retuning their systems in accordance with the Public Safety and Homeland Security Bureau's channel plan for those regions.⁷ This freeze also applies to stations within 70 miles of the borders of those NPSPAC regions, which includes Las Vegas.⁸ In addition, 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.⁹

3. *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.¹⁰ We conclude that the Applicants' requests should be denied.

4. Regarding the border freeze, the Applicants initially argue that the freeze was unnecessary in the first place for the Las Vegas area, which is about 300 miles from the Mexican border, because the population immediately south of Las Vegas is very sparse and 800 MHz licensing in Las Vegas is unlikely to affect the 800 MHz reconfiguration process in the border regions.¹¹ They also argue that a waiver should be granted because the rebanding process for Las Vegas itself is now complete.¹² These are arguments for reconsideration of the geographic or temporal scope of the border freeze, which are not properly presented here, rather than grounds for a waiver for a particular application.¹³ Moreover, parties' assumptions regarding the state of rebanding in a particular area do not demonstrate that all of the required steps have been taken, or that a waiver undermining an orderly procedure that allows all interested applicants a fair opportunity to apply for the channels is warranted.¹⁴

5. Regarding section 90.617, the Applicants state that it does not appear that Public Safety and CII entities need any Sprint-vacated channels in the Las Vegas area, because none have applied for

⁶ *Id.* at 15072, para. 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).

⁷ See *Public Safety and Homeland Security Bureau Extends 800 MHz Application Freeze Along Border with Mexico*, Public Notice, 32 FCC Rcd 1817, 1817 (PSHSB 2017).

⁸ See *id.*

⁹ See 47 CFR § 90.617(g)(1)-(2).

¹⁰ 47 CFR § 1.925(b)(3).

¹¹ See KOAMI Waiver Request at 3; Sierra Waiver Request at 3; WAG Waiver Request at 3.

¹² See KOAMI Waiver Request at 3; Sierra Waiver Request at 3; WAG Waiver Request at 3.

¹³ See *Third District Enterprises, LLC*, Order, 27 FCC Rcd 1980, 1983-84, para. 9 (WTB MD 2012), *aff'd*, Order on Reconsideration, 29 FCC Rcd 7352, 7362, para. 25 (WTB MD 2014).

¹⁴ See *Wake Forest Baptist Hospital*, Order on Reconsideration, 30 FCC Rcd 3705, 3706, para. 6 (WTB MD 2015).

such frequencies by way of requests for waiver or special temporary authority.¹⁵ We disagree with the Applicants' assessment that Public Safety and CII entities do not need access to the requested channels. That eligible entities have not applied for channels that are not yet available for licensing in no way demonstrates that they have no need for or interest in those channels.¹⁶

6. In addition, the Applicants have not demonstrated unique or unusual circumstances that render application of the rules inequitable, unduly burdensome, or contrary to the public interest, or leaves them no reasonable alternative. They plan to use their SMR systems to support communication needs of various service industries in the rapidly developing Las Vegas metropolitan area.¹⁷ They assert that demand for commercial communications service in the Las Vegas market is growing, but do not demonstrate or even suggest that those needs cannot be met by existing providers or by new stations on channels outside the 800 MHz band.¹⁸ That waivers have been granted to other applicants that did demonstrate unique or unusual circumstances does not warrant a waiver here.¹⁹

7. *Conclusion.* We conclude that the Applicants have not demonstrated that waivers are warranted under the circumstances presented. We deny the waiver requests.

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 1.925 of the Commission's rules, 47 CFR § 1.925, that the Waiver Requests filed on December 12 and 29, 2016 by Kirk O'Brian Asset Management, Inc., Sierra Capital Management, Inc., and Wireless Acquisitions Group, Inc. with respect to applications FCC File Nos. 0007588193, 0007588194, and 0007605231, respectively, ARE DENIED, and applications FCC File No. 0007588193, 0007588194, and 0007605231 SHALL BE DISMISSED in accordance with this *Order* and the Commission's rules.

9. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁵ See KOAMI Waiver Request at 4; Sierra Waiver Request at 4; WAG Waiver Request at 4.

¹⁶ See *American Electric Power Service Corp.*, Order, 32 FCC Rcd 6740, 6742, para. 5 (WTB MD 2017) (rejecting the suggestion that the fact that no Public Safety entities had requested vacated interleaved channels by the middle of the three-year window warranted a waiver to permit non-Public Safety use).

¹⁷ See KOAMI Waiver Request at 1, 3; Sierra Waiver Request at 1, 3; WAG Waiver Request at 1, 3.

¹⁸ See *Bristol-Meyers Squibb Company; Mobile Relay Associates, LLC*, Order, 32 FCC Rcd 6805, 6808, para. 11 (WTB MD 2017).

¹⁹ See KOAMI Waiver Request at 3; Sierra Waiver Request at 3; WAG Waiver Request at 3.