

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

In the Matter of )
)
KENNETH L. ERIKSON ) File No. 0007534506
)
VANTAGE FBO NICKOS KOUROUGLOS ) File No. 0007594490
ROTH IRA )
)
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 Kenneth L. Erikson (Erikson)1 and Vantage FBO Nickos Kourouglos Roth IRA (Vantage)2 (collectively Applicants), seeking a total of five channels in the 806-824/851-869 MHz (800 MHz) band for two new Specialized Mobile Radio (SMR) stations at a single location in Keokuk, Iowa. A waiver is needed because the proposed service area overlaps a region where 800 MHz Expansion Band and Guard Band channels are not yet available for assignment. For the reasons set forth below, we deny the 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.3 The Commission provided for the rebanding process to be completed on a region-by-region basis.4 Channels in the Expansion Band (815-816/860-861 MHz) and Guard Band (816-817/861-862 MHz) become available for licensing after the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (the Bureaus) announce that the required level of clearing has been achieved in that National Public Safety Planning Advisory Committee (NPSPAC) region.5

1 See File No. 0007534506 (filed Nov. 2, 2016, amended Jan. 4, 2017), Request for Waiver (Erikson Waiver Request). Erikson requests frequency pairs 816/861.7875 MHz, 816/861.8125 MHz, 816/861.8375 MHz, and 816/861.8625 MHz.

2 See File No. 0007594490 (filed Dec. 15, 2016, amended Jan. 4, 2017), Request for Waiver (Vantage Waiver Request). Vantage requests frequency pair 815/860.9875 MHz.

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, para. 1-3 (2004) (800 MHz Report and Order).

4 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).

5 See Improving Public Safety Communications in the 800 MHz Band, Order, 23 FCC Rcd 15966, 15972-73, para. 17 (2008). The Commission created the Expansion Band and Guard Band to provide spectral separation between commercial licensees operating in the Enhanced Specialized Mobile Radio segment of the band above 817/862 MHz (continued...)

3. In 2012, the Bureaus released Expansion Band and Guard Band channels for licensing in regions which had completed band reconfiguration, including Region 15 (Iowa).<sup>6</sup> The Bureaus reminded potential applicants that their choice of base station locations and mobile areas of operation could be limited to the geographic edge of a completed region if the adjacent region was still frozen, and that applicants proposing a service area that overlapped a neighboring frozen region could request a waiver to allow coverage to extend into the adjacent region “if the overlapping coverage area is limited and would not disrupt ongoing rebanding efforts in the region.”<sup>7</sup>

4. On August 18, 2016, the Commission released a *Notice of Proposed Rulemaking* regarding, *inter alia*, a rulemaking petition seeking to amend the rules to allow 800 MHz incumbent licensees in a market a six-month period in which to apply for Expansion Band and Guard Band frequencies before making them available to other applicants for new 800 MHz systems.<sup>8</sup> On November 2, 2016, Erikson filed the above-captioned application proposing a base station on Guard Band channels at Keokuk, Iowa, with a 50-kilometer mobile operating radius that overlapped into Illinois. On December 9, 2016, the Bureaus announced the completion of 800 MHz rebanding in additional NPSPAC regions, including Region 13 (Illinois), but did not make Expansion Band and Guard Band channels in those regions available for assignment because doing so would prejudice the rulemaking proceeding.<sup>9</sup> On December 15, 2016, Vanguard filed the above-captioned application proposing a base station on an Expansion Band channel at the same location, with a 50-kilometer mobile operating radius that overlapped into Illinois.

5. The Applicants argue that the overlapping coverage area is limited and would not disrupt rebanding efforts in Illinois, and a waiver would serve the public interest by allowing unassigned frequencies to be put to use.<sup>10</sup> On December 20, 2016, Commission staff returned the Erikson application for the applicant to, *inter alia*, demonstrate that the proposed overlap was small and not reasonably avoidable and describe the steps taken to reduce the amount of the service area where Expansion Band and Guard Band channels are not available for assignment.<sup>11</sup> On January 4, 2017, both Applicants filed near-identical statements showing the proposed service contour and mobile area of operations, and noting

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and Public Safety licensees operating below 815/860 MHz. *See 800 MHz Report and Order*, 19 FCC Rcd at 15053-55, paras. 154-58.

<sup>6</sup> *See Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Regional Plans to Reflect 800 MHz Band Reconfiguration in Certain NPSPAC Regions*, Public Notice, 27 FCC Rcd 14775, 14784 (PSHSB/WTB 2012).

<sup>7</sup> *See id.* at 14782.

<sup>8</sup> *See Amendment of Part 90 of the Commission’s Rules to Improve Access to Private Land Mobile Radio Spectrum; Land Mobile Communications Council Petition for Rulemaking Regarding Interim Eligibility for 800 MHz Expansion Band and Guard Band Frequencies; Petition for Rulemaking Regarding Conditional Licensing Authority Above 470 MHz*, Notice of Proposed Rulemaking, 31 FCC Rcd 9431 (2016); Land Mobile Communications Council, Petition for Rulemaking Regarding Interim Eligibility for the 800 MHz Expansion Band (860-861/815-816) and Guard Band (861-862/816-817 MHz) (filed Mar. 27, 2014).

<sup>9</sup> *See Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Regional Plans to Reflect 800 MHz Band Reconfiguration in Certain NPSPAC Regions and the Availability of Additional Sprint Vacated Channels*, Public Notice, 31 FCC Rcd 12891, 12896-97 (PSHSB/WTB 2016).

<sup>10</sup> *See Erikson Waiver Request at 1-2; Vanguard Waiver Request at 1-2.*

<sup>11</sup> Notice of Return, Ref. No. 6213353 (Dec. 20, 2016) (viewable in the Commission’s Universal Licensing System under File No. 0007534506).

that the overlapped area is rural and near no major cities in Illinois.<sup>12</sup>

6. *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.<sup>13</sup> Based on the record before us, we conclude that neither Erikson nor Vantage has presented sufficient facts to meet the standard for grant of the requested waivers.

1. First, we disagree with the Applicants' assertion that the overlapping coverage area is limited. The proposed base station location is less than one mile from the Mississippi River, which is the border between Iowa and Illinois. Consequently, almost as much of the proposed service area is in Illinois as is in Iowa. This is not limited, or merely ancillary to providing service in Iowa. Indeed, the Applicants describe no efforts to minimize the overlap by means of, for example, using a base station location to the west or a directional antenna. Therefore, the waiver requests do not meet the standard set forth by the Bureaus. In addition, we conclude that it would be contrary to the public interest to prejudice the pending rulemaking proceeding.<sup>14</sup> Finally, the Applicants do not demonstrate or even suggest that demand for the commercial communications service that they intend to provide cannot be met by existing providers or by new stations on spectrum other than Expansion Band or Guard Band channels.<sup>15</sup>

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

8. Accordingly, IT IS ORDERED pursuant to sections 4(i), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), and 303(r), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Request for Waiver filed by Kenneth L. Erikson on November 2, 2016, in conjunction with application FCC File No. 0007534506, and filed by Vantage FBO Nickos Kourouglos Roth IRA on December 15, 2016, in conjunction with application FCC File No. 0007594490, ARE DENIED, and the applications SHALL BE DISMISSED in accordance with this *Order* and the Commission's rules.

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<sup>12</sup> See Letter from Andrew Barbour, Wireless Infrastructure Association, to FCC (Jan. 4, 2017) (viewable in the Commission's Universal Licensing System under File No. 0007534506); Letter from Andrew Barbour, Wireless Infrastructure Association, to FCC (Jan. 4, 2017) (viewable in the Commission's Universal Licensing System under File No. 0007594490). The Applicants also state that the proposed mobile operating area has been reduced to 20 kilometers, but the applications were not so amended.

<sup>13</sup> 47 CFR § 1.925(b)(3).

<sup>14</sup> See *American Electric Power Service Corp.*, Order, 32 FCC Rcd 6740, 6743, para. 7 (WTB MD 2017).

<sup>15</sup> See *Kirk O'Brian Asset Management, Inc.*; *Sierra Capital Management, Inc.*; *Wireless Acquisitions Group, Inc.*, Order, DA 17-1022, para. 6 (WTB MD rel. Oct. 18, 2017) (citing *Bristol-Meyers Squibb Company; Mobile Relay Associates, LLC*, Order, 32 FCC Rcd 6805, 6808, para. 11 (WTB MD 2017)).

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  
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