

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

In the Matter of )
ARIZONA PUBLIC SERVICE COMPANY ) WT Docket No. 17-168
Request for Waiver of 800 MHz Licensing Freeze )
for Proposed Statewide Trunked Radio System )

ORDER

Adopted: November 14, 2017

Released: November 15, 2017

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

I. INTRODUCTION

1. In this Order, we address a request filed by the Arizona Public Service Company (APSC) for waiver of the 800 MHz application freeze along the border with Mexico, to permit licensing and implementation of a new statewide radio system. For the reasons set forth below, we grant the request and will process the associated license applications.

II. BACKGROUND

2. 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. The Commission provided for the rebanding process to be completed on a region-by-region basis. Applications for new or modified 800 MHz stations in National Public Safety Planning Advisory Committee (NPSPAC) regions along the U.S.-Mexico border, including Arizona, currently are frozen in order to preserve vacant channels for licensees retuning their systems in accordance with the channel plan of the Public Safety and Homeland Security Bureau (PSHSB) for regions along the border. In

1 Request of Arizona Public Service Company for Waiver (Request). The Request was filed with each individual license application.

2 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).

3 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).

4 See Public Safety and Homeland Security Bureau Extends 800 MHz Application Freeze Along Border with Mexico, Public Notice, 32 FCC Rcd 1817 (PSHSB 2017) (citing Improving Public Safety Communications in the 800 MHz Band, New 800 MHz Band Plan for U.S. - Mexico Sharing Zone, Fifth Report and Order, 23 FCC Rcd 4085 (PSHSB 2013)).

addition, channels in the Expansion Band (815-816/860-861 MHz) and Guard Band (816-817/861-862 MHz) do not become available for licensing until PSHSB and the Wireless Telecommunications Bureau (WTB) (collectively the Bureaus) announce that the required level of clearing has been achieved in that NPSPAC region.<sup>5</sup>

3. APSC is Arizona's largest electric service company, serving more than 1.2 million customers (out of a state population of 1.85 million).<sup>6</sup> It utilizes two-way radio for reliable communication between dispatchers and service personnel working on substations, distribution and transmission lines, and generation facilities throughout the state.<sup>7</sup> APSC shares its radio system with the State of Arizona Department of Emergency and Military Affairs, the Arizona Radiation Regulatory Agency, and the Emergency Operations Center in each of Arizona's fifteen counties—particularly with respect to drills and emergency plans regarding the Palo Verde Nuclear Generating Station (the nation's largest nuclear generating facility, located about 55 miles from Phoenix).<sup>8</sup> APSC states that its aging legacy 800 MHz radio system is difficult to maintain, and relies on equipment that has been discontinued and is no longer supported by the manufacturer.<sup>9</sup>

4. Accordingly, APSC is implementing a new Project 25 radio system that will have a high degree of redundancy and resiliency to ensure reliable communication during critical outages, and will improve coverage in APSC's service area and along key transmission line corridors.<sup>10</sup> It plans to deploy the new system in parallel with the existing system in order to ensure uninterrupted service, but it does not have enough spectrum to facilitate parallel operations while the new system is being tested and communication is transitioned over from the legacy system.<sup>11</sup> Between October 2016 and April 2017, APSC filed 54 applications for 800 MHz channels at 54 locations for a new statewide trunked radio system.<sup>12</sup> It states that it selected frequencies that will neither cause interference to incumbent licensees

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<sup>5</sup> See *Improving Public Safety Communications in the 800 MHz Band*, Order, 23 FCC Rcd 15966, 15972-73, para. 17 (2008). Moreover, the Bureaus recently concluded that Expansion Band channels should not be made available for licensing even in NPSPAC regions where rebanding is complete, because doing so would prejudice the pending rulemaking proceeding regarding a proposal to afford filing priority to 800 MHz incumbent licensees. See *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 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) (citing *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 and Guard Band Frequencies; Petition for Rulemaking Regarding Conditional Licensing Authority Above 470 MHz*, Notice of Proposed Rulemaking, 31 FCC Rcd 9431 (2016)).

<sup>6</sup> Request at 1.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 2-4.

<sup>9</sup> See *id.* at 3, 7, 11.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 3, 6.

<sup>12</sup> See File Nos. 0007518243, 0007518245, 0007518246, 0007518247, 0007518248, 0007518250, 0007518251, 0007518252, 0007518253, 0007518254, 0007518255, 0007518256, 0007518257, 0007518258, 0007518259, 0007518262, 0007518264, 0007518265, 0007518266, 0007518270, 0007518272, 0007528277, 0007537851, 0007537852, 0007537853, 0007538013, 0007538015, 0007538019, 0007538021, 0007538024, 0007538026, (continued...)

nor disrupt the rebanding process,<sup>13</sup> and which were not previously licensed to or held by Sprint.<sup>14</sup> Upon final system acceptance, APSC will cancel any of its current 800 MHz frequencies that are not required for the new system.<sup>15</sup>

5. WTB sought comment on the request.<sup>16</sup> The Enterprise Wireless Alliance (EWA) supports the waiver request.<sup>17</sup> The Association of Public-Safety Communications Officials-International, Inc. (APCO) urges WTB to proceed with care, and grant the waiver only if it will not negatively affect the needs of public safety licensees during the rebanding process.<sup>18</sup>

### III. DISCUSSION

6. Section 1.925 of the Commission's rules states that 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 instant case, and a grant of the requested 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>19</sup> The applicant faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>20</sup>

7. In light of the unique and unusual factual circumstances of the instant case, we conclude that APSC has met the standard for grant of a waiver of the border freeze and for early access to Expansion

(Continued from previous page)

0007538031, 0007538034, 0007701649, 0007701650, 0007701651, 0007701652, 0007701653, 0007701654, 0007701655, 0007701656, 0007701657, 0007701658, 0007701659, 0007701661, 0007701904, 0007703571, 0007703572, 0007703574, 0007703575, 0007703576, 0007739411, 0007739412, and 0007740598. The applications seek two channels at sites where APSC has an existing license (except that it requests four channels at APSC corporate headquarters for a simulcast system, *see* File No. 0007701658) and three channels at the new sites. Request at 4, 8-9. All of the sites are in Arizona, except for two in New Mexico (File Nos. 0007518248 and 0007518262) and one in California (File No. 0007701904).

<sup>13</sup> In support of its request for waiver, APSC includes a letter from the 800 MHz Transition Administrator stating that APSC's applications will not affect band reconfiguration. *See* Letter from Brett Haan, 800 MHz Transition Administrator, to Arizona Public Service Company (Oct. 19, 2016).

<sup>14</sup> Request at 4-5. Channels vacated by Sprint in the interleaved portion of the 800 MHz band (809-15/854-60 MHz) are reserved for Public Safety applicants until three years after release of a public notice announcing the completion of band reconfiguration in that region. 47 CFR § 90.617(g)(1).

<sup>15</sup> Request at 9.

<sup>16</sup> *See Wireless Telecommunications Bureau Seeks Comment on Arizona Public Service Company Request for Waiver of 800 MHz Licensing Freeze for Proposed Statewide Trunked Radio System*, Public Notice, 32 FCC Rcd 4957 (WTB MD 2017).

<sup>17</sup> *See* EWA Comments at 4.

<sup>18</sup> *See* APCO Comments at 3.

<sup>19</sup> *See* 47 CFR § 1.925(b)(3).

<sup>20</sup> *See WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)).

Band channels<sup>21</sup> because application of the rules would be unduly burdensome and contrary to the public interest, and APSC has no reasonable alternative. Reliable communication is essential for critical infrastructure industry entities like APSC and the public safety agencies that share APSC's radio system.<sup>22</sup> We are mindful of APSC's operational needs during 800 MHz rebanding and that denial of its waiver request could unduly delay its system implementation plans.<sup>23</sup> APSC has demonstrated that such a delay could have serious negative effects on its operations and the safety and welfare of the general public, for failure to replace its aging radio system could lead to service disruptions that would impair APSC's regular operations and impede the response of APSC and the government agencies that share its system to power outages and other emergencies.<sup>24</sup> APSC also has demonstrated that grant of its request will not affect the 800 MHz rebanding process, and has committed to returning unneeded 800 MHz channels after the system replacement is complete. Accordingly, we grant APSC's request for waiver.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, 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, the waiver request filed by Arizona Public Service Company in connection with applications FCC File Nos. 0007518243, 0007518245, 0007518246, 0007518247, 0007518248, 0007518250, 0007518251, 0007518252, 0007518253, 0007518254, 0007518255, 0007518256, 0007518257, 0007518258, 0007518259, 0007518262, 0007518264, 0007518265, 0007518266, 0007518270, 0007518272, 0007528277, 0007537851, 0007537852, 0007537853, 0007538013, 0007538015, 0007538019, 0007538021, 0007538024, 0007538026, 0007538031, 0007538034, 0007701649, 0007701650, 0007701651, 0007701652, 0007701653, 0007701654, 0007701655, 0007701656, 0007701657, 0007701658, 0007701659, 0007701661, 0007701904, 0007703571, 0007703572, 0007703574, 0007703575, 0007703576, 0007739411, 0007739412, and 0007740598 IS GRANTED, and the applications SHALL BE PROCESSED 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

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<sup>21</sup> Fewer than half of the applications seek Expansion Band channels. *See* File Nos. 0007518246, 0007518247, 0007518252, 0007518254, 0007518255, 0007518256, 0007518259, 0007518262, 0007518265, 0007518270, 0007537851, 0007537852, 0007537853, 0007538015, 0007538019, 0007538026, 0007538031, 0007701653, 0007701654, and 0007703575.

<sup>22</sup> *See, e.g., Spectrum Policy Task Force Seeks Comment on Issues Related to Commission's Spectrum Policies*, Public Notice, 17 FCC Rcd 10560, 10565 (2002).

<sup>23</sup> *See Ohio, State of*, Order, 27 FCC Rcd 8251, 8255, para. 13 (PSHSB PLD 2012).

<sup>24</sup> *Cf. American Electric Power Service Corp.*, Order, 32 FCC Rcd 6740, 6742-3, para. 6 (WTB MD 2017) (denying a request for early access to Expansion Band channels in part because the petitioner did not demonstrate any consequences to the public of a denial).