

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

In the Matter of)
CLARK COUNTY, WASHINGTON) File No. 0007502190
Request for Waiver for Early Access to Expansion)
Band Channels)

ORDER

Adopted: December 11, 2017

Released: December 11, 2017

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order we grant a request for waiver filed by Clark County, Washington (Clark County) for early access to two Expansion Band channels to allow it to expand its composite contour footprint on two channels by a de minimis amount in a sparsely populated area.

II. BACKGROUND

2. Clark County operates a six-site trunked simulcast radio system on twelve Private Land Mobile Radio (PLMR) channels in the 806-821/851-866 MHz band (800 MHz band). Clark County is engaged in a multiyear \$20 million project to upgrade its trunked radio system in order to improve coverage deficiencies. As part of its upgrade, Clark County seeks to add two additional sites to its trunked simulcast radio system. The new sites will be located in the towns of Orchard and Yacolt, Washington and would operate on the same twelve channels Clark County is currently licensed for including eight Public Safety Pool channels, two National Public Safety Planning Advisory Committee (NPSPAC) channels and two Specialized Mobile Radio (SMR) Pool channels from the Expansion Band. The Orchard, Washington facility would not expand the composite contour of Clark County's system. However, with addition of the Yacolt, Washington facility, the composite contour footprint would expand slightly in the northeast portion of the county.

3. As a general matter, Private Land Mobile Radio (PLMR) channels in the 800 MHz band are divided into categories or pools: (a) NPSPAC, (b) SMR, (c) Public Safety, (d) Business/Industrial/Land Transportation (B/ILT) and (e) General. Applicants are typically licensed on frequencies in the category or categories for which they meet the eligibility criteria.

1 ULS application file no. 0007502190 (Clark County Application). See also attachment to Clark County Application labeled "Expansion Band Freeze Waiver Request" (Waiver Request).

2 Call sign WPLX749.

3 Waiver Request at 2.

4 Id. at 1.

5 Clark County Application.

6 Waiver Request at 1.

7 47 CFR §§ 90.615, 90.617.

4. The Commission first established the Expansion Band as part of 800 MHz band reconfiguration, in order to separate cellular communications from public safety entities.⁸ In April 2007, the Public Safety and Homeland Security Bureau (Bureau) clarified that public safety licensees that elected to remain on their Expansion Band channels could modify their operations, including expanding coverage contours, without the need for a rule waiver.⁹

5. In April 2015, however, the Bureau decided that it would only accept applications for expanded coverage from public safety licensees that elected to remain in the Expansion Band after it and the Wireless Telecommunications Bureau (collectively the Bureaus) established a filing date for accepting such applications.¹⁰ The Bureau explained that it restricted the date upon which public safety licensees could file Expansion Band applications because—since its initial guidance—it had established a process for licensing channels in the Expansion Band to all eligible entities.¹¹ That process depends upon a stable spectral environment in the Expansion Band prior to the filing date so that frequency coordinators can pre-coordinate applications and resolve conflicts.¹²

6. Clark County elected to remain in the Expansion Band. Absent a waiver, however, it could only expand its coverage contour on the Expansion Band channels after the Bureaus established a filing date for applicants seeking to license Expansion Band channels in its NPSPAC region.¹³

7. In support of its waiver request, Clark County states that its Yacolt site is being added to “improve coverage” and that, without this site, its system “does not adequately cover the northeast sector” of the county.¹⁴ Because it operates a simulcast system, Clark County notes that “all channels must be present at all sites” and that omission of the two Expansion Band channels from the Yacolt site would require it to “turn-off” those channels at every other site in the system.¹⁵

8. Furthermore, Clark County argues that the addition of the Yacolt site to its system will have “no material impact on other licensees.”¹⁶ It notes that the closest co-channel licensee on either

⁸ The Expansion Band consists of forty channels in the 815-816/860-861 MHz segment of the 800 MHz band intended for interference resistant PLMR systems that would not be adversely affected by ESMR and other cellular-architecture systems operating on frequencies above 817/862 MHz. *See Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 15053 paras. 154-155 (2004) (*800 MHz R&O*). Initially, the Commission permitted public safety licensees operating on Expansion Band channels to elect to remain in the Expansion Band.

⁹ *See Public Safety and Homeland Security Bureau Clarifies the Rights of 800 MHz Public Safety Licensees Electing to Remain in the 800 MHz Expansion Band*, Public Notice, 22 FCC Rcd 6803 (PSHSB 2007) (*2007 Expansion Band Guidance PN*).

¹⁰ *See Public Safety and Homeland Security Bureau Clarifies the Process for Accepting Applications from Public Safety Licensees that Elected to Remain in the 800 MHz Expansion Band*, Public Notice, 30 FCC Rcd 3021, 3021-22 (PSHSB 2015) (*2015 Expansion Band Guidance PN*). The Bureau noted that a filing date for accepting Expansion Band applications would be established in each NPSPAC region after completion of band reconfiguration in that region.

¹¹ *Id.* at 3022.

¹² *Id.*

¹³ Clark County’s proposed site in Yacolt, Washington is listed as location 2 on its application. Clark County Application. Clark County notes that there would be no increase in the composite 22 dBu F(50,10) footprint from its proposed site in Orchards, Wash. listed as location 1 on its application. Waiver request at 1.

¹⁴ Waiver Request at 1.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

Expansion Band channel is 145 kilometers distant.¹⁷ It also notes that the area where its system's coverage contour will be extended by the addition of the Yacolt site is "sparsely populated and heavily forested."¹⁸

III. DISCUSSION

9. 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;¹⁹ 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.²⁰ We conclude that Clark County has satisfied the first prong of the waiver standard.

10. As noted above, the underlying purpose of the Bureaus' policy regarding acceptance of Expansion Band applications is to maintain a stable spectrum environment prior to establishing a filing date.²¹ In this instance, we find that granting Clark County early access to the two Expansion Band channels listed in its application would not have a material effect on the spectrum environment in its NPSPEC region.

11. Bureau staff examined the potential spectral impact of Clark County's proposed new base stations by plotting the composite contour footprint of its currently licensed base stations operating on the two Expansion Band channels and comparing it to the contours of Clark County's proposed sites in Orchard and Yacolt, Washington.²² Staff determined that the addition of the Yacolt site results in a less than two percent expansion of the area covered by the system's composite contour footprint on the two Expansion Band channels.²³ We consider this a *de minimis* increase, particularly given the rural, forested nature of the area in which the expansion occurs.²⁴ Furthermore, we note that the nearest co-channel incumbent on either Expansion Band channel is more than 140 kilometers from Clark County's proposed new sites.²⁵

12. We conclude therefore, that the slight increase in the composite footprint resulting from the addition of the Yacolt site to Clark County's system is an unavoidable side effect of improvements that Clark County needs to enhance coverage within its operating area, and that Clark County does not seek to expand its authorized mobile operating area. Further, we find that granting Clark County's request would not frustrate the underlying purpose of the Bureaus' policy on accepting Expansion Band applications since the addition of the site will have no significant impact of the availability of Expansion Band channels within Clark County's NPSPEC region.

13. Finally, on this record, we find it in the public interest to waive the Bureaus' policy on accepting Expansion Band applications so that Clark County can continue its multi-year project to

¹⁷ *Id.*

¹⁸ *Id.* at 1.

¹⁹ 47 CFR § 1.925(b)(3)(i).

²⁰ 47 CFR § 1.925(b)(3)(ii).

²¹ *2015 Expansion Band Guidance PN*, 30 FCC Rcd at 3022.

²² Staff plotted the 21 dBu F(50,10) interference contour for each site.

²³ Staff determined there would be no increase in Clark County's composite 21 dBu F(50,10) contour footprint from the addition of the Orchard site. The addition of the Yacolt site, however, would result in a 1.45 percent increase in the area covered by Clark County's composite 21 dBu F(50,10) contour footprint.

²⁴ Waiver Request at 1.

²⁵ *Id.* at 2.

upgrade the technology of its trunked simulcast system and improve radio coverage to the northeast corner of the county for the users who rely on Clark County's system for their public safety communications.²⁶

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), and Section 1.925 of the Commission's rules, 47 CFR § 1.925, that the waiver request associated with ULS File No. 0007502190 filed by the Clark County, Washington, IS GRANTED and that the associated application SHALL BE PROCESSED accordingly.

15. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

²⁶ *Id.* at 1-2.