

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

In the Matter of
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Request for Waiver of Section 90.621 of the Commission's Rules to Short-Space Sprint Sites
File No. 0007523171

ORDER

Adopted: December 12, 2017

Released: December 12, 2017

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

I. INTRODUCTION

1. In this Order we deny a request for waiver filed by the State of Washington, Department of Transportation (Washington DOT) to operate an 800 MHz channel at a base station located less than the minimum required separation distance from co-channel sites licensed to the Sprint Corporation (Sprint).1

II. BACKGROUND

2. Washington DOT operates a statewide private land mobile radio (PLMR) system on numerous channels in the 800 MHz band.2 On October 31, 2016, it filed an application to license a new base station for its PLMR system in Eatonville, Washington.3 Washington DOT proposes to operate on Public Safety Pool frequency 859.2125 MHz and Business/Industrial/Land Transportation (B/ILT) Pool frequency 859.7875 MHz at its new site.4 It also proposes to operate corresponding paired mobile-transmit frequencies 814.2125 MHz and 814.7875 MHz for control station (FX1) operations throughout the state.5

3. Washington DOT's proposed new base station in Eatonville, Washington is less than 88 kilometers from numerous co-channel sites licensed to Sprint to operate on B/ILT frequency 859.7875 MHz. Section 90.621 of the Commission's rules,6 provides that base stations in the 800 MHz band must be located at least 113 kilometers (70 miles) from other co-channel base stations unless the applicant

1 ULS application file no. 0007523171 (Washington DOT Application). See also Letter from Timothy S. McDowell, ITS Communications and Wireless Technology Manager, Washington State Department of Transportation to the Federal Communications Commission (Apr 13, 2017) (attached to Washington DOT Application) (Waiver Request).

2 Washington DOT holds numerous PLMR licenses in the 800 MHz band under FCC Registration Number (FRN) 0001564103. See, e.g., call signs WNZT380, WNZZ826, WPHN664, WQMF773, and WQMF777.

3 Washington DOT Application.

4 Id.

5 Id.

6 47 CFR § 90.621.

satisfies certain power and antenna height limits specified in a short-spacing table, in which case it can operate at a minimum distance of 88 kilometers to other co-channel base stations.

4. In a letter attached to its application, Washington DOT seeks a waiver of Commission rules to license a channel from the B/ILT Pool and use it at the Eatonville site for public safety rather than business related communications.⁷ The letter says nothing, however, about operating the B/ILT frequency 859.7875 MHz at less than the minimum required distance from Sprint's co-channel sites.

5. Consequently, on February 16, 2017, Public Safety and Homeland Security Bureau (Bureau) staff requested that Washington DOT resolve the short-spacing by either obtaining a letter of concurrence from Sprint, or seeking a waiver of Section 90.621.⁸ Washington DOT responded on February 22, 2017, by arguing that it did not need a consent letter from Sprint to operate the B/ILT frequency at the Eatonville site because, according to Washington DOT, it was "assigned the frequency in question by Nextel during the rebanding process."⁹ Washington DOT explained that it now operates on the B/ILT frequency at three other base station locations in its PLMR network all of which are located less than 88 kilometers from Sprint's base stations.¹⁰

6. Bureau staff determined that Washington DOT's response to the Bureau's email was insufficient. The fact that Washington DOT was assigned the B/ILT frequency as a replacement frequency for its existing sites did not entitle Washington DOT to use it at a new site to expand its coverage, when to do so would violate the Commission's spacing rules.¹¹ Accordingly, on April 5, 2017, staff returned the application to Washington DOT and again requested that it either obtain a concurrence letter from Sprint or seek a waiver of Section 90.621.¹² Therefore, in a letter dated April 13, 2017, Washington DOT requests a waiver of Section 90.621 so it can operate on B/ILT frequency 859.7875 MHz at the proposed Eatonville site at less than the minimum required co-channel separation from Sprint's sites.¹³

7. In support of its waiver request, Washington DOT provides a contour plot which demonstrates that the 5 dBu interference contour from its existing sites "blankets the Sprint/Nextel sites of concern."¹⁴ Washington DOT argues that Sprint "had no intention of maintaining operations on the

⁷ Letter from Timothy S. McDowell, ITS Communications and Wireless Technology Manager, Washington State Department of Transportation to the Federal Communications Commission (Oct 27, 2016) (attached to Washington DOT Application). Washington DOT seeks a waiver of Section 90.35(a)(5) because the rule section permits public safety entities to license B/ILT Pool channels only to the extent that they use the channels for business rather than public safety communications. See 47 CFR § 90.35(a)(5).

⁸ Email from Troy Sieg, Electronics Engineer, Public Safety and Homeland Security Bureau to Tracy Simmons, Chief, Licensing Branch, Public Safety and Homeland Security Bureau and Thomas Shuler, Blue Wing Services, Inc. (Feb. 16, 2017, 3:57 EST).

⁹ Letter from Timothy S. McDowell, ITS Communications and Wireless Technology Manager, Washington State Department of Transportation to the Federal Communications Commission at 1 (Feb 22, 2017) (attached to Washington DOT Application) (Feb 2017 Washington DOT Letter).

¹⁰ *Id.*

¹¹ *Id.* Bureau staff has confirmed that Washington DOT would expand its contour footprint on frequency 859.7875 MHz by adding the frequency to its proposed new site in Eatonville, Washington.

¹² Letter from the Public Safety and Homeland Security Bureau, Federal Communications Commission to ITS Comm. & Wireless Technology, Department of Transportation, State of Washington (Apr 5, 2017) (attached to Washington DOT Application).

¹³ Waiver Request at 1.

¹⁴ *Id.*

subject sites even though they have not yet cancelled these licenses.”¹⁵ Therefore it concludes “the need to provide protection to the noted Sprint/Nextel sites is moot and that the close spacing protection requirement for §90.621 serves no purpose in this case.”¹⁶

III. DISCUSSION

8. 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;¹⁷ 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.¹⁸ We conclude that granting Washington DOT’s request would be premature and would conflict with the underlying purpose of Section 90.617(g) of the Commission’s rules.¹⁹

9. Pursuant to Section 90.617(g) of the Commission’s rules, channels that Sprint vacates during the rebanding process which remain vacant in a NPSPAC region are reserved exclusively for public safety licensees for a three-year period once they become available for licensing and then to public safety and critical infrastructure licensees for a two-year period after that.²⁰ Sprint-vacated channels do not become available for licensing, however, until the Bureau releases a public notice announcing a date upon which it will begin accepting applications for Sprint-vacated channels in a NPSPAC region.²¹ Therefore, public safety licensees like Washington DOT may expand operations on their assigned Sprint replacement channels (or apply to license new Sprint-vacated channels) only after the Bureau announces a date on which it will begin accepting applications for those channels.²²

10. Sprint has yet to cancel its remaining licenses in Washington DOT’s NPSPAC region and the Bureau has yet to announce a date upon which it will begin accepting applications for those channels. Thus, Washington DOT’s waiver request is essentially a request for early access to a Sprint-vacated channel so it can expand its contour footprint on that channel.

11. We find in this instance that Washington DOT’s waiver request is premature and, if granted, would allow Washington DOT to circumvent the process the Commission established to make Sprint-vacated channels equitably available for licensing under Section 90.617(g) of the rules.²³

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 47 CFR § 1.925(b)(3)(i).

¹⁸ 47 CFR § 1.925(b)(3)(ii).

¹⁹ 47 CFR § 90.617(g).

²⁰ 47 CFR § 90.617(g).

²¹ See e.g. *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 Rcd 14775, 14778-80 (PSHSB, WTB 2012) (*Nov 2012 Completion of Rebanding PN*) (announcing the availability for licensing of Sprint-vacated channels in certain regions which had completed band reconfiguration as of November 2012).

²² An applicant seeking to expand its contour footprint on a site-based Sprint-vacated channel must ensure that the 22 dBu V/m F(50,10) contour from its proposed facilities remains within the 22 dBu V/m F(50,10) contour of the originally licensed Sprint station. See *Public Safety and Homeland Security Bureau Announces Application and Licensing Procedures for Channels Relinquished by Sprint Nextel Corporation in the 809-809.5/854-854.5 MHz Band*, Public Notice, 23 FCC Rcd 18343, 18344 (PSHSB 2008) (*Dec 2008 Vacated Spectrum PN*).

²³ 47 CFR § 90.617(g). See, e.g., *City of West Palm Beach, Florida*, Order, 28 FCC Rcd 261 (PSHSB 2013) (denying a request for waiver of the application procedures for licensing spectrum vacated by Sprint Corp. before the date that the spectrum becomes available on the VCSE for public safety licensing.); *American Electric Power*

(continued....)

Moreover, we find that Washington DOT offers no unique facts or unusual circumstances supporting expansion of its contour footprint on the Sprint channel before the Bureau makes it available for licensing in the region through its regular process for releasing Sprint-vacated channels.

12. For the reasons stated above, we deny Washington DOT's request for a waiver of Section 90.621 so it can short-space Sprint's active call signs and expand its contour footprint on frequency 859.7875 MHz.²⁴

IV. ORDERING CLAUSES

13. 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 Sections 1.925 and 90.617 of the Commission's rules, 47 CFR §§ 1.925, 90.617 that the waiver request associated with ULS File No. 0007523171 filed by the Washington State of Department of Transportation, IS DENIED.

14. IT IS FURTHER ORDERED that staff at the Public Safety and Homeland Security Bureau SHALL REMOVE frequencies 814.7875 MHz and 859.7875 MHz from ULS File No. 0007523171 but continue processing the remaining frequencies

15. This action is taken under delegated authority pursuant to Section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c) and 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

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Service Corporation, Order, 32 FCC Rcd 6740 (WTB 2017) (denying a utility's request for waiver to access Sprint-vacated spectrum before it becomes available to public safety).

²⁴ This decision readily may be distinguished from our recent decision granting Clark County, Washington a waiver to expand its contour footprint a *de minimis* amount where the contour expansion falls in a rural, heavily forested area. See *Clark County, Washington*, Order, DA 17-1189 (PSHSB rel. Dec. 11, 2017). Here, the requested footprint expansion is approximately 10 times greater than that in Clark County and falls in the heavily congested Seattle metropolitan area.