

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

In the Matter of)
COUNTY OF MARICOPA, ARIZONA) File No. 0007980275
Request for Waiver of the 800 MHz Wave 4)
Application Freeze Along the U.S./Mexico Border)

ORDER

Adopted: June 4, 2018

Released: June 4, 2018

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

I. INTRODUCTION

1. In this Order, we waive the 800 MHz Wave 4 application freeze along the U.S./Mexico border to permit Maricopa County, Arizona (Maricopa County) to operate on 10 NPSPAC frequencies for mobile-only communications in the conventional mode. On our own motion, we also waive Section 90.613 of the Commission’s rules.

II. BACKGROUND

2. Wave 4 Application Freeze and Maricopa County Waiver Request. In the 800 MHz Report and Order, the Commission mandated reconfiguration of the 800 MHz band to eliminate interference to public safety communications in the band. To maintain a stable spectral environment during reconfiguration of each NPSPAC region, the Commission imposed a freeze on acceptance of new

1 Six megahertz of spectrum in the 800 MHz band is made available to local, regional, and state public safety agencies under guidelines of the National Public Safety Planning Advisory Committee (NPSPAC) and administration of Regional Planning Committees (RPCs). See 47 CFR § 90.16 citing Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821-824/866-869 MHz Bands by the Public Safety Services, Report and Order, 3 FCC Rcd 905 (1987).

2 ULS application file no. 0007980275 (Maricopa County Application). See also attachment to Maricopa County Application labeled “Letter of Justification and Request to Wave [sic] Region 4 Rebanding Freeze” (Nov. 1, 2017) (Waiver Request).

3 Maricopa County did not expressly request waiver of 47 CFR § 90.613, which requires assignment of base and mobile frequencies in pairs. Because Maricopa County intends to use the 10 frequencies at issue for “direct unit to unit communication” in an unpaired configuration, we determine that Maricopa County’s proposal also requires a waiver of Section 90.613, 47 CFR § 90.613.

4 See Improving Public Safety Communications in the 800 MHz Band, Report and Order, 19 FCC Rcd 14969 (2004) (800 MHz Report and Order).

800 MHz applications during reconfiguration.⁵ The application freeze was in effect when Maricopa County filed its application,⁶ and remains in effect currently.⁷

3. Maricopa County seeks Commission approval to deploy 800 MHz spectrum as a platform for a talk-around capability of a new Project-25 public safety radio system designed to serve the county's population of over four million people.⁸ On November 1, 2017, it filed an application seeking to license ten frequencies in the NPSPAC bands for mobile-only communications.⁹ Maricopa County states that the frequencies at issue would be utilized in coordination with adjacent counties that currently use those frequencies for law enforcement.¹⁰

4. Although the area of operation for the requested 800 MHz frequencies is within the Wave 4 freeze area, Maricopa County asserts that it has completed, and complied with, the rebanding process and that it is in the close-out phase of that process.¹¹ In addition, Maricopa County states that it "has selected frequencies within the rebanded portion of the spectrum to facilitate a long term solution with minimal impact to the ongoing rebanding process."¹² In this regard, Maricopa County states that vacant frequencies will be "left vacant for subsequent users, thereby 'packing' of the 800 MHz rebanded spectrum in favor of frequency re-use."¹³ Maricopa further asserts that grant of this application will not negatively impact completion of the rebanding effort in Arizona because "the frequencies selected are part of the new block of 800 MHz frequencies set aside for move of the NPSPAC block occupied and has been coordinated with the NPSPAC 800 MHz coordinating committee."¹⁴ Indeed, the application includes a letter of consent to secondary use from the NPSPAC Region 3 (Arizona) RPC.¹⁵ Additionally, the 800 MHz Transition Administrator concurs that Maricopa County's proposed operation would not impede 800 MHz rebanding.¹⁶

5. Maricopa County indicates that it will suffer harm if it cannot use the requested frequencies until the conclusion of rebanding in the Wave 4 Freeze Area.¹⁷ Specifically, it asserts that lengthening the project will increase its costs above the more than \$130 million that it has invested in its new radio system.¹⁸ Maricopa County also asserts that inability to use the requested frequencies could unreasonably delay critical talk-around radio coverage in the Maricopa County area, placing "law enforcement officers in additional jeopardy through lack of communications in tactical response situations

⁵ *Id.* at 15078, para. 204.

⁶ *Public Safety and Homeland Security Bureau Extends 800 MHz Application Freeze Along Border with Mexico*, Public Notice, 32 FCC Rcd 1817 (PSHSB 2017).

⁷ *See id.*

⁸ Waiver Request at 1. Maricopa County holds numerous Private Land Mobile Radio (PLMR) licenses under FCC Registration Number (FRN) 0001591635, approximately 10 of those licenses authorize use of NPSPAC spectrum.

⁹ *See* Waiver Request at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See* Letter from Stuart Snow, Arizona Regional Review Committee, to Albert Daigre, Senior Manager, Maricopa County Wireless Communication Services (October 11, 2017) (attached to Maricopa County Application).

¹⁶ *See* Letter to Thomas Crosby, Maricopa County, from Brett Haan, 800 MHz Transition Administrator (October 27, 2017) (attached to Maricopa County Application) (TA Letter).

¹⁷ *See* Waiver Request at 1.

¹⁸ *Id.*

[. . .] as well as DOT safety ‘flaggers’ that use talk around frequencies to [. . .] communicate over short distances to regulate construction traffic.”¹⁹

6. *Mobile-Only Operation.* Section 90.613 of the Commission’s rules requires assignment of 800 MHz channels in pairs with mobile and control stations transmitting in the 806-824 MHz band segment and base stations transmitting in the 851-869 MHz band segment.²⁰ Maricopa County seeks to use specific base transmit frequencies in the 851 MHz through 853 MHz segment of the NPSPAC band for mobile-only communications.²¹ Therefore, Maricopa County needs a waiver of Section 90.613 to allow mobile stations to transmit on base station frequencies in the 800 MHz band for unpaired mobile-only communications.

III. DISCUSSION

7. 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;²² 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.²³ We find that Maricopa County has satisfied the first prong of the waiver standard with regard to its request for waiver of the 800 MHz Rebanding Wave 4 Freeze, as well as Section 90.613 of the Commission’s rules.

8. *800 MHz Rebanding Wave 4 Freeze.* As noted *supra*, the freeze was imposed to maintain a stable spectral environment during reconfiguration of each NPSPAC region.²⁴ But the Commission did not intend to unnecessarily restrict incumbents during the freeze or deprive them of reasonable operational flexibility.²⁵ Here, Maricopa County claims that it completed physical rebanding and the TA states that it “does not foresee any impact on 800 MHz Band Reconfiguration resulting from the grant of the application.”²⁶ Further, Maricopa selected frequencies that would preserve vacant NPSPAC spectrum for future users while also meeting Maricopa’s need to augment its NPSPAC operations. Therefore, we are persuaded that grant of this application will not negatively impact completion of the rebanding effort in Arizona, while affording Maricopa the flexibility to meet its needs.

9. *Mobile-Only Operation.* The purpose of Section 90.613 of the Commission’s rules is to promote spectrum efficiency by reducing the risk of interference between licensed land mobile radio

¹⁹ *Id.*

²⁰ Base stations are assigned transmit frequencies 45 MHz higher than mobile transmit frequencies. 47 CFR § 90.613.

²¹ See Waiver Request at 1. Specifically, Maricopa County proposes to operate 7,770 mobile units with a maximum 60 watts Effective Radiated Power (ERP) on 10 NPSPAC base transmit frequencies. See Maricopa County Application.

²² 47 CFR § 1.925(b)(3)(i).

²³ 47 CFR § 1.925(b)(3)(ii).

²⁴ See *Wireless Telecommunications Bureau Outlines Application Freeze Process for Implementation of 800 MHz Band Reconfiguration*, Public Notice, 20 FCC Rcd 8905 (WTB 2005). See also *Public Safety and Homeland Security Bureau Extends 800 MHz Rebanding Negotiation Period for Wave 4 Border Area NPSPAC and Non-NPSPAC Licensees Along the U.S.-Mexico Border*, Public Notice, 27 FCC Rcd 3067 (PSHSB 2012).

²⁵ *800 MHz Report and Order*, 19 FCC Rcd at 15078, para. 204 (2004) (stating Commission policy of minimizing adverse effects of the freeze on incumbents and new applicants and identifying waiver as a mechanism for avoiding prejudice to applicants).

²⁶ See TA Letter at 1.

systems.²⁷ The 800 MHz band plan in the Commission's rules assigns frequencies in base/mobile pairs with 45 MHz separation between the base frequency from the mobile frequency.

10. Section 90.613 requires base stations in the 800 MHz NPSAC band to transmit in the 851-854 MHz band, while corresponding mobile radio stations must transmit on frequencies forty-five megahertz lower in frequency at 806-809 MHz.²⁸ In the Division's 2014 *Cleveland Heights Order* waiving Section 90.613 of the rules, we noted that "[t]he Commission's rules recognize that if a mobile radio station is assigned to a frequency that would normally be assigned to a base station, the mobile radio station may be subject to interference that would otherwise not occur."²⁹ We also observed that "[i]t also follows that if a mobile radio station transmits on a frequency normally assigned to a base station, the mobile radio station could create interference to other mobile radio units that are monitoring the base station transmit frequency."³⁰ Nevertheless, Division staff determined that waiver of Section 90.613 was appropriate because it was "unlikely that Cleveland Heights will create interference to other licensees."³¹

11. We find Maricopa County's proposal to license the 10 base transmit frequencies for mobile-only communications would not frustrate the purpose of Section 90.613. The channels selected are unlikely to cause interference to other public safety users in Maricopa County because they currently are vacant. Maricopa County also includes letters from the TA and the Region 3 RPC confirming that Maricopa's proposal will not impair rebanding and conforms to the Regional Plan, respectively. Further, Maricopa County plans to coordinate its use of the frequencies with adjacent counties that currently use those frequencies for law enforcement. Finally, because the mobile-only authorizations are secondary, their operation would have to be discontinued were Maricopa County to cause interference.

12. Finally, we note that licensees in the 800 MHz band typically receive exclusive use of their channels within a certain distance of their base station locations.³² In this instance, because Maricopa County proposes to operate without an associated base station, our *Cleveland Heights Order* establishes that Maricopa County should have only secondary, not exclusive, use of its proposed channels.³³

13. *Public Interest.* We find the public interest is served by granting Maricopa County a waiver of the Wave 4 Rebanding Freeze and Section 90.613. Granting the requested waiver will allow first responders who use Maricopa County's network to communicate via mobile-unit to mobile-unit at locations within the county in coordination with adjacent counties. As noted above, Maricopa County has invested millions of dollars to deploy its new public safety network, and we are persuaded that delay in use of the requested frequencies until lifting of the freeze would cause Maricopa County to incur unnecessary additional costs. Therefore, we find it in the public interest to grant Maricopa County licenses for the frequencies referenced in its application.

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

²⁷ See *Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz and Amendment of Parts 2, 18, 21, 73, 74, 89, 91, and 93 of the Rules Relative to Operations in the Land Mobile Service Between 806 and 960 MHz*, Docket No. 18262, Second Report and Order, 46 FCC 2d 752, 769 paras. 60-61 (1974).

²⁸ 47 CFR § 90.617.

²⁹ See *City of Cleveland Heights*, Order, 29 FCC Rcd 9277, 9279, para. 8 (PSHSB 2014) (*Cleveland Heights Order*).

³⁰ *Id.* at 9279-80, para. 8.

³¹ *Id.* at 9280, para. 10.

³² 47 CFR § 90.621(b).

³³ See *Cleveland Heights Order*, 29 FCC Rcd at 9281, para. 14 citing *Commonwealth of Pennsylvania*, Order, 22 FCC Rcd 1773, 1776-77, para. 10 (PSHSB 2007).

Commission's rules, 47 CFR § 1.925, that the waiver request associated with ULS File No. 0007980275 filed by Maricopa County, Arizona IS GRANTED and the associated application SHALL BE PROCESSED accordingly.

15. IT IS FURTHER ORDERED, on our own motion that Section 90.613 of the Commission's rules, 47 CFR § 90.613, IS WAIVED to the extent that Maricopa County, Arizona may transmit using mobile units on 800 MHz frequencies usually reserved for base station operation.

16. 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

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