

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

In the Matter of)
CITY OF NEW BRITAIN, CONNECTICUT) File No. 0007585881
Request for Waiver for Early Access to 800 MHz)
Expansion Band Channel)

ORDER

Adopted: July 25, 2018

Released: July 25, 2018

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

I. INTRODUCTION AND BACKGROUND

1. In this Order, we address the City of New Britain, Connecticut’s (New Britain), application and associated waiver request for authority to license Expansion Band channel 860/815.2125 MHz for public safety communications purposes.¹

2. The Commission created the 800 MHz Expansion Band and Guard Band to provide spectral separation between commercial licensees operating in the Enhanced Specialized Mobile Radio (ESMR) segment of the 800 MHz band above 817/862 MHz and public safety licensees operating below 815/860 MHz.² Expansion Band spectrum is designated for SMR stations and Business/Industrial/Land Transportation (B/ILT) stations.³ However, Expansion Band users also include Public Safety licensees that elected to remain in the band in lieu of being relocated.

3. On December 9, 2016, the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (Bureaus) announced the completion of 800 MHz rebanding in several National Public Safety Planning Advisory Committee (NPSPAC) regions, including the region covering Connecticut and the New York metropolitan area.⁴ The Bureaus announced that any remaining channels in the interleaved segment of the band vacated by Sprint Corporation (Sprint) would be available for licensing to public safety entities.⁵ However, the Bureaus did not make unoccupied channels in the

¹ File No. 0007585881 (filed Dec. 9, 2016) and accompanying Letter from James P. Donnelly, Public Safety Telecommunications Director, City of New Britain (Waiver Request).

² These frequencies apply to most of the United States and its territories. Certain regions, however, have variations in their Guard Band and Expansion Band frequencies. 47 CFR §§ 90.614, 90.617.

³ 47 CFR § 90.617(b), (d).

⁴ 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 (PSHSB WTB 2016)(Public Notice).

⁵ Id. The Bureaus stated that “[b]eginning on February 23, 2017, Commission-certified frequency coordinators may file applications, in the Universal Licensing System (ULS), on behalf of eligible applicants for the channels released by this Public Notice. Any application filed for these channels before February 23, 2017 will be dismissed.” Id. at 12895. The Sprint-vacated channels are available exclusively to public safety for 3 years following completion of rebanding in a region, and to public safety and critical infrastructure industry applicants for the subsequent 2 years. Thereafter, the channels are available to the class of applicants listed in the Commission’s rules. 47 CFR § 90.617(g).

Expansion and Guard Bands available for licensing at that time, and stated that the availability of those channels would be addressed in a separate Public Notice.⁶ The Bureaus did so because eligibility for Guard Band and Expansion Band channels is the subject a pending rulemaking proceeding.⁷

4. On the same day that the Bureaus announced the unavailability of Expansion Band channels for licensing, New Britain filed the instant waiver request. In its request, New Britain seeks to add Expansion Band channel 860/815.2125 MHz to three sites licensed under call sign WNCE562 in Hartford County, Connecticut.⁸ New Britain indicates that given the lack of public safety spectrum and the close proximity of other 800 MHz users in the metropolitan Hartford, New York/New Jersey, and Massachusetts regions, New Britain is not able to expand its system's capacity and offer coverage from its three sites within the New Britain city limits.⁹ Accordingly, New Britain claims that it has no alternative but to seek spectrum in the Expansion Band.¹⁰

II. DISCUSSION

5. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (1) the underlying purpose of the rule(s) would not be served or would be frustrated by the application to the present case, and that a grant of the waiver would serve the public interest;¹¹ or (2) 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.¹² An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹³

6. New Britain fails to meet the standard for waiver relief. As noted above, the underlying purpose of withholding the Guard Band and Expansion Band frequencies is to avoid prejudicing an ongoing rulemaking proceeding regarding a proposal to afford filing priority to 800 MHz incumbent licensees – a purpose that would be frustrated were we to grant the requested waiver. Further, spectrum congestion in the 800 MHz band is neither a unique nor an unusual circumstance that makes denial of the waiver inequitable, unduly burdensome or contrary to the public interest.¹⁴ Moreover, New Britain arguably has a reasonable alternative, *i.e.*, use of Sprint-vacated frequencies in the interleaved band, which remain available exclusively for licensing to public safety eligible entities until February 22, 2020. Our staff determined that Sprint-vacated frequencies remain available for licensing in Hartford County, Connecticut, which includes New Britain.

⁶ *Public Notice*, 31 FCC Rcd at 12896.

⁷ *Id.* at 12896-97 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 Band and Guard Band Frequencies; Petition for Rulemaking Regarding Conditional Licensing Authority Above 470 MHz*, Notice of Proposed Rulemaking, 31 FCC Rcd 9431 (2016).

⁸ Waiver Request at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 47 CFR § 1.925(b)(3)(i).

¹² 47 CFR § 1.925(b)(3)(ii).

¹³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corporation*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 para. 6 (2003).

¹⁴ *See, e.g., North Carolina State Highway Patrol*, Order, 30 FCC Rcd 10924, 10926 para. 11 (PSHSB 2015) (finding that spectrum congestion in the 800 MHz band is neither a unique nor an unusual circumstance that would warrant early access to Expansion band channels prior to declaring rebanding complete).

7. Based on the record before us, we find that New Britain does not satisfy the waiver criteria in Section 1.925 of the Commission's rules. Therefore, we deny the waiver request and dismiss the application. The dismissal is without prejudice to New Britain, which may reapply for Expansion Band channels when they become available.

III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303 and Section 1.925 of the Commission's rules, 47 CFR § 1.925, the request for waiver associated with the captioned application filed by the City of New Britain, Connecticut, on December 9, 2016, IS DENIED, and the captioned application IS DISMISSED consistent with this *Order* and the Commission's rules.

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

FEDERAL COMMUNICATIONS COMMISSION

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