

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

In the Matter of)
LOWER COLORADO RIVER AUTHORITY) Call Signs WPLZ918 and WPMZ642; File
Requests for Waiver of 900 MHz Application) Nos. 0008537944 and 0008910862
Freeze)

ORDER

Adopted: June 17, 2020

Released: June 17, 2020

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. In this Order, we address applications filed by Lower Colorado River Authority (LCRA) to modify its licenses for 896-901/935-940 MHz (900 MHz) band Business/Industrial Land Transportation Stations WPLZ918 and WPMZ642 by adding three sites, and we address LCRA's associated request for waiver of the 900 MHz application freeze. For the reasons discussed below, we deny the waiver request and dismiss the applications.

2. Background. LCRA is a Texas conservation and reclamation district that offers many services, including delivering electricity to utilities, managing the water supply of the lower Colorado River basin, and providing public recreation areas in Texas. LCRA supplies wholesale electricity to 34 Texas retail utilities, including cities and electric cooperatives that serve more than one million people in 55 counties. LCRA operates a 900 MHz trunked private land mobile radio system for mission critical utility operations, and it also engages in non-profit shared use of its system with a variety of public safety entities.

3. In September 2018, the Wireless Telecommunications Bureau (Bureau) suspended the acceptance of applications for new or expanded 900 MHz operations to maintain a stable spectral landscape while the Commission determined how to proceed with respect to that spectrum. The 900

1 See Request for Waiver of the 900 MHz Application Freeze, FCC File No. 0008537944 (filed Feb. 22, 2019, with a supplement filed Dec. 11, 2019), https://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=11867014 (Waiver Request), and FCC File No. 0008910862 (filed Dec. 11, 2019), https://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=11866829 (Supplement).

2 See Wireless Telecommunications Bureau Announces Temporary Filing Freeze on the Acceptance of Certain Part 90 Applications for 896-901/935-940 MHz (900 MHz Band) Spectrum, WT Docket No. 17-200, Public Notice, 33 FCC Rcd 8735 (WTB 2018) (900 MHz Freeze Public Notice).

3 Waiver Request at 2.

4 Id.

5 Id.

6 900 MHz Freeze Public Notice. In October 2019, the Wireless Telecommunications Bureau modified the freeze to provide greater flexibility for 900 MHz band incumbents to relocate out of the broadband segment. Specifically, the modification permits incumbents to exchange frequencies in a manner that does not increase that incumbent's net

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MHz Freeze Public Notice noted that licensees have recourse through the Commission's waiver provisions to request an exception to the freeze.⁷ In March 2019, the Commission released a *Notice of Proposed Rulemaking* proposing to realign the 900 MHz band to create a 3/3 megahertz broadband segment, while reserving the remaining 2/2 megahertz for narrowband operations.⁸ In May 2020, the Commission adopted a *Report and Order* that established a 3/3 megahertz broadband segment, two narrowband segments of 1.5/1.5 megahertz and .5/.5 megahertz, and a transition mechanism based primarily on negotiations between prospective broadband licensees and existing narrowband incumbent licensees.⁹ At the time it adopted the *Report and Order*, the Commission partially lifted the 900 MHz freeze for relocation of incumbents as part of a transition plan and clarified that the current freeze, which prohibits contour extensions, remains in place.¹⁰

4. In its Waiver Request and Supplement, LCRA requests a waiver of the 900 MHz freeze to add a new 900 MHz site in three cities in Texas—San Angelo, Amos Creek, and Christoval—for a total of three new sites.¹¹ At all three sites, LCRA requests authority to operate on frequencies in the narrowband segments.¹² In its waiver request and supplement, LCRA asserts that the three additional sites are needed to support the expansion of LCRA's transmission service in West Texas and to provide reliable communications in rural areas that often lack reliable radio coverage.¹³ LCRA states that its 900 MHz system is the primary means of communications for its employees to construct, operate, and maintain transmission lines and substations in these areas safely and reliably.¹⁴ LCRA contends that the radio operations requested at the new sites are supported by a demonstrated need for a private internal communications network to support the growth of LCRA's transmission system at a specific location. LCRA further argues that the expansion of transmission services—necessitating expansion of radio coverage—is due to reasons beyond LCRA's control.¹⁵ LCRA also claims that it could not have known about the expansion at the time the Bureau announced the application freeze.¹⁶ In June 2020, LCRA filed an ex parte letter in the 900 MHz rulemaking docket urging the Commission to grant LCRA's pending waiver request.¹⁷

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number of licensed frequencies and is consistent with the Commission's band realignment. *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band; pdv Wireless, Inc. d/b/a Anterix, Request for Modification of 900 MHz Temporary Filing Freeze*, WT Docket No. 17-200, Order, 34 FCC Rcd 9369 (WTB 2019) (*900 MHz Freeze Modification*).

⁷ *900 MHz Freeze Public Notice*, 33 FCC Rcd at 8736, n. 4.

⁸ *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, WT Docket No. 17-200, Notice of Proposed Rulemaking, 34 FCC Rcd 1550, 1555, para. 15 (2019) (*900 MHz NPRM*).

⁹ *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, WT Docket No. 17-200, Report and Order, Order of Proposed Modification, and Orders, FCC 20-67, pages 12-41, paras. 27-95 (2020) (*900 MHz R&O and Orders*).

¹⁰ *Id.* at 69, paras. 175-76.

¹¹ See Waiver Request; Supplement.

¹² Supplement at 1, 3.

¹³ See *id.* at 2-4; Waiver Request at 3-5.

¹⁴ Waiver Request at 3-4.

¹⁵ *Id.* at 5; Supplement at 2.

¹⁶ Waiver Request at 4; Supplement at 2.

¹⁷ See Letter from Kevin M. Cookler, Counsel to Lower Colorado River Authority, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-200 (filed June 2, 2020) (*June 2 Ex Parte*). In the letter, LCRA also urged the

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5. *Discussion.* 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 grant of the waiver would be in the public interest; or (ii) in view of the 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 Although LCRA asserts that it meets both prongs of the waiver standard, we find that it meets neither.¹⁹

6. We conclude that the circumstances presented by LCRA do not warrant a waiver of the 900 MHz freeze. The requested new sites are, respectively, 75, 102, and 110 miles from the nearest existing LCRA site in its 900 MHz network. In *Rohm and Haas Texas Inc.*, we denied a 900 MHz freeze waiver request seeking to expand use of 900 MHz frequencies by adding capacity and relocating operations by 26 miles.²⁰ Here, LCRA requests a significantly larger geographic expansion. We also find LCRA’s request distinguishable from our recent grant of a 900 MHz freeze waiver in *Long Island Power Authority*, where we determined that grant of the request would result in a *de minimis* net change to the geographic coverage area and a net loss of population coverage.²¹

7. LCRA argues that grant of its applications would not encumber use of the 900 MHz spectrum in any major markets, and therefore is supported by the Division’s reasoning in distinguishing *Rohm and Haas Inc.* in its recent *Long Island Power Authority* decision. LCRA notes that it “supplies wholesale electricity,” and it highlights that the Division, in *Long Island Power Authority*, granted relief to “the sole provider of electric utility service in three markets.”²² We find these arguments unpersuasive. In its recent 900 MHz Report and Order, the Commission indicated that it anticipated that rural counties may be the first to transition to broadband.²³ We reject the argument that a freeze waiver generally is warranted where the applications seeking to expand geographically seeks new capacity in rural areas,²⁴ particularly where the expansion is substantial and will result in further encumbrances, potentially delaying or preventing a transition to broadband in those markets. Further, although Long Island Power Authority was granted relief as a utility, that relief primarily was based on the limited scope of the geographic expansion, which distinguishes that case from the circumstances of LCRA’s instant request.²⁵

8. We also find that LCRA’s request is distinguishable from our grant of a 900 MHz waiver request in *Flint Hills Resources*, where we concluded that the replacement of the applicant’s system at the same locations and cancellation of its existing 900 MHz licenses would preserve the current landscape of

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Commission to grant its pending requests for an extension of time regarding construction deadlines, which are not part of LCRA’s waiver request and will be considered separately.

¹⁸ 47 CFR § 1.925(b)(3).

¹⁹ Waiver Request at 4, 5.

²⁰ *Rohm and Haas Texas, Inc., Review for Waiver of 900 MHz Application Freeze*, Order, 34 FCC Rcd 10436 (WTB 2019).

²¹ *Long Island Power Authority – Request for Waiver*, Letter Order, DA 20-552 (WTB May 22, 2020).

²² *June 2 Ex Parte* at 3.

²³ *900 MHz R&O and Orders*, at 20, para. 41.

²⁴ We note that only two of the three locations LCRA requests are in a rural area, as the initial location requested is near San Angelo, TX., which has approximately 101,004 residents. U.S. Census Bureau, *QuickFacts San Angelo city, Texas*, <https://www.census.gov/quickfacts/sanangelocitytexas> (last visited June 8, 2020).

²⁵ In fact, LCRA states that the requested geographic area covers “approximately 3,824 square miles.” See *June 2 Ex Parte* at 3.

authorized 900 MHz operations.²⁶ Unlike *Flint Hills Resources*, LCRA requests authority to expand its operations to new locations rather than replace frequencies in its network at existing locations. Although LCRA emphasizes that it currently is licensed to operate on each requested frequency at some location within its existing 900 MHz system, the new locations that it requests are so distant from LCRA's existing sites that, under the Commission's co-channel base station separation rules²⁷ and absent the freeze, any eligible entity could have filed an application to operate on the same frequencies. Further, as the freeze applies to the entire 900 MHz band—including narrowband channels suitable for relocation of incumbents in any transition to broadband—LCRA's request to operate on frequencies outside of the broadband segment is not sufficient to support a waiver grant.

9. We also are not persuaded by LCRA's arguments that a waiver of the freeze is warranted because LCRA was unaware of the expansion plans at the time the freeze was imposed, or that expansion of transmission services and the resulting need for additional 900 MHz facilities is beyond its control.²⁸ The timing of expansion of transmission services is a business decision and, under the facts presented, we find that the underlying purpose of the freeze would be frustrated if we were to allow LCRA to significantly expand its network geographically, particularly given the Commission's recent action to facilitate a transition of the 900 MHz band to broadband.

10. Accordingly, IT IS ORDERED, 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, that the Waiver Request filed on February 22, 2019, in association with application FCC File No. 0008537944, and Supplement filed on December 11, 2019, in association with applications FCC File No. 0008537944 and FCC File No. 0008910862, IS DENIED, and applications FCC File No. 0008537944 and FCC File No. 0008910862 ARE DISMISSED.

11. 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

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

²⁶ *Flint Hills Resources Corpus Christi, LLC; Requests for Waiver of 900 MHz Application Freeze*, Order, 34 FCC Rcd 8071 (WTB 2019); *Flint Hills Resources*, Letter Order, 35 FCC Rcd 606 (WTB 2020).

²⁷ 47 CFR § 90.621(b).

²⁸ *Cf. Eversource Energy Service Company, Requests for Waiver of 900 MHz Application Freeze*, Order, 34 FCC Rcd 8074 (WTB 2019) (the proximity of WTB's imposition of the freeze to Eversource's anticipated filing was insufficient to justify a waiver).