

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

In the matter of Applications of)	
)	
COUNTY OF TOMPKINS, NEW YORK)	
)	FCC File Nos. 0002574431, 0002574522,
For Modification of Licenses for Trunked, Public)	0002709985, and 0002709902
Safety Category Stations WQBZ750 and)	
WQBR701 and Request for Waiver of the Inter-)	
Category Sharing Freeze in the 806-821/851-866)	
MHz Band and Request for Waiver of the 800)	
MHz Application Filing Freeze)	

ORDER

Adopted: June 4, 2007

Released: June 5, 2007

By the Associate Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this *Order*, we address the above-captioned applications and waiver requests filed by the County of Tompkins, New York (County) relating to its 800 MHz public safety facilities. The County requests a waiver of the 800 MHz inter-category sharing freeze to implement a rebanding-related exchange of 800 MHz channels with Sprint Nextel Corporation (Sprint).¹ We dismiss this waiver request as moot because the requested swap may now be carried out through the 800 MHz rebanding process. The County also seeks to expand its currently licensed operations on certain 800 MHz frequencies that are not subject to rebanding.² We grant a waiver of the relevant inter-category sharing and application freezes to enable the County to implement this proposed system expansion.

II. BACKGROUND

2. The County operates a ten-channel trunked public safety radio system under two licenses (call signs WQBZ750 and WQBR701). Five of the ten frequencies licensed to the County are in the Channel 1-120 portion of the 800 MHz band that must be vacated under the Commission's *800 MHz*

¹ See FCC File Nos. 0002574431 (filed Apr. 17, 2006 amended Jun. 6, 2006), 0002574522 (filed Apr. 17, 2006 amended Jun. 6, 2006) and accompanying Letter to Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, FCC from James Wheaton, Regulatory Manager, Sprint Nextel Corp. and Lee Shurtleff, Project Director, Public Safety, County of Tompkins, NY (dated Feb. 10, 2006) (Waiver Request). We note that the delegated authority for handling 800 MHz public safety matters has been transferred from the Wireless Telecommunications Bureau to the Public Safety and Homeland Security Bureau. See Establishment of the Public Safety and Homeland Security Bureau and Other Organizational Changes, *Order*, 21 FCC Rcd 10867 (2006).

² See FCC File Nos. 0002709985 (filed Aug. 11, 2006, Aug. 22, 2006 and Sept. 12, 2006), 0002709902 (filed Aug. 11, 2006, Aug. 22, 2006 and Sept. 12, 2006), and accompanying Letter to Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, FCC, from Lee Shurtleff, Director, Emergency Response Dept., Tompkins County, NY (dated Aug. 18, 2006) (Modification Waiver Request).

*Report and Order.*³ In April 2006, before the rebanding process had begun in the Tompkins County area,⁴ the County and Sprint filed a request for waiver of the inter-category sharing freeze to enable the County to acquire two Business/Industrial Land Transportation (B/ILT) and three Specialized Mobile Radio (SMR) channels from Sprint in the interleaved portion of the 800 MHz band in exchange for relinquishing its five Channel 1-120 channels.⁵

3. The other five frequencies licensed to the County are in the 854-856 MHz portion of the 800 MHz band and are therefore not subject to rebanding.⁶ The County operates on these frequencies both in portions of the County that are within the U.S./Canadian border region, which extends 140 km from the Canadian border,⁷ and in portions of the County that are outside the border region. Under the 800 MHz band plan that applies within the border area (*i.e.* Region 7), these five frequencies are designated for Public Safety use.⁸ Outside the border region, three of the frequencies are designated General Category,⁹ the remaining two are designated B/ILT,¹⁰ and the County uses the frequencies on an inter-category sharing basis.

4. The County has filed modification applications to expand its operations on these five channels as part of its effort to improve its communications capability. Specifically, the County seeks to add two new sites, correct coordinates for certain existing sites, and adjust antenna and Effective Radiated Power (ERP) data.¹¹ These proposed modifications will affect both the border and non-border area portions of the County's system. To implement these changes in the border area portions of the system, the County has requested a waiver of the 800 MHz application freeze that was imposed when the Commission announced the start of band reconfiguration in the Wave 4, Stage 1 NPSPAC regions.¹² In

³ 851.0125 MHz, 851.3125 MHz, 852.3125 MHz, 853.3125 MHz, and 853.4875 MHz. Under the rebanding plan, these five frequencies must be vacated because they fall in the new NPSPAC band (851-854 MHz). *See* Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Report and Order*, 19 FCC Rcd 14969 (2004) (*800 MHz Report and Order*).

⁴ Wireless Telecommunications Bureau Announces that 800 MHz Band Reconfiguration will Commence July 3, 2006, In the NPSPAC Regions Assigned to Wave 4 and Specifies 800 MHz Reconfiguration Benchmark Compliance Dates, WT Dkt 02-55, *Public Notice*, 21 FCC Rcd 6267 (WTB 2006).

⁵ *See* Waiver Request. To effectuate the swap with Sprint, the County has filed two applications to operate on Sprint's frequencies. Sprint is the licensee of Economic Area (EA) Block V and consents to the assignment of these frequencies. Sprint notes that the County's application requests the addition of SMR channels in areas where Sprint is the EA licensee. Sprint consents to the County's use of these frequencies and will delete those frequencies from its licenses within 55 miles of the Tompkins County stations. *Id.* at accompanying Letter to Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, FCC from James Wheaton, Regulatory Manager, Sprint Nextel Corp. (dated Feb. 10, 2006).

⁶ 854.0125, 854.3125, 854.4875, 855.0125, and 855.3125 MHz.

⁷ U.S./Canada border areas in the 800 MHz band are areas within 140 km (87 miles) of the US-Canada border. *See* *800 MHz Report and Order*, 19 FCC Rcd at 15063 ¶ 176.

⁸ *See* 47 C.F.R. 90.619 Table 21 (2004).

⁹ 854.0125 MHz, 854.3125 MHz, and 854.4875 MHz.

¹⁰ 855.0125 MHz and 855.3125 MHz.

¹¹ *See* Modification Waiver Request at accompanying Explanation of License Modification Request. Use of some of these frequencies at these locations would be short-spaced to Sprint. *Id.* at accompanying Short Spacing Study Report.

¹² Public Safety and Homeland Security Bureau Extends Negotiation Period Between Sprint Nextel and Border Area Non-NPSPAC Licensees in Wave 4, Stage 1 of the 800 MHz Band Reconfiguration, WT Dkt 02-55, *Public Notice*, 22 FCC Rcd 6543 (PSHSB 2007) (*Wave 4 PN*) (extending the Wave 4 freeze in the U.S. border areas with Canada

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the non-border areas, the County requires waivers of the General Category freeze to expand use of the three frequencies in the General Category band and of the intercategory sharing freeze to expand use of the two B/ILT frequencies.¹³

III. DISCUSSION

A. Inter-Category Frequency Swap

5. As noted above, the County seeks a waiver of the inter-category sharing freeze to enable it to relinquish its five Channel 1-120 channels in exchange for two B/ILT channels and three SMR channels currently licensed to Sprint. However, we need not reach the County's arguments on this point because the inter-category sharing freeze does not apply to applications that are necessary to implement 800 MHz band reconfiguration once the reconfiguration process begins in the relevant region.¹⁴ To ensure that 800 MHz band reconfiguration could be timely and effectively completed, the Commission stated in the *800 MHz Report and Order*, that applications designed to implement band reconfiguration agreements would not be subject to the freeze on inter-category sharing.¹⁵ Because the *800 MHz Report and Order* requires the County to vacate its five Channel 1-120 channels and the applications are designed to facilitate the County's frequency relocation, we find the County's request for a waiver of the inter-category sharing freeze to be moot. As a result, we permit the processing of the County's applications to obtain the five B/ILT and SMR channels from Sprint.

B. System Modification

6. The County seeks to modify its authorizations to make expanded use of its five 854-856 MHz frequencies currently authorized under the County's system. In order to do so within the U.S./Canada border region, the County requires a waiver of the Wave 4 application freeze. In addition, for modifications that affect its operations outside the border region, the County requires a waiver of the intercategory-sharing freeze for expanded use of its two B/ILT channels and a waiver of the General Category application freeze for expanded use of its three General Category channels.

7. We conclude that the County has shown good cause for waiver of all of the above-mentioned application freezes.¹⁶ The County is redesigning its communications system and relocating the replacement channels to new locations as specified in those applications.¹⁷ The County states that in order to operate its public safety communications system after rebanding, the five channels that are not

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and Mexico to July 1, 2007). Because we extended the Wave 4 freeze in the 800 MHz border areas, that freeze only applies to the border area portions of the County's system.

¹³ The County seeks to expand its use of frequencies 854.0125 MHz, 854.3125, 854.4875 MHz which are allocated to the General Category at locations farther than 140 km from the U.S./Canadian border. See Licensing of General Category Frequencies in the 806-809.750/851-854.750 MHz Bands, *Order*, 10 FCC Rcd 13190 (1995).

¹⁴ See *800 MHz Report and Order* at 15073 ¶ 198. See also County of Tuscarawas, Ohio, *Order*, 22 FCC Rcd 1717 (PSHSB 2007) (*Tuscarawas*).

¹⁵ See *800 MHz Report and Order*, 19 FCC Rcd at 15073 ¶ 198 note 517.

¹⁶ 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; 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. 47 C.F.R. § 1.925(b)(3)(i)-(ii).

¹⁷ See Modification Waiver Request at 3-4.

subject to rebanding must be relocated to the same sites as the replacement channels that the County is receiving from Sprint in the rebanding process.¹⁸ The County states that it has contracted for the complete system and is prepared to begin construction immediately upon approval of the pending applications and license modifications.¹⁹ The County further states that it is working cooperatively with Sprint and other co-channel licensees to improve public safety communications and reconfigure the County's system consistent with the *800 MHz Report and Order*.²⁰ The County contends that the underlying purpose of the inter-category sharing freeze and Wave 4 application filing freeze would not be frustrated by grant of the instant waiver request, and that a waiver is in the public interest.²¹

8. We agree. The Wave 4 application freeze was established to maintain a stable spectrum environment during 800 MHz rebanding and to minimize adverse effects on incumbent public safety licensees that demonstrate a legitimate need for an exception to the freeze.²² The County is already licensed on the frequencies at issue, and seeks to make more effective use of these frequencies in combination with the five frequencies it will receive from Sprint as part of band reconfiguration. We are mindful of the operational needs of public safety licensees during 800 MHz rebanding and that denial of the County's waiver request could unduly delay the County's system implementation plans. Accordingly, we permit the processing of the County's modification applications. For the same reasons, we also grant a waiver of inter-category freeze to enable the County to expand use of B/ILT channels outside the border region.

9. Finally, on our own motion, we grant a waiver of the freeze on site-based General Category applications to the extent needed to allow the County to implement its requested modifications on its three General Category channels. Although the General Category freeze remains in effect while the rebanding process is under way, Sprint has not objected to the County's use of the frequencies immediately at the new locations specified in the County's application. Further, we find that grant of the waiver is consistent with our public interest goal to facilitate effective public safety communications. Our decision here is consistent with our prior *Tuscarawas* decision, in which we granted a waiver of the General Category freeze on our own motion under similar circumstances.²³

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925 and 90.621 of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.621, the request for waiver of the inter-category freeze filed by the County of Tompkins in association with FCC File Nos. 0002574431 and 0002574522 is DISMISSED as moot.

11. It is FURTHER ORDERED that the request for waiver of the inter-category sharing freeze and the Wave 4, Stage 1 application freeze for stations WQBZ750 and WQBR701 IS GRANTED, and applications FCC File Nos. 0002574431, 0002574522, 0002709985, and 0002709902 filed by the County of Tompkins SHALL BE REFERRED for processing consistent with this *Order*.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See *Report and Order*, 19 FCC Rcd at 15078 ¶ 204; Improving Public Safety Communications in the 800 MHz Band, WT Dkt No. 02-55, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25129, 25158-59 ¶ 87 (2004); *Wave 4 PN*, 21 FCC Rcd 6267 at note 17.

²³ See *Tuscarawas*, 22 FCC Rcd at 1719 ¶ 7.

12. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

David L. Furth
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Public Safety and Homeland Security Bureau