

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

In the Matter of
Improving Public Safety Communications in the
800 MHz Band
County of Calhoun, Alabama
Request for Waiver
WT Docket No. 02-55

ORDER

Adopted: June 30, 2008

Released: June 30, 2008

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

I. INTRODUCTION

1. In this order, we grant the County of Calhoun, Alabama's (Calhoun County) May 22, 2008 waiver request, in which Calhoun County seeks permission to continue operating its Tone Alert Radio System (TARS) on pre-rebanding 800 MHz NPSPAC frequencies rather than rebanding TARS to the new NPSPAC band. We grant Calhoun County's request for the reasons set forth below.

II. BACKGROUND

2. The Tone Alert Radio System is an 800 MHz emergency notification network licensed to Calhoun County in the NPSPAC band that operates in both Calhoun and Talladega Counties. TARS is a highly specialized paging-type system designed to alert county residents in the event of a chemical accident at the U.S. Army's Anniston Army Depot Chemical Weapons Incinerator, which is located in Calhoun County. This system is part of the Chemical Stockpile Emergency Preparedness Program, required by Congress, which protects the general public and the environment from the hazard of accidental or unauthorized release of lethal chemicals or munitions.

3. In the absence of a waiver, Calhoun County would be required to reconfigure TARS to operate in the new NPSPAC band, with Sprint Nextel Corporation (Sprint) required to pay the cost of reconfiguration. In its waiver request, however, Calhoun County contends that rebanding TARS would be highly costly, time-consuming, and complex, and would yield limited benefit because the chemical weapons destruction program at Anniston Army Depot is scheduled to end by 2013. Under these circumstances, Calhoun County asserts that the public interest would be better served by allowing continued operation of TARS on its pre-rebanding channels, subject to protection from harmful interference by Sprint.

1 Calhoun County, Alabama Petition for Waiver at 1 (dated May 22, 2008) (Calhoun Petition).
2 See Request for Extension of Planning Time by Calhoun County, Alabama, filed December 14, 2007, TAM-32268 at Exhibit A.
3 Calhoun Petition at 1.
4 Id. at 3.
5 Id. at 4-5.

4. The County states that Sprint supports its waiver request, and states that Sprint has cooperated with the County in testing whether the TARS system could remain on its current frequencies rather than move to the new NPSPEC band.<sup>6</sup> In that connection, Sprint agreed to pay the testing costs and to pay for future monitoring of TARS performance and susceptibility to interference from commercial operations.<sup>7</sup> Calhoun County states that it is satisfied with the test results, which show that TARS can continue to operate on its present frequencies without significant likelihood of harmful interference or other consequences.<sup>8</sup>

### III. DISCUSSION

5. 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, applications of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>9</sup> We conclude that Calhoun County's request satisfies the waiver standard.

6. First, Calhoun County has shown that attempting to reconfigure TARS would be unusually complex due to unique logistical and regulatory requirements associated with the system.<sup>10</sup> Rebanding would require the County to replace or reprogram 50,000 warning receivers purchased by the State of Alabama, most of which are installed in individual homes and businesses.<sup>11</sup> The County would also have to comply with Federal Emergency Management Agency and Alabama requirements regarding radio installation, record keeping, and inventory control.<sup>12</sup> Additionally, Warning Systems, Inc., the company responsible for the initial design and ongoing maintenance of the TARS system, downsized after the initial installation and currently lacks enough personnel to support the rebanding effort.<sup>13</sup>

7. Calhoun County has also shown that reconfiguring TARS would be unusually costly and time-consuming, and would yield only short-term public benefit. Calhoun County estimates that rebanding TARS would cost over \$15.8 million and would require until December 2011 to complete.<sup>14</sup> Yet Calhoun County points out that the chemical weapons destruction program for which TARS provides alert capability is scheduled to end by 2013.<sup>15</sup> Once this occurs, continued operation of TARS will no longer be necessary and the system will be decommissioned.<sup>16</sup>

8. We are also persuaded that grant of the waiver is consistent with the Commission's paramount goal of eliminating interference to 800 MHz public safety systems from 800 MHz commercial

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* and Exhibit C.

<sup>9</sup> 47 C.F.R. §§ 1.925(b)(3)(i-ii).

<sup>10</sup> Calhoun Petition at 1-2.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* and Exhibit A.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 3 and Exhibit B.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 4 and Exhibit C.

systems that use incompatible cellular architecture.<sup>17</sup> In the *800 MHz Report and Order*, the Commission stated that “parties who are unable for technical reasons or otherwise to relocate according to the schedule may petition the Commission for a waiver of the relocation obligation,” but noted that “[s]uch a waiver would only be granted on a strict non-interference basis.”<sup>18</sup> In this case, given the critical disaster preparedness role that TARS plays in Calhoun and Talladega Counties, our primary concern is to ensure that TARS will be fully protected from harmful interference if it remains on its current channels after rebanding. We find that the County and Sprint have satisfactorily addressed this concern through their agreement that Sprint will avoid use of the TARS channels in the area and will provide ongoing monitoring and testing to protect TARS from harmful interference by any commercial operation in the vicinity.<sup>19</sup> We also require Sprint to afford full interference protection to TARS on its current channels applying the standard set forth in Section 90.672 of the Commission’s rules.<sup>20</sup>

9. In sum, we find that the cost and disruption associated with rebanding TARS outweighs the potential benefit, particularly in light of the fact that TARS is only scheduled to be active until 2013. We also find that allowing TARS to continue operation on its current channels with full interference protection will serve the public interest. Based on the novel and narrow circumstances before us, we therefore grant Calhoun County’s request for waiver.

#### IV. ORDERING CLAUSES

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 C.F.R. § 1.925, that the waiver request filed by Calhoun County, Alabama **IS GRANTED** as noted herein.

11. 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  
Associate Bureau Chief  
Public Safety and Homeland Security Bureau

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<sup>17</sup> See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 14972 ¶ 2 (2004).

<sup>18</sup> *Id.* at 15076 ¶ 201.

<sup>19</sup> Calhoun Petition at 3-4.

<sup>20</sup> 47 C.F.R. § 90.672.