

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

In the Matter of)	
)	
STATE OF FLORIDA)	File Nos. 0003087139, 0003087140,
)	0003087141, 0003087142, 0003087143,
Request for Waiver of Sections 90.613,)	0003087144, 0003120864, 0003120935,
90.615(a)(1), and 90.617(g)(1) of the)	0003120940, 0003120998, 0003121063,
Commission's Rules)	0003113192

ORDER

Adopted: February 4, 2008

Released: February 4, 2008

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

I. INTRODUCTION

1. We have before us twelve applications filed by the State of Florida (Florida) to expand the operation of its 800 MHz Statewide Law Enforcement Radio System (SLERS) by adding new base stations and additional frequencies to existing base stations.¹ In conjunction with these applications, Florida seeks a waiver of Section 90.613 of the Commission's rules² in order to operate on "offset" channels, *i.e.*, channels with center frequencies offset 12.5 kHz from the center frequencies of normally assignable channels.³ Florida also seeks a waiver of Sections 90.615(a)(1) and 90.617(g)(1) of the Commission's rules⁴ in order to operate the requested base stations and frequencies prior to the end of the 800 MHz rebanding process.⁵ For the reasons discussed herein, we grant Florida's requests to the extent indicated below.

II. BACKGROUND

2. Florida's SLERS system consists of 164 fixed sites providing radio coverage throughout the State of Florida to over 15,000 mobile and portable subscriber units operated by state, local, and

¹ FCC File Nos. 0003087139, 0003087140, 0003087141, 0003087142, 0003087143, 0003087144, 0003120864, 0003120935, 0003120940, 0003120998, 0003121063, 0003113192 (collectively, Florida Applications).

² 47 C.F.R. § 90.613.

³ See Request for Waiver (B) attached to Applications 0003087139, 0003087140, 0003087143, 0003087144, 0003120935, 0003120940; Request for Waiver attached to Applications 0003120998, 0003121063 and Request for Waiver 90.613 attached to Application 0003120864 (collectively, Offset Waiver Requests).

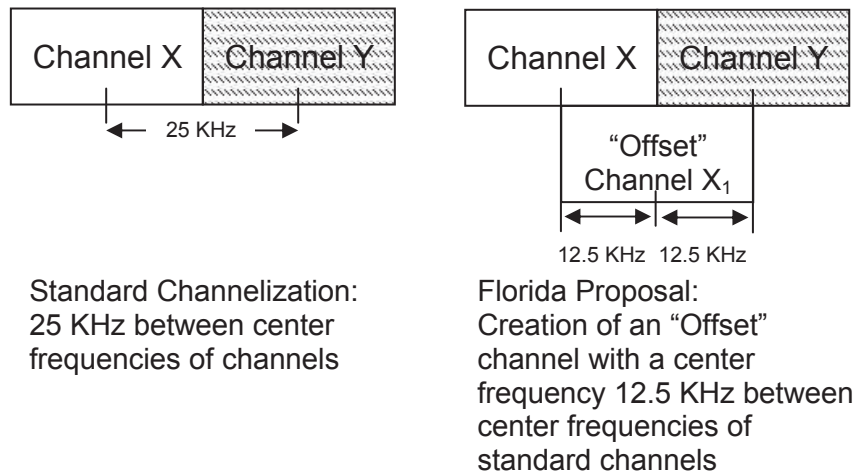
⁴ 47 C.F.R. §§ 90.615(a)(1) and 90.617(g)(1).

⁵ See Request for Waiver (A) attached to Applications 0003087139, 0003087140, 0003087143, 0003087144, 0003120935, 0003120940, Request for Waiver attached to Applications 0003087141, 0003087142, 0003113192, Statement attached to Applications 0003120998, 0003121063; Request for Waiver (C) attached to Application 0003120935 and Request for Waiver 90.617(g) attached to Application 0003120864 (collectively, Early Access Waiver Requests). Although Florida did not specifically seek a waiver of Section 90.617(g)(1) with respect to Applications 0003120998, 0003113192, and 0003121063, we will apply the justification it included for a waiver of Section 90.615(a)(1) to Section 90.617(g)(1) for these applications.

federal agencies.⁶ SLERS utilizes trunked frequencies throughout the 800 MHz band.⁷ Florida states that the number of subscriber units is expanding due to the popularity of SLERS among Florida law enforcement agencies and other public safety users, and claims that an increase in the channel allotment at various sites is needed to handle the current and projected channel loading.⁸

3. As part of its proposed system expansion, Florida seeks to increase its channel capacity by reducing the spacing in between its operating channels.⁹ Section 90.613 of the Commission's rules lists the center frequencies for channels that are available for licensing in the 800 MHz band.¹⁰ Except in the NPSPAC portion of the band, these center frequencies are separated by 25 kHz. Florida seeks a waiver of this rule in order to operate "offset" channels in the interleaved portion of the 800 MHz band¹¹ with center frequencies that are offset 12.5 kHz from the center frequencies listed in Section 90.613.¹² See Figure 1 below.

Figure 1



4. In support of its waiver request, Florida states that operation of offset channels is necessary for a transition to a more effective and efficient statewide frequency plan.¹³ Florida notes that in 2001, it received authorization to employ offset channels at certain locations within the SLERS system and that operation of these offset channels has been essential to providing a reasonable grade of service to subscribers.¹⁴ Florida states that due to long-standing frequency congestion within the state, expansion of SLERS will require continued use and expansion on offset channels.¹⁵ Furthermore, Florida includes

⁶ Early Access Waiver Requests at 1.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ Offset Waiver Requests at 1.

¹⁰ 47 C.F.R. § 90.613.

¹¹ The interleaved portion of the band consists of 809-815/854-860 MHz.

¹² Offset Waiver Requests at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

spacing studies to demonstrate that it will satisfy the minimum co-channel spacing requirements to all non-SLERS licensees operating on each upper and lower-adjacent standard channel.¹⁶

5. Florida is also seeking to activate the channels and base stations proposed in its applications prior to the completion of 800 MHz rebanding in its region.¹⁷ Specifically, Florida would like to add base stations and activate both offset and non-offset channels in coordination with its retuning of current SLERS system channels in the Channel 1-120 portion of the band to channels in the interleaved portion of the band as part of 800 MHz band reconfiguration process.¹⁸ The interleaved channels that Florida seeks to use for its expanded operations are currently licensed to Sprint Nextel (Sprint) and Southern LINC (Southern) on a geographic-area basis throughout Florida. Although these channels will be vacated by Sprint and Southern and become available for licensing to eligible public safety entities after the conclusion of the 36 month rebanding period,¹⁹ Florida requires a waiver of Sections 90.615(a)(1) and 90.617(g)(1) of the Commission's rules to apply for and operate on these channels before that time.

6. In support of its waiver request, Florida states that due to the extent of SLERS' already-licensed 800 MHz operations, under the Commission's minimum co-channel spacing requirements, no other public safety entity would be able to use the requested channels at the locations specified in the applications.²⁰ Thus, Florida contends that its early access to these channels will have no adverse impact on other licensees.²¹ Florida also asserts that the public interest will be served by adding these channels and base stations at the same time that Florida carries out the rebanding of its Channel 1-120 facilities to the interleaved band, which is scheduled to take place in early 2008. Florida notes that coordinating the changes to the SLERS system encompassed by these applications will require reprogramming of over 15,000 subscriber units.²² While this would normally require scheduling of reprogramming a year or more in advance, followed by three to four months of work and the subsequent retuning of fixed sites, Florida states that it can save time and resources by conducting its rebanding-related and expansion-related reprogramming simultaneously.²³ Finally, Florida notes that it has obtained both Sprint's and Southern's consent for Florida to add the requested channels at the proposed locations prior to the conclusion of rebanding.²⁴

¹⁶ See Co-channel spacing studies included in Early Access Waiver Requests (Spacing Studies).

¹⁷ Early Access Waiver Requests at 1.

¹⁸ *Id.* at 2.

¹⁹ See 47 C.F.R. §§ 90.615(a)(1) and 90.617(g)(1).

²⁰ Each of the Early Access Waiver Requests includes maps showing proposed and licensed locations by frequency. (License Maps). The License Maps for frequencies 854.0625, 854.1500, 854.1750, 854.2500, 856.5875, 856.6875, and 856.5500 MHz for Application 0003120935 and frequency 854.0875 MHz for Application 0003120940 were not included in the Early Access Waiver Requests but are attached separately.

²¹ Early Access Waiver Requests at 2.

²² *Id.*

²³ *Id.*

²⁴ See letter from Richard Edwards, Legal Analyst, Sprint Nextel, to Public Safety and Homeland Security Bureau, Federal Communications Commission (Oct. 19, 2007), attached to Florida Applications. See also letter from John D. Logan, Spectrum and Site Inventory Manager, SouthernLINC Wireless, to Public Safety and Homeland Security Bureau, Federal Communications Commission (Oct. 22, 2007) attached to Early Access Waiver Requests for Applications 0003087143 and 0003087144.

III. DISCUSSION

7. Section 1.925 of the Commission's rules provides that 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 requested 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,²⁵ or the applicant has no reasonable alternative.²⁶ Based on the information before us, we conclude that a grant of the waiver requests is warranted to the extent described below.

A. Offset Channels

8. We find that Florida has justified a waiver of Section 90.613 for its proposed operations on offset channels. We agree with Florida that its proposed operations on offset channels are not only essential to maintaining a reasonable grade of service within the SLERS system,²⁷ but that given the long-standing degree of frequency congestion in Florida, expanded use of offset channels is essential to the successful operation and growth of SLERS.²⁸ We also find that allowing Florida to expand channel capacity through use of offset channels will benefit numerous public safety agencies in the State of Florida that use SLERS.²⁹

9. We are also persuaded that the addition of the proposed offset channels to the SLERS system will not harm the interests of other licensees. First, Florida has provided engineering studies and maps demonstrating that it is the only licensee that operates on the adjacent standard channels within 113 kilometers of any of the sites at which the proposed offset channels will be used.³⁰ Thus, Florida's proposed operation on offset channels meets the Commission's co-channel spacing requirements and will not negatively impact any existing licensees because Florida is maintaining the minimum required spacing.³¹ Second, with one exception discussed below, Florida has demonstrated that its proposed offset channel operations could not negatively impact any future licensee because no licensee other than Florida could operate on the adjacent standard channels in the vicinity of the proposed locations where the offset channels will be used.³²

10. The one exception to the situation described above concerns Application 0003120935, in which Florida seeks to license offset channel 809/854.2500 MHz at a new location in Apopka, Florida.³³ The map attached to this application shows that Florida operates no facilities on the lower-adjacent standard channel, 809/854.2375 MHz.³⁴ Consequently, this standard channel could be available for licensing in this area to others besides Florida after rebanding is completed in the region. Because Florida's proposed operation on offset channel 809/854.2500 MHz at the Apopka site could create

²⁵ 47 C.F.R. § 1.925(b)(3)(i).

²⁶ 47 C.F.R. § 1.925(b)(3)(ii).

²⁷ Offset Waiver Requests at 1.

²⁸ *Id.*

²⁹ Early Access Waivers at 1.

³⁰ *See* Spacing Studies. The Spacing Studies excluded Sprint and Southern's operations because Florida has obtained consent from these licensees. *See* note 24, *supra*.

³¹ These requirements are set forth at 47 C.F.R. § 90.621(b)(4).

³² *See* License Maps.

³³ *See* Application 0003120935.

³⁴ *See* License Map for frequency 854.2500 MHz, attached to Application 0003120935.

adjacent-channel interference to future users of the lower-adjacent standard channel within the state, we will grant Florida's application for an offset channel at this site, but only on a secondary basis to operations on standard channels. Thus, Florida's offset operation on channel 809/854.2500 MHz at Apopka must not cause interference to and will not receive interference protection from any operation on an adjacent-standard channel.

B. Operation Prior to Conclusion of Rebanding

11. We find that Florida has also justified the requested waiver of Sections 90.615(a)(1) and 90.617(g)(1) to enable it to operate on the specified interleaved channels prior to the completion of rebanding. The Commission promulgated these rules to preserve spectrum vacated by ESMR operators such as Sprint and Southern and make it available for licensing to all public safety eligible entities.³⁵ However, Florida has conclusively shown that because of its already-existing use of the band, it is the only eligible entity that will be able to operate on the specified channels at the specified locations after rebanding is complete.³⁶ Consequently, providing Florida early access to these channels will have no adverse impact on any other eligible entity. We also find that the public interest will be served by allowing Florida to add these channels and base stations at the same that it carries out rebanding of its Channel 1-120 facilities to the interleaved band. This will enable Florida to save time and resources by conducting rebanding-related and expansion-related reprogramming of over 15,000 subscriber units simultaneously.

IV. ORDERING CLAUSE

12. Accordingly, IT IS ORDERED pursuant to Sections 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 associated with FCC Application File Nos. 0003087139, 0003087140, 0003087141, 0003087142, 0003087143, 0003087144, 0003120864, 0003120935, 0003120940, 0003120998, 0003121063, and 0003113192, filed by the State of Florida ARE GRANTED to the extent indicated herein.

13. IT IS FURTHER ORDERED that FCC Application File Nos. 0003087139, 0003087140, 0003087141, 0003087142, 0003087143, 0003087144, 0003120864, 0003120935, 0003120940, 0003120998, 0003121063, and 0003113192 SHALL BE PROCESSED consistent with this Order and the Commission's rules.

14. 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

³⁵ 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, 15052 ¶¶ 152-153 (2004).

³⁶ See License Maps.