

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

In the Matter of Application of)	
)	
CITY OF HOUSTON, TEXAS)	FCC File No. 0000471626
)	
For Private Land Mobile Radio Station KNDH570)	
And Request for Waiver of Inter-Category Sharing)	
Freeze in the 806-821/851-866 MHz bands and)	
Section 90.617(b) of the Commission's Rules)	

ORDER

Adopted: December 30, 2002

Released: December 31, 2002

By the Chief, Public Safety & Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order*, we address the above-captioned application and waiver request for consent to assign the license for Station KNDH570 from Southwestern Bell Telephone Company (Southwestern Bell), the proposed assignor, to the City of Houston, Texas, Department of Aviation (Houston), the proposed assignee.¹ In this connection, Houston requests a waiver of the inter-category sharing freeze² and Section 90.617 of the Commission's Rules.³ For the reasons set forth below, we grant the *Waiver Request*.

2. *Background.* Private Land Mobile Radio (PLMR) service frequencies in the 806-821/851-866 MHz bands (800 MHz band) are divided into the following "categories" or "pools:" (a) Specialized Mobile Radio (SMR), (b) Public Safety, (c) Business, (d) Industrial/Land Transportation (I/LT) and (e) General.⁴ As a general matter, applicants are licensed on frequencies in the category or categories for which they meet the eligibility criteria.⁵ Furthermore, Section 90.621(e) of the Commission's Rules permits "inter-category sharing" whereby applicants that are eligible for licensing in the 800 MHz Public Safety, I/LT, or Business Categories may be licensed on channels outside of their respective categories if no channels are available in the category for which the applicant is eligible.⁶ On April 5, 1995, however, the Bureau suspended the acceptance of applications for inter-category sharing of

¹ FCC File No. 0000471626. The waiver request was submitted as an attachment to the application on May 21, 2001 (*Waiver Request*).

² Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands, *Order*, 10 FCC Rcd 7350 (WTB 1995) (*Inter-Category Sharing Order*), *recon. denied, Memorandum Opinion and Order*, 11 FCC Rcd 1452 (WTB 1995).

³ 47 C.F.R. § 90.617.

⁴ *See* 47 C.F.R. §§ 90.615, 90.617.

⁵ *See* 47 C.F.R. § 90.617.

⁶ *See* 47 C.F.R. § 90.621(e)(1). That provision also requires that no public safety systems are authorized on those channels under consideration to be shared. Further, the Commission's Rules require that the frequency coordinator certify that frequencies are not available in the applicant's own category, and that the frequencies are coordinated by an applicable out-of-category coordinator. *See* 47 C.F.R. § 90.621(e)(5).

PLMR frequencies in the 800 MHz band.⁷ In December of 1995, the Commission eliminated inter-category sharing for SMR entities.⁸

3. Southwestern Bell, the licensee of Station KNDH570,⁹ is authorized to operate on ten 800 MHz channel pairs (channels) that are designated by Table 2A of Section 90.617(b) of the Commission's Rules as available to eligible applicants in the I/LT Category.¹⁰ On May 21, 2002, Southwestern Bell filed an application¹¹ to assign the license for Station KNDH570 from Southwestern Bell to Houston, licensee of five 800 MHz Public Safety/Special Emergency Category channels operating in the Houston, Texas area.¹² On November 7, 2001, the Branch returned the application because Southwestern Bell did not include a letter from APCO stating that no frequencies are available in the 821-824/866-869 MHz band.¹³ On December 28, 2001, Southwestern Bell amended the application to include the requisite letter from APCO regarding available 800 MHz Public Safety Category channels.¹⁴

4. *Discussion.* We may grant a request for waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁵ For the reasons set forth below, we conclude that grant of the requested waiver is warranted under the circumstances presented.

5. Houston states that expanding its existing five-channel system with an additional ten channels would enable it to meet the public safety communications demands of the Houston Airport.¹⁶ In support of its waiver request, Houston states that it satisfies the specific circumstances to warrant a waiver of the inter-category sharing freeze as indicated by the Commission in PR Docket 93-144.¹⁷ Specifically,

⁷ See *Inter-Category Sharing Order*, 10 FCC Rcd at 7353 ¶ 9.

⁸ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, PR Docket No. 93-144, 11 FCC Rcd 1463, 1536-37 ¶¶ 138-142 (1995); see 47 C.F.R. § 90.621(e)(1) (1996).

⁹ See Letter from Preston Johnson, Southwestern Bell Telephone Co., to Federal Communications Commission, dated December 1, 2000 (certifying that Station KNDH570 is fully constructed and operational).

¹⁰ See 47 C.F.R. § 90.617(b).

¹¹ See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Accepted for Filing, *Public Notice*, Report No. 871 (rel. May 30, 2001).

¹² Houston is the current licensee of Station WPNW558.

¹³ Automated Dismissal Letter, Reference No. 1085811, (Nov. 7, 2001).

¹⁴ See *Waiver Request* at 1 citing Letter from Kenneth C. Yoder, Texas APCO, Frequency Coordinator, to City of Houston, dated Nov. 15, 2001 (informing Houston that there are no 800 MHz trunked Public Safety Special Emergency (YP) or trunked Public Safety National Plan (YF) channels available for assignment in the Houston, TX area).

¹⁵ 47 C.F.R. § 1.925(b)(3).

¹⁶ *Waiver Request* at 1.

¹⁷ *Waiver Request* at 1 citing Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Third Report and Order*, 9 FCC Rcd 7988, 8047-8048 ¶ 108 (1994) (dockets omitted). In the *Third Report and Order*, the Commission suspended acceptance of new 800 MHz applications on the 280 SMR category channels and established the following criteria for waiver of that freeze: "We will consider requests for waiver of the application freeze for new station licenses for permanent facilities, provided that operation of such proposed stations affects coverage solely within a geographic area and on

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Houston avers that waiver of the *Inter-Category Sharing Order* in this instance is appropriate because (1) the application involves the assignment of I/LT channels that are permanently licensed to Southwestern Bell,¹⁸ and (2) the channels, which will be used for public safety purposes, will operate in the same geographic area as authorized under Southwestern Bells' current license, and thus will not infringe upon new I/LT spectrum or previously uncovered geographical areas.¹⁹

6. Under the circumstances presented and, given that no frequencies are available in the category for which Houston is eligible,²⁰ we are persuaded by Houston's contention that grant of the *Waiver Request* to permit the assignment of the license for Station KNDH570 from Southwestern Bell to Houston will not frustrate the underlying purpose of the inter-category sharing freeze.²¹ That is, our decision to grant Houston's request for waiver in this instance neither dilutes the availability of I/LT Category Channels for prospective non-commercial and public safety use nor encumbers existing SMR channels with shared non-SMR users.²² Furthermore, to the extent the proposed transaction will enhance the public safety communications capabilities of Houston Airport, we find that a grant of Houston's request is also consistent with our overarching public interest goals to promote efficient utilization of the spectrum and facilitate effective public safety communications.²³

7. *Conclusion.* Based on our review of the record before us, we conclude that Houston has demonstrated that grant of a waiver of Section 90.617 of the Commission's Rules and the inter-category sharing freeze is warranted. This action serves the public interest in that it will enhance the immediate communications capabilities of a public safety user without compromising or frustrating the underlying purposes of the inter-category sharing freeze.

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a frequency channel that already is licensed permanently to the applicant(s), *i.e.*, there is no infringement of new spectrum or previously uncovered geographical areas.”

¹⁸ Southwestern Bell has certified that Station KNDH570 was placed into operation in November, 1983. See Letter from Preston Johnson, *supra* note 9.

¹⁹ See *Waiver Request* at 1. Using criteria found in Section 73.208(c) of the Commission's Rules, our Universal Licensing System database calculates that the distance between Southwestern Bells' and Houston's stations in and around the Houston, TX area is 12.119 miles (19.504 km).

²⁰ See Letter from Kenneth C. Yoder, *supra* note 14.

²¹ See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, 12 FCC Rcd 9972, 10004-5 ¶ 103 (1997) (“This freeze was intended to stem the increase in inter-category applications for Public Safety channels by I/LT and Business licenses whose own channels were subject to increased demand from SMR applicants.”).

²² *Id.* at 10005 ¶ 104.

²³ See In the Matter of American Medical Response, Inc., *Order on Reconsideration*, 15 FCC Rcd 25587, 25592 ¶ 11 (WTB/PSPWD 2000) (finding, *inter alia*, a public interest basis to support granting a waiver of the inter-category sharing freeze to permit Public Safety eligible to acquire licenses from I/LT eligible by assignment).

8. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 1.925 and 90.617 of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.617 of the Commission's Rules, the Request for Waiver filed by Houston on May 21, 2001, IS GRANTED, and application FCC File No. 0000471626 SHALL BE REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for processing consistent with this *Order*.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau