

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

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| In the Matter of Application of |) | |
| |) | |
| COUNTY OF PALM BEACH |) | FCC File No. 0000912467 |
| |) | |
| Request for Waiver of General Category Freeze to |) | |
| Permit relocation of licensed transmitter facilities |) | |
| of Station WNDD563, Palm Beach, Florida |) | |

MEMORANDUM OPINION AND ORDER

Adopted: December 3, 2002

Released: December 6, 2002

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

I. INTRODUCTION

1. We have before us a request by the County of Palm Beach, Florida (Palm Beach) for a waiver of the suspension of filing of new applications (freeze) for General Category channels in the 806-821/851-866 MHz (800 MHz) band.¹ Palm Beach requests the waiver to permit it to modify its current license for conventional Public Safety/Special Emergency Service Radio Station WNDD563, Palm Beach, Florida. Palm Beach seeks to operate Station WNDD563 from four locations rather than the current single authorized location. Specifically, Palm Beach seeks authorization to relocate the operation of each of the four 800 MHz General Category channels assigned to Station WNDD563 to a separate location elsewhere in Palm Beach County.² For the reasons discussed herein, we grant Palm Beach's waiver request.

II. BACKGROUND

2. In 1994, the Commission proposed a new licensing framework for Specialized Mobile Radio (SMR) systems in the 800 MHz band.³ After release of the *Further Notice*, there was a significant increase in the number of requests for General Category channels made by SMR applicants and licensees. On October 4, 1995, the Wireless Telecommunications Bureau imposed a freeze on the filing of new applications for 800 MHz General Category channels to

¹ See FCC File No. 0000912467, Waiver Attachment (filed June 4, 2002) (Waiver Request). Palm Beach also seeks a waiver of Section 90.693(b) of the Commission's Rules, 47 C.F.R. § 90.693(b), which provides that incumbent 800 MHz licensees may add or modify transmitter sites within their original service contour without prior notification to the Commission so long as the service contour is not expanded. We conclude that no waiver of Section 90.693(b) is required in this case, because Palm Beach has requested Commission approval prior to modifying its transmitter sites.

² *Id.*

³ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Further Notice of Proposed Rulemaking*, PR Docket No. 93-144, PP Docket No. 93-253, 10 FCC Rcd 7970 (1994) (*Further Notice*).

ensure that resolution of the spectrum allocation issues raised in the *Further Notice* would not be compromised.⁴ The freeze also applied to the filing of applications to modify existing licenses so as to expand the station's service contour.⁵ The Commission subsequently redesignated the General Category channels exclusively to the 800 MHz SMR service, whereby mutually exclusive initial applications would be subject to competitive bidding, and excluded private land mobile radio (PLMR) licensees from eligibility for this spectrum.⁶ On reconsideration, however, the Commission reversed its decision concerning eligibility and reinstated the eligibility of PLMR applicants for General Category channels.⁷ The Commission also partially lifted the freeze on General Category channels to permit potential Economic Area (EA) applicants⁸ to relocate incumbents from the upper 10 MHz block of 800 MHz spectrum to the General Category channels.⁹ In all other respects, the Commission maintained the freeze so as not to frustrate its efforts regarding future licensing of General Category channels.¹⁰

3. On June 4, 2002, Palm Beach filed an application for modification of its authorization to operate Station WNND593, which operates on General Category frequencies 852.3875, 853.5125, 852.2375 and 852.8875 MHz.¹¹ Palm Beach asserts that it needs to relocate the facilities associated with Station WNDD593's frequencies in order to build and launch a countywide wireless mobile data network for use by the County's public safety and local government agencies.¹² It states that it is spending one million dollars to achieve mobile data communications coverage throughout Palm Beach County, which is the largest county in Florida.¹³ Palm Beach also states that the proposed modification will expand its service contour

⁴ See Licensing of General Category Frequencies in the 806-809.750/851-854.750 MHz bands, *Order*, 10 FCC Rcd 13190 (WTB 1995).

⁵ See Requests for Waiver of the 800 MHz Specialized Mobile Radio Application Freeze, *Order*, 11 FCC Rcd 13850, 13850-51 ¶¶ 1-3 (WTB 1996).

⁶ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of the 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, GN Docket No. 93-252, PP Docket 93-253, 11 FCC Rcd 1463 (1995) (*800 MHz SMR Report and Order*), and *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 9972 (1997) (*800 MHz SMR Memorandum Opinion and Order*).

⁷ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of the SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order on Reconsideration*, PR Docket No. 93-144, GN Docket No. 93-252, PP Docket 93-253, 12 FCC Rcd 9972, 9975 ¶ 4 (1997).

⁸ In the *800 MHz SMR Report and Order*, the Commission adopted geographic licensing based on EAs for the upper 10 MHz of the 800 MHz SMR service. See *800 MHz SMR Report and Order*, 11 FCC Rcd at 1484 ¶¶ 24-25. The U.S. Department of Commerce Bureau of Economic Analysis has established 172 EAs which cover the continental United States. See *Final Redefinition of the BEA Economic Areas*, 60 Fed. Reg. 31114 (Mar. 10, 1995).

⁹ See *800 MHz SMR Report and Order*, 11 FCC Rcd at 1508 ¶¶ 74-75.

¹⁰ *Id.* at 1509 ¶ 76.

¹¹ FCC File No. 0000912467.

¹² Waiver Request at 1.

¹³ *Id.* at 2.

for two of the subject channels, but significantly reduce its service contour for the other two channels.¹⁴

4. Nextel Communications, Inc., through its wholly-owned subsidiary, Nextel South Corp., is the EA licensee of EA 031 (Palm Beach) Blocks DD, E, EE, and F, which contain the four frequencies on which Station WNDD563 operates.¹⁵ Palm Beach asserts that Nextel, the EA licensee, supports a grant of the subject application.¹⁶ Nextel has indicated its consent to Palm Beach's proposed operation on the instant frequencies.¹⁷

III. DISCUSSION

5. The Commission may grant a waiver of its rules if (a) it is in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case, or (b) in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁸ Palm Beach's proposed operations require a waiver of the Commission's rules because there is a freeze on the filing of modification applications for General Category Channels in the 800 MHz band.

6. The filing freeze regarding 800 MHz General Category Channels was intended to preserve the licensing landscape of the General Category spectrum so the Commission could implement its new licensing approach for the spectrum effectively.¹⁹ We conclude that grant of a waiver here would not frustrate the purposes of the General Category freeze. We note that Palm Beach seeks to relocate the facilities associated with four General Category frequencies already licensed to it. Thus, it does not seek to encumber any additional General Category spectrum. Consequently, the pivotal issue becomes what impact, if any, its proposed operations, which would alter the service contours of Station WNDD593, would have on the operations of the EA licensee. In this regard, we note that Nextel has consented to Palm Beach's proposed modification. Further, Nextel has agreed to move its operations fifty-five miles from the proposed Palm Beach operation without significant adverse impact.²⁰

7. Based on the record before us, we find that grant of the requested waiver to permit the proposed relocation for the limited number of General Category channels is warranted. We believe that under the circumstances presented, it is in the public interest to facilitate Palm Beach's efforts to implement a countywide communications system which will foster interoperability and more effective public safety communications. We also find it very persuasive that Nextel, the EA licensee, has consented to the proposal and has indicated its

¹⁴ *Id.* at 8-9.

¹⁵ See Letter, dated May 20, 2002, letter from Robin J. Cohen, Regulatory Manager, Nextel Communications to Licensing & Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission (Nextel Letter).

¹⁶ Waiver Request at 3.

¹⁷ See Nextel Letter at 1. Nextel has agreed to protect Palm Beach's future operations upon the grant of the requested license modification and will relocate its transmitters fifty-five miles from those of Palm Beach.

¹⁸ See 47 C.F.R. § 1.925(b)(3).

¹⁹ See *800 MHz SMR Report and Order*, 11 FCC Rcd at 1508 ¶¶ 74-75.

²⁰ Nextel Letter at 1.

willingness to accommodate Palm Beach's modified facilities.²¹ Thus, we believe that grant of the waiver would not adversely affect the EA licensee's operations. In this connection, we note that we have granted waivers of the General Category freeze when we have determined that the waiver would not have a significant adverse impact on the EA licensee's operations. For example, in *City of Denton, Texas*,²² we granted a waiver of the General Category freeze to a public safety licensee that wished to relocate its tower 3.3 miles in order to improve its coverage. We concluded that grant of a waiver in that instance would be consistent with the underlying purposes of the freeze because the licensee was already short-spaced to the affected licensees, the frequency coordinator found that there would be no interference to existing facilities, the effect on the auctioned spectrum would be minimal since the applicant was relocating existing facilities, and the relevant EA licensees did not object to the waiver request.²³ We conclude that granting Palm Beach a waiver under the circumstances presented is consistent with other General Category waiver decisions.²⁴

IV. ORDERING CLAUSES

8. 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 the County of Palm Beach, Florida on June 4, 2002 with respect to FCC File No. 0000912467 IS GRANTED.

9. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(a), that the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch SHALL PROCESS FCC File No. 0000912467 in accordance with this *Memorandum Opinion and Order*.

10. 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

²¹ We also consider it significant that the proposed modification will significantly reduce Palm Beach's service contour on two of the four subject channels. This spectrum will revert to the use of the EA licensee. *See* 47 C.F.R. § 90.683(b). Thus, granting Palm Beach's request will not have an overall adverse impact on what spectrum is available to Nextel under its EA license.

²² *City of Denton, Texas, Order*, 15 FCC Rcd 23643 (WTB PSPWD 2000).

²³ *Id.* at 23646 ¶ 7.

²⁴ *See, e.g., State of Florida, Order*, 16 FCC Rcd 2174, 2179 ¶ 12 (WTB PSPWD 2001) (waiver granted where no operational impact on and or opposition from EA licensee).