

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

In the Matter of	)	
	)	
FISHER RANCH	)	FCC File No. C032585
	)	
Application for Assignment of License and	)	
Modification of Private Land Mobile Radio	)	
Service Station WNXG464, Mt. Potisi, Nevada,	)	
and Request for Waiver of Commission Rules	)	

**ORDER**

**Adopted: January 10, 2002**

**Released: January 11, 2002**

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

1. *Introduction.* In this *Order*, we address the above-captioned private land mobile radio services (PLMRS) application and waiver request of Fisher Ranch for assignment and modification of Station WNXG464, Mt. Potisi, Nevada.<sup>1</sup> For the reasons set forth below, we grant the waiver request (Request).

2. *Background.* PLMRS frequencies in the 806-821/851-866 MHz bands (the “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.<sup>2</sup> As a general matter, applicants are licensed on frequencies in the category or categories for which they meet the eligibility criteria. Section 90.621(e) of the Commission’s Rules, however, permits “inter-category sharing” whereby applicants that are eligible for licensing in the 800 MHz Public Safety, Industrial/Land Transportation or Business Categories can be licensed on channels outside of their respective categories if no channels are available in the category for which the applicant is eligible.<sup>3</sup> On April 5, 1995, the Wireless Telecommunications Bureau (Bureau) suspended the acceptance of applications for inter-category sharing (inter-category sharing freeze) of all PLMRS frequencies in the 800 MHz band.<sup>4</sup>

3. Northwest Pipeline Corporation (Northwest) is the current licensee of Station WNXG464. The station operates on frequency 854.9875 MHz, a Public Safety frequency<sup>5</sup> that Northwest, an I/LT eligible, obtained through inter-category sharing prior to 1995. On July 18, 2000, the Licensing and Technical Analysis Branch (Branch) of the Bureau’s Public Safety and Private Wireless Division received an application to assign the license from Northwest to Fisher Ranch, another I/LT eligible. The application also sought to modify the license by moving the transmitter thirty-two miles east-northeast,

<sup>1</sup> FCC File No. C032585 (Request).

<sup>2</sup> See 47 C.F.R. §§ 90.615, 90.617. It should be noted, however, that although they are regulated under Part 90 of the Commission Rules, SMR and General Category frequencies generally are now used to provide commercial mobile radio services, rather than PLMRS.

<sup>3</sup> See 47 C.F.R. § 90.621(e)(1).

<sup>4</sup> See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands, *Order*, 10 FCC Rcd 7350 (WTB) (*Inter-Category Sharing Order*), *aff’d on recon.*, 11 FCC Rcd 1452 (WTB 1995).

<sup>5</sup> See 47 C.F.R. § 90.617(a).

from its current site approximately twenty-five miles west of Las Vegas, Nevada, to a location approximately eight miles northeast of Las Vegas. On December 27, 2000, the Branch returned the application, because it did not include a request for waiver of the inter-category sharing freeze.<sup>6</sup> On May 3, 2001, Fisher Ranch amended the application to request such a waiver.

4. *Discussion.* A waiver may be granted where the (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant 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, or the applicant has no reasonable alternative.<sup>7</sup> In support of its request, Fisher Ranch argues that its proposal will not frustrate the underlying purpose of the inter-category sharing freeze.<sup>8</sup> In this connection, Fisher Ranch states that the inter-category sharing freeze was “designed to preserve the 800 MHz spectrum landscape while the Commission considered the SMR service spectrum allocation issues.”<sup>9</sup> Fisher Ranch reasons further that because at the time the Bureau implemented the inter-category sharing freeze the subject frequency was already assigned to an I/LT user in the Las Vegas area, permitting Fisher Ranch to acquire and relocate it to another site in the Las Vegas area will not change the spectrum landscape as frozen in 1995, nor will it conflict with the policy considerations that prompted the Commission to adopt the inter-category sharing freeze.<sup>10</sup> We are persuaded by Fisher Ranch’s arguments under the circumstances presented that grant of a waiver to permit the assignment of the license from Northwest to Fisher Ranch would not frustrate the underlying purpose of the inter-category sharing freeze.

5. However, we disagree with Fisher Ranch’s suggestion that any relocation within the same urban area would not conflict with the purposes of the inter-category freeze. In this connection, we note that ensuring that the needs of the public safety community were not compromised was a significant factor underlying the Bureau’s adoption of the inter-category sharing freeze.<sup>11</sup> Against this backdrop, because public safety users are typically concentrated in urban areas, we are concerned that a relocation closer to the center of the city, as proposed by Fisher Ranch, could impact public safety users operating on the same frequency.<sup>12</sup> Thus, we believe that we must consider public safety communications currently being carried on the subject frequency in the same urban area before permitting the proposed relocation. In this case, we have reviewed the licensing database and found that there are no co-channel Public Safety licensees within 113 kilometers<sup>13</sup> of either the current site of Station WNXG464 or the proposed new location. We also note that the Association of Public-Safety Communications Officials-International, Inc., a FCC-certified frequency coordinator for 800 MHz Public Safety frequencies, gave its concurrence to Fisher Ranch’s request.<sup>14</sup> In this instance, therefore, we conclude that the proposed modification would have no adverse impact on public safety systems, and that grant of the requested waiver would not undermine the underlying purposes of the inter-category freeze.

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<sup>6</sup> Automated Dismissal Letter, Reference No. 707381, (Dec. 12, 2000).

<sup>7</sup> 47 C.F.R. § 1.925(b)(3)(i), (ii).

<sup>8</sup> See Request at 3-4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4.

<sup>11</sup> See *Inter-Category Sharing Order*, 10 FCC Rcd at 7351 ¶ 4.

<sup>12</sup> See, e.g., *id.* at 7352 ¶ 7.

<sup>13</sup> See 47 C.F.R. § 90.621(b)(4).

<sup>14</sup> See Request at 2.

6. 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 application and request for waiver filed by Fisher Ranch, on May 3, 2001 IS GRANTED, and application FCC File No. C032585 SHALL BE REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for processing consistent with this *Order*.

7. 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