

813/858.3125 MHz at its Walcott site fails to meet the minimum mileage separation requirements specified in the table relative to co-channel Station WPBI314, Dubuque, Iowa, licensed to Interstate Power and Light Company (Interstate).⁶ SECC also seeks waiver of the Wireless Telecommunications Bureau's (Bureau) freeze on the filing of new applications for inter-category sharing on private land mobile radio service (PLMRS) frequencies in the 800 MHz band in order to use the 800 MHz B/ILT channel, 813/858.3125 MHz, specified in its application.⁷ SECC submits that there are no frequencies in the NPSPAC band, the Public Safety Pool or General Category channels suitable for operation at its location.⁸

III. DISCUSSION

3. 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;⁹ 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.¹⁰ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹¹ We conclude that SECC has not demonstrated that its request should be granted under the circumstances presented.

4. Section 90.621(b)(4) provides that applicants for facilities located at distances less than those prescribed in the short-spacing table must request a waiver and submit with the waiver request an interference analysis showing that existing co-channel stations will receive the same or greater interference protection than that provided in the table.¹² As part of its application, SECC submitted a co-channel interference study to support its use of the proposed channel at the Walcott site. It appears, however, that SECC's study used the actual Effective Radiated Power (ERP) for Interstate's Station WPBI314, whereas the rules require short spacing studies to be based on an existing station's maximum

⁶ See FCC File No. 0004911635 at Request for Waiver of Short-Spacing Table. SECC is also short-spaced on this frequency to Station WQIU452 licensed to Ameren Services Company. SECC's proposed operation, however, complies with the short-spacing table with respect to Station WQIU452. See 47 C.F.R. § 90.621(b)(4).

⁷ See FCC File No. 0004911635 at Intercategory Sharing Rule Waiver Request (dated Sept. 22, 2011).

⁸ See FCC File No. 0004911635 at Frequency Search Results. As part of its modification application, SECC proposes to add channel 809/854.3125 MHz to its license. SECC claims it does not require a waiver of the inter-category sharing freeze to add this channel because Sprint Nextel Corp. relinquished it as part of 800 MHz rebanding. See FCC File No. 0004911635 at Letter from Richard Kinsman, International Municipal Signal Association/International Association of Fire Chiefs to Wireless Telecommunications Bureau, FCC (dated May 9, 2011). We agree with SECC that a waiver is not necessary. See Public Safety and Homeland Security Bureau Announces Application and Licensing Procedures for Channels Relinquished by Sprint Nextel Corporation in the 809-809.5/854-854.5 MHz Band, WT Docket No. 02-55, *Public Notice*, 23 FCC Rcd 18343 (PSHSB 2008) (announcing the availability of Sprint-vacated spectrum for public safety use). Therefore, although we are denying SECC's short-spacing waiver request and dismissing its inter-category sharing waiver request for use of frequency 813/858.3125 MHz, we will process its application to add frequency 809/854.3125 MHz to its license.

⁹ 47 C.F.R. § 1.925(b)(3)(i).

¹⁰ 47 C.F.R. § 1.925(b)(3)(ii).

¹¹ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

¹² See 47 C.F.R. § 90.621(b)(4).

ERP, *i.e.*, 1000 watts.¹³ Thus, SECC's contour study is defective.

5. Our staff performed a contour overlap analysis with Interstate's Station WPBI314 operating at 1000 watts ERP. The analysis shows that SECC's proposed 22 dB μ V/m F(50,10) contour from the Walcott site would overlap the 40 dB μ V/m F(50,50) contour of the Bernard site of Station WPBI314. Because the short-spacing table in Section 90.621(b)(4) is based on non-overlap of a proposed station's 22 dB μ V/m F(50,10) contour with the 40 dB μ V/m F(50,50) contour of existing co-channel stations, we find that SECC has failed to demonstrate that its proposal will provide existing stations with the same or greater interference protection than that provided by the short-spacing table.¹⁴

6. SECC's filing includes no other basis for allowing its proposed frequency to be short-spaced to Interstate's facilities. The separation between co-channel systems may be less than the separation specified in the short-spacing table if an applicant submits with its application letters of concurrence indicating that the applicant and each short-spaced co-channel licensee agree to accept any interference resulting from the reduced separation.¹⁵ Although SECC states it sent a copy of its application and technical information to Interstate relative to Station WPBI314, no concurrence letter from Interstate is included with SECC's application.¹⁶

IV. CONCLUSION

7. Based on the information provided, we deny SECC's request for waiver of Section 90.621(b)(4) to enable it to use frequency 813/858.3125 MHz at the Walcott site. Furthermore, because we are denying SECC's request for waiver of Section 90.621(b)(4), we need not consider, and thus dismiss as moot, its request for waiver of the inter-category sharing freeze.¹⁷

V. ORDERING CLAUSE

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, the request for waiver of Section 90.621(b)(4) of the Commission's rules filed by the Scott Emergency Communications Center on October 14, 2011, IS DENIED.

9. IT IS FURTHER ORDERED that the request for waiver of the inter-category sharing freeze filed by the Scott Emergency Communications Center IS DISMISSED AS MOOT.

10. IT IS FURTHER ORDERED that the Licensing Branch of the Policy and Licensing Division of the Public Safety and Homeland Security Bureau SHALL RETURN application FCC File No. 0004911635 as unacceptable for filing relative to channel 813/858.3125 MHz.

11. IT IS FURTHER ORDERED that the licensing staff of the Policy and Licensing Division

¹³ See footnote 3 of Short-Spacing Separation Table in 47 C.F.R. § 90.621(b)(4). Footnote 3 states, in pertinent part: "All existing stations are assumed to operate with 1000 watts ERP." *Id.*

¹⁴ See footnote 2 of Short-Spacing Separation Table in *See* 47 C.F.R. § 90.621(b)(4). Footnote 2 states, in pertinent part: "Distances shown [between stations in the Short-Spacing Separation Table] are derived from the R-6602 curves and are based upon a non-overlap of the 22 dBu (F50,10) interference contour of the proposed station with the 40 dBu (F50,50) contour of the existing station(s)." *Id.*

¹⁵ See 47 C.F.R. § 90.621(b)(5).

¹⁶ See FCC File No. 0004911635 at Request for Waiver of Short-Spacing Table.

¹⁷ See, e.g., Delaware, State of, *Order*, 22 FCC Rcd. 1763 (PSHSB 2007) (denying request for waiver of Section 90.621(b)(4) and dismissing the associated request for waiver of the inter-category sharing freeze to use B/ILT spectrum).

of the Public Safety and Homeland Security Bureau SHALL PROCESS application File No. 0004911635 relative to channel 809/854.3125 MHz.

12. 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

Michael J. Wilhelm
Deputy Chief
Policy and Licensing Division
Public Safety and Homeland Security Bureau