



**FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

January 13, 2015

**DA 15-49**

Mark E. Crosby, Secretary/Treasurer  
Land Mobile Communications Council  
2121 Cooperative Way, Suite 225  
Herndon, VA 20171

Re: Request for Postponement of the Pre-Coordination and Application Filing Deadlines  
for Expansion Band and Guard Band Channels

Dear Mr. Crosby:

This letter responds to the request you filed on behalf of the Land Mobile Communications Council (LMCC) for postponement of the pre-coordination and application filing deadlines for 800 MHz band Expansion Band (815-16/860-61 MHz) and Guard Band (816-17/861-62 MHz) channels.<sup>1</sup> For the reasons set forth below, we deny the request.

On December 30, 2014, the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (Bureaus) announced the completion of 800 MHz Band Reconfiguration in nine additional National Public Safety Planning Advisory Committee (NPSPAC) regions.<sup>2</sup> The Bureaus noted that they had released Expansion Band and Guard Band channels<sup>3</sup> for licensing in regions which

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<sup>1</sup> Letter dated January 12, 2015 from Mark E. Crosby, Secretary/Treasurer, LMCC to Marlene H. Dortch, Secretary, FCC (Request).

<sup>2</sup> See Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSPAC Regions and the Availability of Additional Sprint Vacated Channels, *Public Notice*, WT Docket No. 02-55, DA 14-1904 (PSPSB/WTB rel. Dec. 30, 2014) (2014 PN).

<sup>3</sup> The Commission created the Expansion Band and Guard Band to provide spectral separation between commercial licensees operating in the ESMR segment of the band above 817/862 MHz, and public safety licensees operating below 815/860 MHz. See *Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969, 15053-55 ¶¶ 154-158 (2004). No Guard Band exists in the southeastern portion of the United States in counties served by both Sprint Nextel Corporation (Sprint) and SouthernLINC and in areas adjacent to the U.S./Canada border. Furthermore, the Expansion Band consists of the 812.5-813.5 MHz/857.5-858.5 MHz segment of the band in these counties served by both Sprint and SouthernLINC except for a seventy-mile radius around Atlanta where the Expansion Band is reduced to one-half megahertz. *Id.* at 15058 ¶ 166. See also *Improving Public Safety Communications in the 800 MHz Band, Memorandum Opinion and Order*, WT Docket No. 02-55, 20 FCC Rcd 16015, 16036 ¶ 48 (2005).

had previously completed band reconfiguration,<sup>4</sup> but that LMCC had subsequently filed a petition for rulemaking seeking to amend the rules to allow 800 MHz incumbent licensees in a market a six-month period in which to apply for Expansion Band and Guard Band frequencies before making them available to other applicants for new 800 MHz systems,<sup>5</sup> and some commenters requested that the Commission defer declaring rebanding to be complete in any additional regions pending resolution of the petition for rulemaking.<sup>6</sup> The Bureaus noted, however, that the request in the rulemaking petition was largely premised on the need for licensees in congested urban areas to obtain additional 800 MHz spectrum for system expansion, and that the additional NPSAC regions in which they were declaring rebanding to be complete do not contain any urban areas larger than those in the regions where they already declared rebanding complete.<sup>7</sup> Consequently, the Bureaus concluded that announcing the completion of rebanding in these additional regions would not prejudice either the rulemaking petition or commenters' requests that we defer releasing the channels pending the resolution of the rulemaking petition, so the Bureaus made Expansion Band and Guard Band channels available for licensing in the additional regions.<sup>8</sup> Specifically, the Bureaus declared that pre-coordination could commence on January 13, 2015, and that Expansion Band and Guard Band channels in the NPSAC regions at issue would be available for licensing on February 10, 2015.<sup>9</sup>

On January 12, 2015, LMCC requested that the pre-coordination and application filing dates be postponed 120 days, to May 13 and June 10, 2015, respectively.<sup>10</sup> It stated that the frequency advisory committees (FACs) had begun work on a memorandum of agreement (MOA) to govern the pre-coordination process to resolve potentially conflicting applications for Expansion Band and Guard Band channels, but the effort was suspended upon the filing of the petition for rulemaking.<sup>11</sup> LMCC now requests that the pre-coordination and application filing dates be postponed to allow the FACs sufficient time to negotiate and implement an MOA for the coordination of Expansion Band and Guard Band channels.<sup>12</sup>

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<sup>4</sup> See Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSAC Regions, *Public Notice*, WT Docket No. 02-55, 27 FCC Rcd 14775, 14780-82 (PSHSB/WTB 2012).

<sup>5</sup> Land Mobile Communications Council, Petition for Rulemaking Regarding Interim Eligibility for the 800 MHz Expansion Band (860-861/815-816 MHz) and Guard Band (861-862/816-817 MHz) (filed Mar. 27, 2014). The period for comments and reply comments has closed, and Commission staff is reviewing the record. See Wireless Telecommunications Bureau and Public Safety And Homeland Security Bureau Seek Comment on Petition for Rulemaking Filed by Land Mobile Communications Council Regarding Interim Eligibility For 800 MHz Expansion Band and Guard Band Frequencies, RM-11719, *Public Notice*, 29 FCC Rcd 4093 (WTB/PSHSB 2014).

<sup>6</sup> See 2014 PN at 6. The Bureaus also referred to a letter from LMCC noting that the certified frequency advisory committees did not have a memorandum of agreement governing pre-coordination procedures for Expansion Band and Guard Band channels. See *id.* at 6 n.31.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 6-7.

<sup>10</sup> See Request at 2.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.* LMCC also notes that one FAC does not support the Request.

In effect, LMCC seeks a stay of the Bureaus' decision to permit pre-coordination for the Expansion Band and Guard Band channels commencing January 13, 2015, and the filing of applications beginning February 10, 2015. A stay is grantable if the petitioner can show that (i) it is likely to prevail on the merits; (ii) it will suffer irreparable harm, absent a stay; (iii) other interested parties will not be harmed if the stay is granted; and (iv) the public interest would favor a grant of the stay.<sup>13</sup> We conclude that LMCC fails to meet this standard.

LMCC states, "The opportunity for mutually exclusive applications is high, absent an MOA designed specifically for these bands that also ensures that the spectrum is made available in a clearly defined, equitable, and public beneficial manner."<sup>14</sup> LMCC does not, however, explain why an MOA is necessary. As noted above, the Bureaus released Expansion Band and Guard Band channels for licensing in regions which had previously completed band reconfiguration, and the Bureaus concluded that the additional NPSPAC regions were similarly situated to the earlier regions. The FACs did not have an MOA in place when Expansion Band and Guard Band channels were released in those regions, and LMCC neither indicates that the lack of an MOA caused significant problems at that time nor posits any changed circumstances explaining what detriment might result from proceeding with the licensing of Expansion Band and Guard Band channels in the additional regions without an MOA. Without evidence of potential harm, we are unable to conclude that LMCC has satisfied the stay criteria.<sup>15</sup> Consequently, we deny the request.

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 Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Request for Postponement of the Pre-Coordination and Application Filing Deadlines for Expansion Band and Guard Band Channels filed by the Land Mobile Communications Council on January 12, 2015 IS DENIED.

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

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>13</sup> See, e.g., *TV Communications Network, Inc., Order*, 27 FCC Rcd 943, 945 ¶ 7 (WTB 2012). For a discussion of stay criteria, see, e.g., *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (*Virginia Petroleum Jobbers*); *Washington Metropolitan Area Transit Comm'n v. Holiday Tours*, 559 F.2d 841 (D.C. Cir. 1977) (clarifying the standard set forth in *Virginia Petroleum Jobbers*); *Hispanic Information and Telecomm. Network, Inc., Memorandum Opinion and Order*, 20 FCC Rcd. 5471, 5480 ¶ 26 (2005). See also *Phone Depots Inc. d/b/a Mobilefone Radio System, Memorandum Opinion and Order*, 91 FCC 2d 1244, ¶6 (1982) (stay motion summarily denied because movant's "request failed to discuss and does not satisfy the criteria for a stay").

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

<sup>15</sup> See, e.g., *Forest Conservation Council, Memorandum Opinion and Order*, 21 FCC Rcd 4462, 4468 ¶ 17 (2006).