

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

In the Application of)
)
 WAKE FOREST BAPTIST HOSPITAL) File No. 0006431747
)
 For 800 MHz Expansion Band Frequency Pair)

ORDER ON RECONSIDERATION

Adopted: April 17, 2015

Released: April 20, 2015

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order on Reconsideration*, we address a petition filed by Wake Forest Baptist Hospital (Petitioner) for reconsideration of our dismissal of its application for an 800 MHz Expansion Band frequency pair.¹ For the reasons stated below, we deny the petition.

2. *Background.* As part of the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems, the Commission created the Expansion (815-816/860-861 MHz) and Guard (816-817/861-862 MHz) Bands in order to provide spectral separation between commercial licensees operating in the enhanced Specialized Mobile Radio band operating above 817/862 MHz and public safety licensees operating below 815/860 MHz.² The Commission announced in 2008 that Expansion and Guard Band channels would become available for licensing when the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (the Bureaus) announce that the required level of clearing has been achieved in a particular region.³ In November 2012, the Bureaus announced that band reconfiguration was complete in eleven regions, and that Expansion and Guard Band channels in those regions would be available for licensing on January 17, 2013.⁴ North Carolina (Region 31) is not among those regions.

3. On August 20, 2014, Petitioner filed the captioned application to operate on frequency pair 815/860.8125 MHz in Winston-Salem, North Carolina. On August 27, 2014, the Wireless Telecommunications Bureau's Mobility Division (Division) granted the application. On August 29, 2014, Smartcomm LLC (Smartcomm) filed an opposition to the application, arguing that the application sought use of Expansion Band frequencies that the Commission has not yet made available for licensing.⁵ On September 12, 2014, the Division set aside the grant, and returned the application to Petitioner to

¹ Petition for Reconsideration (filed Dec. 5, 2014) (Petition).

² 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 ¶¶ 154-58 (2004).

³ See Improving Public Safety Communications in the 800 MHz Band, *Order*, WT Docket No. 02-55, 23 FCC Rcd 15966, 15972-73 ¶ 17 (2008).

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

⁵ Letter dated Aug. 28, 2014 from M. Rob Somers, General Counsel, Smartcomm LLC to Marlene H. Dortch, Secretary, FCC. The Smartcomm letter was sent to Petitioner's application contact and frequency coordinator.

select alternate frequencies.⁶ On October 10, 2014, Petitioner filed a request for waiver, arguing that while the Bureaus had not yet announced the completion of 800 MHz band reconfiguration in Region 31, Sprint Corporation had reported to the Commission that rebanding was complete in Region 31 and Petitioner expected the Commission to release this region in the near future.⁷ On November 5, 2014, the Division denied the waiver request and dismissed the application. On December 5, 2014, Petitioner filed a petition for reconsideration.

4. In December 2014, the Bureaus announced that band reconfiguration was complete in nine additional regions, and that Expansion and Guard Band channels in those regions would be available for licensing on February 10, 2015.⁸ Region 31 is not among those regions.

5. *Discussion.* Under Section 1.925 of the Commission's rules, waiver is appropriate where (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and 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, and the applicant has no reasonable alternative.⁹ In its petition for reconsideration, Petitioner argues that the underlying purpose of the rule(s) would not be served by application to the instant case because "release of the expected frequencies is expected to be forthcoming," and Petitioner's use of the channel to benefit its patients would serve the public interest.¹⁰

6. We disagree. While Sprint has vacated certain channels in Region 31, that is not the final step before the Bureaus announce that the required level of clearing has been achieved in a region. Petitioner has provided no basis for its assumption that the Bureaus' announcement of the completion of rebanding in Region 31 is imminent. Moreover, grant of the waiver request would undermine the Commission's purpose in establishing an orderly procedure that allows all interested applicants a fair opportunity to request Expansion Band and Guard Band channels.

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Wake Forest Baptist Hospital on December 5, 2014 is DENIED.

8. 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

⁶ See Return Letter Ref. No. 5864560.

⁷ Request for Waiver (filed Oct. 10, 2014) (Waiver Request).

⁸ 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, 29 FCC Rcd 16290, 16296 (PSHSB/WTB 2014).

⁹ 47 C.F.R. § 1.925(b)(3).

¹⁰ See Petition at 1.